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REMOVING RED TAPE FROM THE DEPARTMENT OF LABOR'S APPRENTICESHIP APPROVAL PROCESS

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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REMOVING RED TAPE FROM THE DEPARTMENT OF LABOR'S APPRENTICESHIP APPROVAL PROCESS

TUESDAY, SEPTEMBER 25, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM
AND OVERSIGHT,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m. in room 2360, Rayburn House Office Building, Hon. Mike Pence (chairman of the subcommittee) presiding.

Chairman PENCE. This hearing will come to order.

I would like to welcome all of the participants, as well as the ranking member of the Subcommittee on Regulatory Reform and Oversight, the gentleman from Pennsylvania, Mr. Robert Brady.

I want to welcome you to the hearing entitled Removing Red Tape from the Department of Labors Apprenticeship Approval Process. We have a spate of expert witnesses as well as the author of important legislation on this issue.

Let me begin with a few short thoughts and then we will move immediately to my colleague's opening statement and then, of course, testimony. My expectation is that the members in the room can expect a vote between 10:30 and 11:00. In the event that there is a vote on the floor, anyone in attendance and witnesses should be advised that we will simply recess for a brief period of time and then reconvene. We will complete this subcommittee hearing today in the midst of what will probably be a busy schedule across the street.

The hearing today, of course, addresses the need for reforming our regulatory procedures used to approve apprenticeship programs in the United States. I am honored to be a co-sponsor of H.R. 1950, the Apprenticeship Enhancement Act of 2001, authored by my good friend in attendance today, the gentleman from Mississippi, Mr. Wicker.

I look forward to his testimony and that of other witnesses who will discuss the procedures for registering a federal apprenticeship program and the problems they face in receiving such approval.

As the Secretary of Labor recently noted in her Labor Day address on the state of the workforce, America, more than ever, needs a skilled workforce. The office buildings of our cities, the shopping centers of our suburban towns, the homes of our rural counties are all built by skilled craftsmen who have mastered their art through

apprenticeship programs. What concerns me and should concern every member of Congress, the Administration and businesses is whether America has the processes in place to train a new generation of skilled craftsmen.

Since at least the time of the Middle Ages, young men and now young women in the modern era have learned trades at the hands of masters. The thousands-of-year-old process of training new workers continues today.

During the heights of the worst economic disaster in American history, the Great Depression, Congress enacted what came to be known as the National Apprenticeship Act to ensure that employers did not take advantage of young workers' need for training and jobs. The National Apprenticeship Act requires that the Secretary of Labor promulgate standards to ensure the welfare of apprentices. The act also requires that the secretary works with the states to carry out this function. I think it is absolutely vital for the future of this country to ensure that apprentices are protected yet trained well enough that they have a mobility to move where the labor markets dictate that they are needed.

The Department of Labor regulations set forth the criteria by which any employer should be able to obtain approval of an apprenticeship program. Approval is sought either from the United States Department of Labor or a state apprenticeship council given that authority by the federal government. An applicant that meets the criteria set forth by the Secretary should have the program approved with all deliberate speed without regard to who is sponsoring the apprenticeship program.

If the applicant does not meet the criteria, the Department or State Apprenticeship Council should provide a written explanation of the deficiencies so the applicant can modify the program accordingly. The appropriate government agency then should meet quickly when the application is resubmitted to approve the modified program.

Yet these simple procedures are not evident in the approval of apprenticeship program in America today. In certain instances, it has literally taken years and multiple lawsuits to obtain approval of a qualified apprenticeship program and this is unacceptable. Such behavior, whether at the federal or the state level, is wrong and it is our purpose in this subcommittee hearing to entertain a proposal before the Congress to address this inequity. That is one reason I have decided to co-sponsor H.R. 1950 and I believe it would provide regulatory certainty to a process fraught with unbridled discretion and endless meetings of federal and state bureaucrats.

Ultimately, I think 1950's reforms will help all employers interested in providing our young men and women with training in skilled crafts that this country will need for not only the economic growth of the 21st century but also the economic dynamism that our nation may well need in the long struggle into which we entered two weeks ago today.

With that, I yield to the ranking member of this subcommittee who is kind to join us today and I recognize Mr. Brady for any opening comments.

[Chairman Pence's statement may be found in appendix.]

Mr. BRADY. Thank you. Thank you, Mr. Chairman. And for the sake of time, I am going to make some brief remarks and would ask unanimous consent to submit the rest for the record.

Chairman PENCE. Without objection.

Mr. BRADY. Thank you.

As the population ages and the number of potential workers decline, we must find ways to help meet a new demand for skilled labor. One way which has been suggested is by changing the federal apprenticeship programs.

Since 1937, the apprenticeship program has a record of great success: 440,000 workers are trained under apprenticeship programs held to high standards of excellence in the skilled trades. We depend upon these workers to make sure that our buildings are well built. Sometimes we take for granted how well our buildings are put together. In Japan, they build homes to last 30 years. In America, we build them to last a century. That is the result of high standards of training in skilled trades like construction, roofing, plumbing and electrical wiring.

This program makes sure that when you buy a new home and turn on the faucet, you do not blow an electrical fuse. The men and women who have graduated from apprenticeship programs are the professionals who built this country.

Clearly, we want the strongest apprenticeship programs possible. The proposal under consideration does nothing to strengthen the current program and, in some instances, may weaken it.

Proponents of this bill see backups and lack of action on applications as the problem. I can understand and appreciate that frustration. There is a labor shortage in the skilled trades and training programs are needed. But the solution is not to waive the standards that maintain apprenticeship programs at such high quality.

At best, Mr. Chairman, the proposal in this bill is only a small piece to the puzzle. I look forward to working with my colleagues in finding a sensible solution to the current skilled labor shortage, one that maintains our training standards and our apprentice programs and ensures the quality workmanship that makes America proud.

I feel real, real close to this issue. I am not an expert on anything, but I am close to an expert on this. I graduated from a four-year apprenticeship program in the carpenters union. I still carry a current card there. And I am close the apprenticeship programs. I tutor on every Tuesday night that I am not here and have been for the last seven, eight years in our programs that help these young men and women get into them.

We do need them. It is necessary and, again, I cannot express enough of my abilities that I can lend toward helping making this remedy the situation that we do find ourselves in. So I am pledging to work along with you and with my colleagues in trying to come up with a decent solution.

Thank you.

[Mr. Brady's statement may be found in appendix.]

Chairman PENCE. Thank you, Mr. Brady.

And with that, we will recognize our first witness, the Honorable Roger Wicker of Mississippi, the author of the Apprenticeship Enhancement Act of 2001.

Good morning.

We will recognize the gentleman from Washington to introduce a constituent and friend before returning to Mr. Wicker.

Mr. Nethercutt, welcome.

Mr. NETHERCUTT. Thank you, Mr. Chairman, Mr. Brady, and I thank my colleague and my dear friend Mr. Wicker for yielding for a moment. I apologize for this.

I am delighted to be here before the subcommittee to introduce Ken Dunham, who will testify on a panel after Mr. Wicker testifies.

I have known Ken Dunham for years. He is a northwesterner. He is affiliated with the Association of General Contractors in Spokane, Washington. He has a wealth of experience, Mr. Chairman, about apprenticeship programs, about the labor force, and about the need to have a strong labor force in my region of the country. He will be a valuable witness as the subcommittee considers this bill. I appreciate your welcoming him, all of you here, and I am delighted to have a chance to say a good word about Ken Dunham. He is a fine man, a very credible citizen with respect to the issues that are facing the committee and so I am delighted to do so.

And I again thank the chairman for his indulgence and I thank Mr. Wicker for his and I apologize for having to leave early.

Chairman PENCE. Not at all. Thank you very much.

With that, the author of this legislation, the gentleman from Mississippi, Mr. Wicker, is recognized.

Mr. WICKER. Thank you, Mr. Chairman.

STATEMENT OF HON. ROGER F. WICKER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WICKER. I do appreciate the subcommittee having this hearing and allowing me to testify and I appreciate the remarks of both gentlemen who have spoken. I am delighted to know that Mr. Brady is a graduate of an apprenticeship program and is still involved in that process and I am glad to see that both of you have spoken in support of the concept. I think that every member of Congress certainly would like to make the process better if we can do so.

My remarks today and my legislation deal simply with streamlining the approval process. There may be other things that we need to discuss with regard to apprenticeship programs, but that is what H.R. 1950 deals with. Let me just say I want to talk a little more about what an apprenticeship program is and should be, why they need to be registered, why there is a need for more skilled workers and then spend a little time talking about actual experiences that I have learned from business people and contractors in my own district and then a brief discussion of my legislation.

Mr. Brady mentioned 440,000 apprentices in the United States now. I had the number of approximately 400,000. But certainly while that is a large number of men and women being trained, I think we should have the goal of raising that figure to one million. Everything I hear is that we need a large increase in the number of skilled workers because these apprentices are our future electricians, carpenters, plumbers, pipe fitters and mechanics.

And, as Mr. Brady said, they are more educated, they are more highly motivated, more productive, better skilled. They are more

likely to become supervisors. And they are more likely to earn higher salaries and experience less unemployment. So we need more apprentices and I think we can all agree on that.

Certainly the reason for registering the apprenticeship programs is that only the registered ones are permitted to pay apprenticeship wages on projects where there is federal funding. Also, many municipalities and states require that the apprenticeship program be registered in order to qualify for the apprenticeship wage.

Mr. Chairman and members of the subcommittee, two years ago, contractors from my home state of Mississippi came to Washington to discuss the challenges facing the construction industry. They listed a number of items but they all agreed that the critical shortage of skilled workers was a paramount issue in the industry.

One of the electrical contractors related the type of apprenticeship program horror story which discourages other potential program sponsors from even formulating an application. In seeking approval for a line erector's apprenticeship program in the State of California, this Mississippi company spent nearly $1 million and five years before the program was finally approved and then only after a successful lawsuit.

It took the same company two years and $250,000 in expenses in the State of Washington not to even get an answer. It is not that the program was denied because it was a poor plan. No one ever said that. But the State Apprenticeship Council or the SAC in that state did not even give the program sponsor an answer.

After these experiences, the company no longer seeks approval of their apprenticeship programs in states that are governed by State Apprenticeship Councils.

During this meeting, the other contractors in the room all nodded their heads in understanding. Either they or someone they knew had similar experience. The costs in time and money to obtain approval for apprenticeship programs is a strong disincentive to sponsoring programs of their own. Therefore, there are not enough new programs that are submitted for approval and the costly and lengthy delays in the approval process are denying job training opportunities to thousands who are awaiting approval.

So, members of the subcommittee, to address these concerns, I have introduced H.R. 1950, the Apprenticeship Enhancement Act. This legislation does not change the standards which are required of apprenticeship programs in any way. Those are not changed at all under this legislation. Without sacrificing standards, we can create more apprenticeship programs, thereby creating more job training opportunities.

All this legislation does is remove bureaucratic roadblocks so that apprenticeship programs which meet federal standards can be approved in a timely manner, and so that potential program sponsors are not discouraged by approval processes that can cost hundreds of thousands of dollars and many years.

The bill currently has 24 bipartisan cosponsors.

H.R. 1950 requires that the U.S. Department of Labor Bureau of Apprenticeship Program and Training, BAT and State Apprenticeship Councils, SACS, act on applications within 90 days after an application is submitted. This should be sufficient time for these government agencies to make a decision. It should not take more

than three months to determine if an apprentice application meets the 22 basic elements of an acceptable apprenticeship program.

However, my legislation allows for unforeseen circumstances. If for any reason a SAC or BAT cannot render a decision within 90 days, they can notify the applicant of the status of the application and then make a decision within the next 30 days. If after the additional 30–day period there is still no verdict, the application would then be forwarded to the U.S. Department of Labor. The purpose of this provision is to eliminate the possibility of a pocket veto by either a BAT or a SAC.

In addition to these reasonable time lines, H.R. 1950 also requires a written justification for disapproval of an application. With this explanation, sponsors of programs which are denied can work with the agencies to improve their programs so that they submit new and approved applications. The legislation also allows for an appeal to the Department of Labor if the applicant believes that their program was improperly denied.

This legislation, I repeat, does not change standards and does not provide for unlimited appeals on the part of a program sponsor. Instead, the bill does just one thing; it asks for an answer from the government agency.

I appreciate the opportunity to testify before you on the concept of streamlining the application process and I would urge the subcommittee to give favorable consideration to the legislation, Mr. Chairman.

[Mr. Wicker's statement may be found in appendix.]

Chairman PENCE. Thank you for that testimony. I know it is not customary to ask too many questions of members, but I wondered if I might, rather than a question, ask you to elaborate on your assertion today that I think is very relevant to both sides of this subcommittee that your legislation does not change the standards which are required of apprenticeship programs in any way.

In evidence today and in other discussions about your bill, there seems to be an impression that it does and I wanted to ask you, if time permits, for you to elaborate on that, however briefly.

Mr. WICKER. Well, I would suggest that persons who are concerned about that particular issue simply need to read the legislation. This is a bill simply about the approval process and I really cannot state any stronger than that that we leave the standards the same. Perhaps the standards need to be revisited by the Congress. I do not know. Perhaps they need to be visited by the various agencies. But this bill is very narrow in its scope and it simply says that under the present standards and guidelines, changing none of the criteria whatsoever, the agency should simply give an answer: does the application qualify for approval or not?

And I would submit to members of the subcommittee that 120 days is ample time in order to see if an application on its face meets the criteria.

Now, perhaps once a program is up and running, I am certain there are other safeguards to make sure that they are doing what the application proposed to do and promised to do, but this legislation simply deals with the question of whether the application is sufficient in order for the program to get started.

Chairman PENCE. Thank you.

Mr. Brady, did you have anything else?

Mr. BRADY. Just I would not dare question you, I just wanted to ask you for help, so to speak.

You did all the work on this and I appreciate it. Is there any way we could play with the standard or try to—not play with the standard, pardon me. With the application and the way the application is looked at to speed that up?

The problem that I have is the 120 days they automatically get in and I think then there is no screening process whatsoever, there is no qualification whatsoever, and the problem with that is through an accredited apprenticeship program as I know, I went through one, you have to pass every year. And if you get applicants that should not be in the program originally, they may fail and you are loading up the process with first year apprentices that do not go to the second year, do not go to the third year and, in some cases, a third year and a fourth year. I went to a four-year program, some only have two and some have three. And if you automatically let somebody in, it is like waiting in line for something, if you wait long enough, you get in automatically.

Maybe we could work on the problem that they cannot get to these people in time and give them some beefing up to make sure that they do have enough manpower or whatever the problem is to review these applications in time, within the 120-day period.

Just letting somebody in can cause a problem. If you have 120 people in the first apprenticeship class in the first year and 60 drop out because they should not have been there, then you are short in the second year and it is hard to get an apprentice—you do not let an apprentice in on your second year. They go in the first year and go through a four-year or two-year respectively program. That is the main problem that I have looking at this.

And I would love to sit down and work with you a little further with it.

Mr. WICKER. Well, I appreciate the sentiment of that question and I would be delighted to work with you on that and perhaps craft a bill that you could be a co-sponsor of.

This bill is somewhat different from the legislation that I introduced during the previous Congress as a result of some conversations I had with people who had doubts about it, but let me address several of your concerns.

First of all, the legislation does not provide for an automatic approval after the initial 90-day period with the 30-day extension. All it says is that after that 120-day period if an agency will not give an answer, yes or no, then it goes up to a higher authority to make the decision. After the second period, which is a 30-day period, the application is then forwarded to the United States Department of Labor. It is still then an application and there is no directive in the legislation that says the Department of Labor should automatically approve it. It just says after 120 days we need a yes or no answer or we are going to give it to somebody who can look at it.

So I hope that addresses your concern in that regard.

Congressman, if there is a need for additional manpower in order to actually view the applications and see if they are adequate, then I think that is a legitimate issue that might be very cost effective

for this Congress to look at, if we need more people to make the approval process run more efficiently.

But there is no reason—and I hope you will agree with this, Congressman, there is no excuse for year after year after year, the same application not even receiving an answer, not even receiving a status report about what the problem is, what is wrong with this application. We certainly need to fix that aspect. And that is all this legislation does.

With regard to an additional point that you made, if a program that submits an effective application is then up and running and proves not to be effective there should certainly be sanctions by the government agencies to address that particular problem.

Chairman PENCE. The chair would welcome the gentleman from Illinois, Mr. Phelps, and provide an opportunity for any opening comments that you might have.

Mr. PHELPS. Thank you.

Chairman PENCE. With that, again, our thanks to the gentleman from Mississippi for a direct and candid exchange. We are very grateful for your leadership on this issue.

Mr. WICKER. I am grateful to you also, Mr. Chairman.

Chairman PENCE. And we will allow you to move on to a busy day and then ask our panel of four to move to the witness table. Thank you.

I would like to welcome all of our witnesses to this hearing of the Subcommittee on Regulatory Reform and Oversight of the Small Business Committee. And I know I speak on behalf of the entire subcommittee in welcoming you and expressing appreciation for your time and expertise today.

The procedure that we will follow is I will give a brief introduction of each witness and then you will be individually recognized after your introduction for what will be five minutes of time. Most of you are veterans of this institution, but for those that may not, you can observe the lights and respond accordingly. The yellow does not mean step on the accelerator, it means being to slow down and then the red means to wrap up your comments.

We will entertain brief remarks from each of the witnesses in the interests of time and then move into any questions that your comments have stimulated from myself, the ranking member or the gentleman from Illinois or any other member that joins us.

With that, Mr. Ken Dunham is with us, already having been generously introduced by the gentleman from Washington, Congressman Nethercutt, earlier today.

Ken Dunham is Executive Director of the Inland Northwest AGC, a chapter of the Associated General Contractors of America, which is a national construction industry trade association. The Spokane-based organization has a membership of nearly 560 firms, representing the highway, utility and commercial building industry subcontractors and suppliers.

Prior to coming to Spokane in 1993, Mr. Dunham held a similar position from 1990 to 1993 with the Montana Contractors Association. He is a graduate of the University of Montana with a degree in radio and television journalism, which is my background as well, so we will expect a stellar presentation. A native of Troy, Montana and is recognized for five minutes.

Mr. Ken Dunham.

STATEMENT OF KEN DUNHAM, EXECUTIVE DIRECTOR, INLAND NORTHWEST AGC, SPOKANE, WASHINGTON, FOR THE ASSOCIATED GENERAL CONTRACTORS

Mr. DUNHAM. Thank you very much. Good morning, Mr. Chairman and distinguished members of the committee. I am pleased to be here this morning to discuss the issue of apprenticeship training. My name is Ken Dunham. I am the Executive Director of the Inland Northwest Associated General Contractors in Spokane, Washington.

The members of the AGC of America have consistently ranked the shortage of skilled construction labor among their most critical business issues. The construction industry needs more skilled workers. By encouraging the development of more registered apprenticeship programs, we will have more skilled and better trained craftspeople in all aspects of construction. We need to abandon those practices that have restricted apprenticeship registration.

House Resolution 1950 will help bring some accountability to the approval process and is a great start to the process of raising both the number and the skill levels of our workers throughout construction.

I hope to be able to provide the committee today with an illustration of how the approval process works in real life and impress upon you the need for reform and accountability.

I have oversight of apprenticeship and training programs for the AGC chapter in Spokane. In this capacity, I serve as a trustee for the open shop/non-union carpenters' and construction equipment operators' apprentice program as well as serving as both a trustee and an apprentice committee member for an AGC Teamster's apprenticeship program. This background has allowed me to have that rare perspective of serving in both union and open shop apprenticeship programs.

Until the early 1980s, most of the apprenticeship programs were administered as joint labor and management programs. Attempts to open up the process to non-union programs has met with some success in certain areas. However, patchwork acceptance of open shop programs does not help fill the need for more trained workers. We do believe that there is a place for both the union-affiliated apprenticeship programs and apprenticeship programs for the open shop segment of the industry.

The Inland Northwest AGC attempted to gain approval for construction trade programs without success for ten years, beginning in 1983. The chapter applied for carpentry and construction equipment operator programs in January of 1994. In that same year, we re-submitted carpentry apprenticeship programs and operator programs for approval and were denied twice that year, despite the approval of both the SAC staff and the BAT staff in the State of Washington.

Following those denials, we had no choice but to file suit against the Washington State Department of Labor and Industry, as well as each member individually of the State Apprentice Council.

In January 1995, the two programs were finally approved after a council meeting that was punctuated by much shouting, threats, and the attempt of the council to go into an illegally closed meeting to discuss strategies to again deny our program.

The end result was that the programs were finally approved. This action then resulted in the withdrawal of our lawsuit. The challenges to our programs continue today and include unwarranted, unreasonable and often contradictory demands for data and oversight.

I have observed that that same level of oversight and interference is not present in the union program on which I serve as a trustee and a committee member.

The latest issue with the State of Washington Apprenticeship Council was the July 2001 denial of approval for an open shop construction craft laborers apprentice program. The SAC rejected the program after vague, confusing and often contradictory arguments were made on the grounds that it was unnecessary because the union program was in place, that AGC jurisdiction lines did not match up with union lines and challenges were made on the professional and trade qualifications of the proposed members of the committee. None of these were valid criticisms and the programs again had garnered the support of both the SAC staff and the BAT staff. We have resubmitted the program for the next meeting in October.

The AGC supports Congressman Wicker in his efforts and applauds H.R. 1950 as a step in the right direction. We welcome all attempts, legislative and regulatory, to improve a system that is so vital to the construction industry and the nation's economy.

In the past, there have been efforts to improve, revamp and update the regulations governing apprenticeship. In the early 1990s, the Department of Labor developed an initiative to improve the apprentice system in the nation. I list those ideas in which we agreed with the Department of Labor in my written comments.

The AGC believes that this is a good time to revisit many of these ideas and to use the legislative and regulatory processes in concert with one another to improve the apprenticeship system.

Thank you for your time and interest today in this crucial matter. I am happy to answer any questions that you might have regarding my testimony. It is my hope that together we can find a positive way to address the concerns raised and help workers secure and maintain rewarding careers in the construction industry.

Thank you very much.

[Mr. Dunham's statement may be found in appendix.]

Chairman PENCE. Thank you, Mr. Dunham.

And, again, we will run through the witnesses and their presentations and then hopefully have a very productive dialogue with the members present.

John Bonk is also with us today. He was raised in the Wilmington area, graduated from St. Elizabeth's High School and attended Drexel University and University of Delaware, where he started working in the construction field at a very early age. He was a certified welder an still holds a long boom crane operator's license.

John started with M. Davis & Sons in 1978 as a project engineer when the company had 15 employees. he is currently president and

part owner of that company now, which has over 400 full-time employees and performs work both regionally and nationwide.

He is also past president of the Delaware chapter of Associated Builders and Contractors and on the national board and is recognized for five minutes.

Welcome, Mr. Bonk.

STATEMENT OF JOHN BONK, PRESIDENT, M. DAVIS & SONS, INC., WILMINGTON, DE, FOR THE ASSOCIATED BUILDERS AND CONTRACTORS

Mr. BONK. Good morning, Mr. Chairman and members of the committee. My name is John Bonk. I am President of M. Davis & Sons, Inc., located in Wilmington, Delaware.

On behalf of Associated Builders and Contractors, I would like to thank Chairman Pence and the members of the Subcommittee on Regulatory Reform and Oversight for this opportunity to address ABC's concerns regarding the hurdles and often overburdensome procedures faced by businesses when they seek approval of their apprenticeship programs. I will be summarizing my comments, but I request that my full statement be submitted for the official record.

Additionally, ABC chapters from Hawaii, Washington and California will be submitting additional comments regarding this issue and we request that their statements also be included in the record.

Chairman PENCE. Without objection.

Mr. BONK. For over 100 years, M. Davis & Sons has offered fully integrated industrial construction. We have built our reputation through providing quality workmanship for our clients and safe, healthy work sites for our employees. We normally have 60 to 70 registered apprentices. In addition, we employ a full-time training manager and spend in excess of $300,000 per year in training.

M. Davis & Sons has been a member of the Delaware Chapter of ABC for 20 years. ABC is a national trade association representing more than 2300 merit shop contractors, subcontractors, material suppliers, and construction-related firms within a network of 82 chapters throughout the United States and Guam. According to the National Bureau of Labor Statistics, merit shop contractors comprised 87 percent of the construction workforce in 1997, up from 17 percent in 1947.

Our diverse membership is bound by a shared commitment to the merit shop philosophy within the construction industry. This philosophy is based on the principles of full and open competition unfettered by the government and non-discrimination based on labor affiliation in the awarding of construction contracts to the lowest responsive bidder through open and competitive bidding. This process assures that taxpayers and consumers will receive the most for their construction dollars.

ABC's commitment to quality training is unquestioned. Beginning in 1960 with the establishment of ABC's first apprenticeship program in Baltimore, ABC recognized that the future of the construction industry lies in its ability to attract and retain the men and women necessary to meet the nation's construction needs. ABC provides formal apprenticeship training programs that are reg-

istered with the Department of Labor's Bureau of Apprenticeship and Training. These programs meet all federal and state requirements for formal apprenticeship and prevailing wage work, including employer-sponsored classroom instruction and on-the-job training. Upon successful completion, craft workers are recognized at the journey level in their trade and awarded their BAT certificate.

The depression-era National Apprenticeship Act which serves as the basis for the voluntary national apprenticeship system is no longer responsive to needs of both employers and employees. The regulations which govern apprenticeship do not address the new and innovative training techniques that are utilized by employers and employees today.

Delaware has a state-sponsored apprenticeship program. While the State Department of Labor employees who administer the program are dedicated individuals, the program is antiquated and hamstrung by bureaucracy. Because of the time and effort it would take to register ABC's apprenticeship program in Delaware, the contracting community has accepted the status quo.

Over the years, Delaware has lost much of its manufacturing base and construction could fill the job void this has left. Unfortunately, numerous apprenticeship problems preclude this. It is hard to keep students in the apprenticeship training because they get bored with the outdated training methods. Lack of reciprocity with neighboring states make it economically unwise to utilize apprentices in some instances.

In Delaware and nationally, we have an ever increasing need for skilled people which is going unanswered. The contracting community is willing to invest the time and money it would take to establish good apprenticeship programs, but are reluctant in the face of the government.

ABC is looking to accomplish five things. The first of those is due process. Through the enactment of the Apprenticeship Enhancement Act of 2001 sponsored by Representative Roger Wicker and Ruben Hinojosa, the federal government could restore much needed balance and fairness to the approval of apprenticeship programs.

Reciprocity. It is essential to require one state's apprentices to recognize those registered in other states. Apprentices should be able to work in more than one state.

Portability. Registered apprentices currently in training need to have the ability to move from state to state and enter into another state's registered apprenticeship program at the same level they had attained in a prior state without penalty.

Competency based training. Employees who have previously acquired skill sets should not be required to begin the apprenticeship program from the beginning.

Distance learning. In order to achieve apprenticeship reform, the Department of Labor must increase their usage of technology and the Internet. There is a great need for flexibility and variable options and training methods.

Thank you for this opportunity to be here today. I welcome any questions that the committee may have.

[Mr. Bonk's statement may be found in appendix.]

Chairman PENCE. Thank you, Mr. Bonk, for your presentation.

With that, we will take a brief recess while the members discharge their duty across the street and then we will return for Mr. Herzog's and Mr. Krul's presentations and then the following questions.

Thank you.

[Recess.]

Chairman PENCE. I would like to thank everyone for their patience. I am informed that the ranking member will be joining us momentarily, as other members are also returning from the House floor.

I want to welcome you back to this hearing of the Subcommittee on Regulatory Reform and Oversight entitled Removing Red Tape from the Department of Labor's Apprenticeship Approval Process, where we are focusing specifically on H.R. 1950, the Apprenticeship Enhancement Act of 2001.

As I mentioned before, we will complete with our testimony and then move to any questions or dialogue thereafter and we should be able to complete our work here before it is time to break for lunch.

Our next witness is John Herzog, who is the Staff Vice President for Public Policy for Air Conditioning Contractors of America. John has nearly 15 years of government experience, including elective and appointed positions at the local, state and federal levels of government. In addition, he ran his own advertising and public relations business in Colorado for approximately 20 years. Prior to joining ACCA, he was vice president of a Washington, D.C. based public affairs firm where he represented the interests of small business and rural associates on Capitol Hill.

In addition to his undergraduate degree from the University of Colorado, he holds an M.S. in journalism from UCLA and has taught journalism, marketing, consumer behavior, business communications and technical writing at the college level. He is, among other things, listed in the Who's Who in Politics in America.

And with that, I recognize Mr. John Herzog gratefully for five minutes.

STATEMENT OF JOHN HERZOG, STAFF VICE PRESIDENT FOR PUBLIC POLICY, AIR CONDITIONING CONTRACTORS OF AMERICA, ARLINGTON, VA

Mr. HERZOG. Thank you, Mr. Pence and Representative Brady. We appreciate the opportunity to enter in to the national dialogue on improving the recruitment and training of America's skilled workforces.

Originally, as you know, Dick Stilwilll, chapter manager for the Oregon-Washington chapter of ACCA was scheduled to testify. The events of September 11th changed that. Consequently, he asked me to deliver his message and I have also spoken with several other of our chapter executives who operate apprenticeship programs, so I think you will find the information of help.

As you know, ACCA is the nation's largest trade association of those who design, install and maintain heating, ventilating, commercial, residential, refrigeration and air conditioning systems, known as HVACR.

We are a federation of 60 state and local affiliated organizations representing approximately 9000 contractor companies nationwide. Approximately 20 percent of our membership is union affiliated.

Prior to September 11th, the number one concern of our members, union and non-union, was addressing the labor shortage in the industry. It is not an issue of union versus non-union, but one of simply putting enough qualified people on the streets to meet the needs of our community.

Discounting the fallout on the economy from the terrorist attacks, the Bureau of Labor Statistics had projected that the HVACR contracting industry will face a labor shorting of 104,000 by the year 2004. The entire industry employees 600,000 to 800,000 people, so you can see this represents a significant shortfall.

Part of the solution lies in the way we train technicians. To begin, we support the Apprenticeship Enhancement Act for it addresses part of the problem. However, our experience highlights other barriers to training that deserve your attention.

ACCA became involved in apprenticeship training about 20 years ago through our chapters. Today, I would like to focus on specific problems that Dick had encountered in Oregon. Our Oregon chapter is often allied with another local trade association. Dick said they planned to start a SAC-approved apprenticeship program but became discouraged by what the other group experienced.

Oregon has adopted a random selection pool process. This means a contractor interested in hiring someone to put through an apprenticeship program can only select the person at the top of the list. They hire sight unseen.

Dick said that prior to 1999, Oregon operated on a method D selection process approved by BAT. This is the traditional hiring process. However, the addition of affirmative action stipulations, which is already addressed by BAT, changed the Oregon process. It created today's random selection pool process that has failed to meet the needs of the contractors or the students.

This presents an especially sticky problem for company owners who cannot even place their children in a program with their own company unless the timing is absolutely perfect.

The Oregon SAC requires applicants to have a high school diploma or equivalent with the additional requirement for HVAC only that they have a C in algebra.

SAC is being driven because it is the only way one can work on public projects in Oregon, Washington, and California and meet the prevailing wage requirement for apprentices. This assumes you want to use apprentices and very few businesses, regardless of size, can afford to work with only journeyman on a job.

I see that my time is running out. I have experience on Florida and Maryland. During questioning, if you would like to hear about those states, I will be happy to share that with you.

Thank you.

[Mr. Herzog's statement may be found in appendix.]

Chairman PENCE. Thank you, Mr. Herzog, and thank you especially for coming in and filling in at late notice. We appreciate your remarks and hope as you are comfortable to have some additional dialogue about some of the remarks that were capably presented.

Our final witness today is Robert J. Krul. Mr. Krul is the National Apprenticeship Coordinator for the United Union of Roofers, Waterproofers and Allied Workers and has held that position since 1979. He is a 29-year member of Roofers Local 74 in Buffalo, New York, a graduate of their apprenticeship program and is proud to say he was voted the outstanding apprentice of his class. He was an instructor and coordinator in his local union as well as a journeyman roofer and waterproofer, serving in a foreman and estimator capacity for several western New York roofing companies. He has served on the Federal Committee on Apprenticeship, is currently a member of the Building and Construction Trades Department Apprenticeship Committee, is chairman of the Secretary of Labor's Advisory Committee on Construction, Safety and Health, and is also chairman of the Building and Construction Trades Department Safety and Health Committee.

So it is with deep appreciation that we recognize Mr. Robert Krul for five minutes.

STATEMENT OF ROBERT J. KRUL, NATIONAL APPRENTICESHIP COORDINATOR, UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS, WASHINGTON, DC, FOR THE BUILDING AND CONSTRUCTION TRADES AFL–CIO

Mr. KRUL. Thank you, Mr. Chairman, for that kind introduction and I would like to thank the members of the subcommittee for this opportunity to address an issue that the 14 affiliated unions of the Building and Construction Trades Department feel is of utmost importance and those of us who are products of this apprenticeship training system feel compelled to address.

H.R. 1950, the Apprenticeship Enhancement Act, purports to streamline the process of registering apprenticeship training programs and increase the numbers of programs in this country. In this period of extreme shortages of skilled workers in all industries in this nation, and most particularly in the construction industry, the purpose of the legislation at first glance seems to address a pressing need. But no matter how noble one thinks the purpose of the bill is, the unions of the Building Trades and the organized segment of the apprenticeship community have one salient point regarding its enactment: what will be the price to the current standards of apprenticeship training that have served this country well for at least 64 years?

Under the current system, the Department of Labor has issued national guidelines defining apprenticeship training criteria for numerous occupations and minimum standards governing apprenticeship training that all those making applications office review an apprenticeship program must abide by. These standards include items like affirmative action goals, health and safety training, classroom hours, curricula, wage progression for apprentices, ratios, and other aspects of the program that ensure the welfare of the apprenticeship is protected and, most importantly, that actual training will be conducted and the apprentices will learn a trade or a craft. The system as it exists was designed to make sure that everyone who submits an application for an apprenticeship program adheres to a given set of national standards for a particular

industry or trade, protected the welfare of apprentices being trained and ensured that the apprentice completed his or her training by learning a craft or a trade.

H.R. 1950 will undermine the Department of Labor's Office of Apprenticeship Training, Employer and Labor Services and the State Apprenticeship Councils. Under H.R. 1950, a contractor or entity wishing to receive approval for a training program that may not meet the standards established for their particular industry or trade can play a waiting game and file continual appeals in order to receive an apprenticeship training program approval from the Secretary of Labor's office without being held to the OATELS's or SACs' high standards.

Those established sets of standards have served the apprenticeship community for over six decades. Are we ready to say in this time of critical shortage of skilled workers in the construction and other industries that we are ready to lower the bar? Are we ready to say that construction workers need not be completely skilled in what they do, that they only need partial training or task training in order to work in this industry?

If the answer to those questions in anyone's mind is yes, then I hold out to you that the workers who eventually rebuild our World Trade Center and the Pentagon need not be of top quality or possess utmost skills. If mediocrity in the form of so-so work that leads to future problems in building and construction is our goal, then let us lower the bar of excellence.

I have never understood why it is that many in this country look down at construction work as just another occupation that requires no marketable skills or standards by which to judge those skills. Just think of the standards and skills that must be measured in a host of occupations and vocations in our everyday life. Lawyers must pass a bar exam in order to practice law. Accountants must pass a standard certification to receive their CPA license. And pilots must conform to a set of established standards in their training before being allowed to fly. And for the general public, all of us must pass tests and demonstrate proficiencies before being issued a driver's license.

For each of these examples, there are always individuals who do not pass muster with the tests administered or the standards established in a particular industry, craft or profession. Is the answer to accommodate them by changing or weakening the standards or tests? Of course not.

The same should be true of apprenticeship standards. Yes, the standards are tough, but they are tough for the same reasons that any industry standards are tough: to ensure that men and women who enroll in these apprenticeship and training programs will be properly trained to safely and competently perform their work. Instead of lowering the bar, we should be committed to making sure that the standards of apprenticeship that have served us so well over the last six decades are never weakened and, in fact, they should be strengthened and protected.

I understand the frustration of those who come before you today and relate that they have experienced difficulty in registering what they feel is a bona fide apprenticeship training program that meets the required standards. I am not here to attempt to convince you

that this system is never in need of repair or adjustment. But I would hope that conjecture, anecdotes and what seems to be a few minor administrative infractions will not be the catalyst for amending the National Apprenticeship Act of 1937.

The committee should look to the Federal Committee on Registered Apprenticeship for guidance on how to address the issues raised by H.R. 1950 and its proponents. In fact, the FCRA has been working for the past two years on the very area of concern addressed by H.R. 1950.

I see my time is up and I just would like to sum up by saying that I and my colleagues in the Building Trades from both labor and management urge the subcommittee to look to those experts in the apprenticeship community for any remedies that will be done so that the original purpose and intent of the Fitzgerald Act to safeguard the welfare of apprentices is the primary concern that we look at.

Thank you very much for this opportunity to testify.

[Mr. Krul's statement may be found in appendix.]

Chairman PENCE. Thank you, Mr. Krul, and thank you to all of our witnesses today.

The chair will entertain a few questions to our witnesses and then we will recognize our ranking member, the gentleman from Pennsylvania and the gentleman from Illinois for any questions or comments that they might have.

Beginning with Mr. Dunham, I am intrigued by the fact that you have been involved in union and non-union apprenticeship programs, which seems in some part of this to be a fault line of this debate, and you have been involved in programs that have been approved under the National Apprenticeship Act. Do you believe that union and non-union registered apprenticeship programs result in graduating skilled craftsmen as a general rule?

Mr. DUNHAM. Yes, I do. In our case, the standards that we are using for the open shop programs are models, the mirrors, of the union programs under the requirement that the programs have to parallel each other. So the standards that we use and the education processes throughout it are the same and we have had no major objection with that.

I think there should probably be some standardization. Carpenters are carpenters, operators are operators. The work processes are much the same.

The difficulty we have is just simply getting the program considered by the State Apprenticeship Council in the first place and that is what we think the whole issue is with H.R. 1950.

Chairman PENCE. One follow-up question, Mr. Dunham.

You referred in your remarks to past efforts to update the apprenticeship system with new ideas. I know Mr. Bonk laid out a few ideas and Mr. Krul also referred to the debate over how we improve the system. I wondered if you might elaborate briefly on how outside of H.R. 1950 we might consider improving the system that would raise the level and the quality of our apprenticeship workforce?

Mr. DUNHAM. Mr. Chairman, the issues Mr. Bonk raised are certainly valid ones, perhaps maybe slightly apart from what the intent of this bill is, to simply get access to the program. We cer-

tainly agree with the issues of reciprocity, the issues of training, some of the others. We listed those in our written comments.

But the major problem is simply gaining access to the process of registering a program in the first place. We do not say the system needs to be broken, it just needs to be utilized better.

Chairman PENCE. And to Mr. Bonk, I appreciate both you and Mr. Krul's hands-on experience, I am someone who believes that the ability to perform a trade which is far beyond my talent base is an awesome ability to observe and will probably be much in evidence at those tragic sites in Manhattan and here in Washington.

With that piece of admiration expressed to both of you, let me ask you about how would you characterize the extent of this problem?

We have heard a wide range of views among the testimony today, some saying this is a very acute problem with regard to the approval process. I know that some thought that non-union contractors in Delaware have chosen not even to apply for approval of apprenticeship programs.

How would you characterize the depth of this problem? Are these isolated instances or is this a pattern, both in your home jurisdiction and around the country?

Mr. BONK. Having served on the national board of ABC, I was in frequent meetings with contractors all over the United States and it is a country-wide problem, that all ABC contractors are looking for is a chance to get out of the batter's box up to the plate. If they strike out, they strike out. If they get a hit, they get a hit, but we cannot even get to the batter's box right now.

No one is trying to put the standards aside or minimize the standards. All we want is a chance to stand at the plate.

In Delaware, we have a State Apprenticeship Council. It is comprised of members of the Department of Labor, members of the business community and members of organized labor. However, some of the members of the business community are also owners of organized labor contracting companies, so nothing ever gets through the State Apprenticeship Council in Delaware. So the curriculum is poor—and it is not to demean the people in the Department of Labor, they are well intentioned, good, hard working people—the curriculum is outdated, the teaching methods are outdated. We are using systems that were brought about 50 years ago. We are ignoring CD–ROMs, the Internet. We are ignoring the ability to bring someone in and test them.

If you have someone that has been in the trade for 20 years, why not test them? Why subject that person to a first year apprenticeship program? He is not going to want to do that. Or she is not going to want to do it. Why not recognize their skill in that field?

We do it at the college and university level, we let people test out of a class there. Why not do it in the apprenticeship program? But we are always at loggerheads because of these State Apprenticeship Councils.

Once again, it is not meant to reduce the standards, just give us a shot at the plate.

Chairman PENCE. Mr. Herzog, it is my understanding that State Apprenticeship Councils are supposed to follow federal regulations. Now, I also understand that federal regulations do not permit the

establishment of new apprenticeship programs even though an apprenticeship program of that nature and in that craft currently exist in the state. Is that something that we ought to address specifically in terms of—should we make federal regulations explicit that an SAC cannot prohibit the establishment of a new program simply because there is already a program in that craft?

Mr. HERZOG. Definitely. And this is one of the problems that they faced in Oregon. They also had that same pattern in Florida. And this is local requirements. All the state SACs have to do is meet minimum federal standards, which is very true for a lot of federal programs given to the states. The states can then build upon these as long as they are meeting the federal standards.

But if you are in a situation—and, actually, there is a lawsuit in California where they had approved a program for Sacramento, and they wanted to have satellite programs for the rest of the state. California is rather a large state so they tried it, but the union came in and sued them and now there is a possibility they are going to lose everything because it is such a mess.

In Washington State, there is another example. The 9th District Court ruled that the state had to provide parallel non-union programs. In effect, the SAC is undergirding that decision by creating new regulations that make it extremely difficult for the non-union programs to get started.

So if you want to have enough workers, if that is the goal, you have to make these programs available so that they are fairly convenient, so apprentices do not have to travel 200 miles to get to a program, and they have to be cost effective so apprentices and employers can afford it.

Chairman PENCE. And, Mr. Krul, you said, I think, that the number one point has to do with maintaining the current standards among these apprenticeship programs. And I ask this very sincerely, as someone who obviously has forgotten more today about these programs than I have yet learned, how specifically in your mind does H.R. 1950 erode the standards that currently exist in the law, at least the last 20 years?

How are the standards that you described eroded in any way by simply creating a time table for a yes or no decision?

Mr. KRUL. Well, Congressman, it is a fair question and, as I said in my remarks, we are not here to tell you that the system is not in need of repair or adjustment. We would much rather see the Federal Committee on Registered Apprenticeship make suggestions.

To answer your immediate question, I would repeat what Congressman Brady had said. The way this bill is structured, it builds in an appeals process that seems to be an endless process that would allow a contractor or an entity to merely stand in line and wait for the time limitations to run out.

A State Apprenticeship Council with all the stories we are hearing from the folks that are testifying at the table and Congressman Wicker, the states have the right to state if deficiencies exist in standards that are being put forward.

Now, there seems to be a time table debate, that it takes too long. And if there have been years, then obviously something is wrong and it needs to be fixed, if it takes years to get an appren-

ticeship program looked at, or there should be at least an oversight by some other entity. And we think that back in 1990, the Bureau of Apprenticeship and Training proposed rules to address this in program registration, denials and deregistration, that it would come back through the Department of Labor.

But understanding the way these State Apprenticeship Councils work, that they meet quarterly, there should not be any big reason for people to get upset that it is 90 days in between the review of the program. If that program was reviewed and denied because it did not meet standards existing for a particular industry, then those standards need to be brought up.

I mean, there are non-union programs being—I hate to bring that debate up, but there are non-union programs being registered, apprenticeship programs being registered, in this country. It is not like it is—in fact, what I am looking at from those who submitted testimony, the non-union programs are registered in far greater numbers than union programs are. But the inverse relationship that exists is that the preponderance of registered apprentices who graduate from the programs come from that minority union sector.

So we are looking at—if that many registered programs are in the non-union sector, could it be that the states are exercising states' rights in saying that we will not let a program come into our particular borders that is less than what is established for an industry or trade?

If there are some egregious—and I am sure that we have zealots, some of them my union brothers and sisters, I am sure—then there ought to be oversight capabilities. But I do not think amending the National Apprenticeship Act is the way that the apprenticeship system ought to be looked at to have those adjustments made and repairs made to it.

I think those who have equity in this system, both in the organized and unorganized sectors, sit on the Federal Committee on Registered Apprenticeship, there are folks there from the private and the public sector, and I think those experts would better be able to tell this body if legislation is needed or if it could be done through Part 29 of Title 29 of the Code of Federal Regulations, which currently exists for the regulation of apprenticeship programs.

Chairman PENCE. Thank you.

Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman, and thank all of you for testifying today. We appreciate you being here.

My question would be for Mr. Bonk.

Your program has apprentices pay a fee of $700 to $1000 to participate in that program. Is that correct? And how do they pay that?

Mr. BONK. I am not aware of any apprentice paying for their education.

Mr. BRADY. I understand that to join the apprenticeship program that there is a fee for that.

Mr. BONK. That is not true.

Mr. BRADY. Not at all?

Mr. BONK. I am not aware of any ABC chapter or member that charges for their apprentices. They are usually borne by the com-

pany. I have registered apprentices in the State of Maryland that I pay the ABC chapter there for their training.

Mr. BRADY. You pay for the apprentices' training?

Mr. BONK. Yes.

Mr. BRADY. What happens in the second year through lack of work, an apprentice put two years in and he now longer has no work? Do they get laid off and they just go about the wayside? Do you keep track of them? I mean, do you try to bring them back a year later when there is work? Are they a member or what happens?

Mr. BONK. I do not recall the last person that I laid off. It must have been at least ten years ago, Congressman.

Mr. BRADY. That is good when we are booming, but right now we are not booming. And if we stop booming, what would happen? I mean, somebody had to get laid off somewhere, a single employer had to lay people off. What happens to those apprentices?

Mr. BONK. Well, part of the problem is the lack of portability. In construction, you have some training in a vo tech arena, different levels of training once you get out, and there is no portability with the thing, so that someone after two years may get lost in the backwash.

What is happening now with the National Center for Construction Education and Research, as you take these programs, you actually acquire a transcript so that whether you are in Wilmington, Delaware or Spokane, Washington, you can take this transcript and once again catch up on your education.

Mr. BRADY. But to catch up on your education, you have to have a job with somebody, correct?

Mr. BONK. With the great demand for construction workers in this country, I do not see any construction workers looking for a job.

Mr. BRADY. Well, the point I am making is when there are, and we are in a boom right now, there is no question about it, but there are times when we do have a lack of work. And the difference between the programs that I see, because I have been involved in them and I have had a lack of work, is that in a union program they keep you. They keep you and they keep you for as long as you keep your card up and they will find work for you. And we have a mandate on so many employees, so many journeymen, they must have apprentices. And I am wondering whether you have that same thing.

Mr. BONK. I do not feel there is any difference in the open shop sector. January, February, March were very difficult months for my company. I came out of pocket to get work for my people. Once again, I have not laid someone off in ten years.

Mr. BRADY. Yes, but that is you. There are other people out there that do lay people off.

Mr. BONK. Well, I do not know that my story is that different than the rest of the industry.

Mr. BRADY. Well, I do. I mean, that is absolutely true, there are people that lay people off. I know people that have gotten laid off. I was just wanting to know what happens to these apprentices that put two years or three years in on a four-year program. I mean, in a union position, they have a union card that they maintain

their dues which are minimal and they even make them lower when they are not working, when they are out of work, and they stay for life. I mean, you could come back 10, 15 years and go back into the trade. And I was just trying to find the distinction.

Mr. BONK. I have hired people that have completed one year, two years, three years at other companies and they have completed their apprenticeship programs within my company.

Mr. BRADY. Okay.

Mr. Krul, how do you see this bill addressing the problems in the current shortage of the skilled workers?

Mr. KRUL. I hate to keep falling back on my standards crutch. I do not see this bill addressing skills. It will address skills shortage, it will address shortages in the construction industry. Will it address skilled worker shortages? I have my doubts. I have my doubts.

I am listening to the laments of the folks here at the table and issues that we disagree on. Portability and reciprocity, I do not think those are the kinds of things personally that the apprenticeship system ought to entertain. However, I would defer to experts in the field.

And I do think, I would like to repeat, that the question that you just asked me would be best answered by those folks sitting on the Federal Committee on Registered Apprenticeship who have dealt with these issues before and, in fact, are dealing with this very issue that H.R. 1950 addresses right now and would like to address the issue of the critical skill shortages.

There are no silver bullets, no magic solutions to the skilled worker shortages in this country. But I do not believe H.R. 1950 addresses that, sir.

Mr. BRADY. How will the overall quality of apprenticeship programs be affected under H.R. 1950 if it is enacted?

Mr. KRUL. If it is enacted, the quality of those people, if substandard programs, programs that undermine the standards that are currently existing for an apprenticeship program are allowed to go into place, for instance, if wage progressions are not equal, if wages and fringe benefit levels are not equal, there is a huge bidding advantage for a contractor in the construction industry who would register a program, pay his people lesser monies than someone in the organized sector would be doing, and to come in and underbid fair contractors in a union setting.

Mr. BRADY. Thank you.

And thank you, Mr. Chairman.

Again, I thank all of you.

Chairman PENCE. The chair recognizes Mr. Phelps of Illinois for any questions or comments of our panel.

Mr. PHELPS. Thank you, Mr. Chairman. I want to thank you for calling this hearing and examining a very important piece of legislation and the panel members for testifying. Very enlightening.

What protection, Mr. Bonk, do you think an apprentice worker would have under an employer-sponsored apprenticeship program if after two years they fire them, an employee, to hire another apprentice to keep the costs down, so people maybe are not being laid off, but have you hired people fired?

Mr. BONK. We have fired people, not—you know, there has to be a reason to fire someone or it will not stand up in court. We do not just arbitrarily go out and fire someone.

Mr. PHELPS. No, I am not indicating that. But those that—I guess if the concerns of labor are not addressed, one of the things that they evidently are concerned about would be the competition of what eventually comes to wages, which has all kinds of ramifications, what Mr. Krul says, from the competition of bids, how much skill there is involved in those because of lower costs versus those that had to pay more to get more skilled. Do we have an even playing field with everything that is proposed in H.R. 1950?

Mr. BONK. No, I do not believe we have an even playing field. I think you will find more situations where journeymen are less likely to find work in the organized labor section, in a closed shop, than in an open shop sector, because in order to get a good average wage on a job, you are going to find union contractors want a lot of apprentices to get the average wage down. However, once they reach journeyman status, I think statistically it has been proven that they are going to sit in the hall. There is not as much demand for the journeymen as there is for the apprentice because of the reduced wage.

That is not the situation in the open shop arena. If I am going to spend all this time and effort on a person, I want to retain them. I think there is more of an affinity towards the company in the open shop arena. There is an allegiance there. I take care of my people. And I think you will find they are more likely to stay with me. I do not send them back to the hall, I give them the opportunity to work within other trades.

The construction industry does not work in a vacuum. If I start doing shoddy work, I am not going to be out there. If my employees perform poorly, people are not going to utilize me. Architects look at our work. Engineers look at our work. License and inspections people look at our work. I cannot do shoddy work. So the idea that we can put in a poor apprenticeship program and do shoddy work to keep the costs down, I am not going to survive in a free market system.

Mr. PHELPS. Mr. Herzog or Krul, would you respond to that as far as the effect on the journeyman, the point he made? Do you have an opinion on that?

Mr. HERZOG. Fortunately, we do not have that problem. Our members cannot find enough workers to do the work that they have. And this situation has been going on for many years.

Mr. PHELPS. Why is that, you think?

Mr. HERZOG. Because there is a shortage of people that want to get into these quote blue collar trades because it is not very sexy. Students can get work in the computer industry. We have talked with the BAT people here, they have been very helpful and understand this situation. You cannot attract the kids into these programs. The high school counselors are sending them elsewhere. Our people are actually going down to the junior high level trying to convince students that this is a possible trade one can get into if you are not college bound.

Mr. PHELPS. So we have this factor with the 25–to–40–year olds' decreasing interest in the industry.

Mr. HERZOG. Getting them at 18, getting high school graduates to go into this industry. We would love to have a lot more people.

Mr. PHELPS. So is that—maybe you would say let the market work without too much intervention or influence from the government? Does that not mean, then, that that would have an effect on wages, trying to recruit in shortage areas?

Mr. HERZOG. Yes. Obviously, what wages one pays determines how competitive you are in competing against others, whether union or non-union. You can only afford to pay a certain amount of money. The market determines what the rates are, except prevailing wages where everybody pays the same.

Mr. PHELPS. Mr. Krul, did you have a response?

Mr. KRUL. I do not mean to get into colloquy here, but I could not think of a quicker way for a union contractor to go into Chapter 7 or 11 bankruptcy than to put all apprentices out on a job and not use his most skilled manpower in the form of his journeyman and top estimators.

The fact is that all contractors in the organized sector, and I can only speak for the organized sector, that is where my experience is, they understand under the collective bargaining process that they are required to hire apprentices in the ratio that the standards of the program are registered under. There would certainly be no contractor who would ever consider going beyond those ratios in some quote-unquote cost saving measure because the apprentices are being paid a portion of the journeyman's rate. The skill level is not there for an apprentice. He or she is still learning. And when you are on a big outage on a power plant or if you are going through a decommissioning a nuclear plant, you are not going to put apprentices in there. You are going to have your top people doing that.

Mr. PHELPS. Mr. Dunham, do you have a response?

Mr. DUNHAM. Many of the public work contracts in the State of Washington now have a requirement in them for a certain percentage of apprentices and whether it is open shop or union contractors bidding on that, that is how many apprentices will be on the job. So it is really not that much of an issue.

The issue, too, for the contractor is, whether they are union or open shop, is that they want to do a quality job and be able to stay in business and continue to do work in the future and they are not going to put unskilled, untrained people on the job that would affect their ability to do that.

The standards in our situation, standards that the apprentices adhere to, are virtually the same for both the union and open shop segment. Our issue is just one of simply getting the open shop programs registered in the first place.

Mr. PHELPS. One last question for any of you to respond or all of you.

One of the main reasons expressed for the need for this bill is to streamline the application process. How do time limits on the application approval streamline the process in your opinions?

Mr. BONK. I think no matter what industry you are in, if you have a time limit you are more apt to perform. I always laugh at contractors at bid meetings, the first question is can we get an extension on the time to bid. And it does not matter how much time

you have, you are going to do it at the end, so if there is some pressure at some point in time to get this done, it will get done. If there is no pressure to come up with an answer, whether it be positive or negative, it is just human nature to let it slide.

Mr. PHELPS. Okay. So the time table provides pressure, in your opinion, to move it right along.

Mr. BONK. In my opinion, yes.

Mr. KRUL. Congressman, I would just repeat what I said before. It is my understanding, and I would stand to be corrected, that most State Apprenticeship Councils, those members, serve in a voluntary capacity and meet quarterly, so any time limit, for instance, the 90 days proposed in this bill, would put pressure on. If the review happens 90 days—an apprenticeship program is submitted and it is found to be deficient and that State Apprenticeship Council will not meet again for 90 days, I do not know how this bill's time table and the time table of the State Apprenticeship Council—who is going to authorize or enforce that they meet sooner in order to accommodate that time table?

Mr. PHELPS. Mr. Bonk, what do you say to that?

Mr. BONK. I do not feel the 90 days is an issue. I think 20 years is an issue.

Mr. KRUL. I would agree.

Mr. PHELPS. Twenty years? I missed something.

Mr. BONK. The ABC Washington chapter waited 20 years for an answer.

Mr. PHELPS. Oh, I am sorry.

Mr. BONK. I feel that if we are being given due process, if someone is legitimately looking at the thing, that is fine. The 30 days, 90 days, six months, I think it is all irrelevant. I do not feel they are being given an honest——

Mr. PHELPS. Except the pressure time table, you said. That is relevant.

Mr. BONK. The 90 days is relevant. I do not know that these apprentice councils only meet quarterly. I do not think that is the issue. The real issue is get someone to look at it. Let us get out of the batter's box up to the plate. If we strike out, we strike out.

Mr. HERZOG. We have a perfect example for you. In Florida, our chapter executive applied for a program. She was on the SAC, she knew the people, she made her application. After four to six months not hearing anything, she called the chairman of the SAC and raised Cain. She asked what is going on, why have I not heard? And immediately thereafter, the program was approved.

If she did not know anybody there, if she was just out there like everyone else, she would still be waiting. And if you have a problem on the time limit, determine it based on when you start the clock. If a SAC does not meet less than quarterly, and start the clock at that first quarterly meeting. But you have to make it known to everybody applying for the program when that clock is going to start.

So, if I am applying for a program and the SAC met, say, two weeks ago and then I apply, I will know ahead of time that there is not going to be any action at least for two and a half months because they are not meeting.

The other problem they have in Florida is they cut their budget to $1.3 million to oversee 347 programs. They lost their specialist and now they put the program under the unemployment department. So that is another problem, the funding of these programs is probably why there is the slowdown in response.

Mr. PHELPS. So do you think these people are properly communicated with, with the quarter timing, to understand where they are?

Mr. HERZOG. It is a certainty. Yes. You have to know what the game plan is. You have to know when to expect a response so that you are not sitting on the phone and telling people who have signed up to become apprentices, yes, maybe they will hear something next week, when it could be months before you know anything.

Mr. DUNHAM. Mr. Congressman, in the State of Washington, the staff of the SAC obviously goes to work every day and works on that and has correspondence and discussion with the council members on a very regular basis. The quarterly meetings that are conducted by the SAC in some instances are formal occasions to enroll for the public record actions taken by that group, but they obviously do not work in a vacuum, the work is done constantly, and that is why I think the 90 days is probably a reasonable way to say that you should take some positive action toward us.

Any of us who have a program, if we found some deficiency in our standards, which we rarely would because they model the union programs that have been in existence for years, we could take care of that and the issue of 90 days would not be a major issue.

Mr. PHELPS. So if I hear you all right, even though you might differ on the time table process, you think that it is necessary to have a time table.

Mr. DUNHAM. That is correct.

Mr. PHELPS. And that whether it is 90 days, you think it is irrelevant, you all think it is working as it is?

Mr. KRUL. I would respectfully state, as I said in my testimony, that rather than do this legislatively, I would rather see this done through the CFR. And I would, if I could, leave with your staff a copy of that 1990 proposal that never went anywhere that did give the then Bureau of Apprenticeship and Training Director within 30 days the right to review a denial of a program.

Mr. PHELPS. Thank you. That would be very valuable.

Anybody else have anything to add?

Mr. BONK. I think one of the most basic management premises is what gets measured gets done. Right now, there is no measurement. Put some kind of measurement in and it will get done.

Mr. HERZOG. I might add, too, that a lot of our chapters just went with the BAT process and they said that the difference is like night and day. It has been a pleasant experience, they have been very helpful.

Mr. PHELPS. The BAT process?

Mr. HERZOG. The BAT process. They understand——

Mr. PHELPS. So maybe that would be a model?

Mr. HERZOG. They do not have a time line. It is just that they are more efficient and maybe it is because they have more people. I do not know.

Mr. PHELPS. Thank you all very much.

Mr. Chairman?

Chairman PENCE. Mr. Brady, did you have any other follow-up questions?

Mr. BRADY. Just an observation. The DOL does not keep statistics, I do not believe, on the amount of complaints. I think that we should probably look at that and maybe try to compile what amount of complaints there really are and how widespread it is before we consider legislation. I mean, we do not know that.

And I do not know whether or not—I am not trying to be an obstructionist—I do not know whether or not we can even get that information, but I think in due diligence we should try to and find out if it is two complaints from this part of the state and maybe just three from here, maybe Mr. Bonk has a legitimate complaint from just his own area, but if we can just see where it is at instead of putting in broadbased legislation for the United States of America for apprentices, we should probably try in due diligence to get those statistics.

Chairman PENCE. I want to thank all of those who presented testimony today and especially thank my colleagues, the ranking member, Mr. Brady from Pennsylvania, and Mr. Phelps from Illinois for joining us.

I especially want to thank the public spirited nature of all of your comments. This is an issue that affects today 440,000 some odd families. It is our hope that we could proceed in a positive way so that we could have nearly a million people to meet the market need that seems inarguable in the coming years.

I just would hope that we would go forward with the idea that whatever we do that one principle would come shining out and that would be that the law that is on the books is enforced and that if we need to make changes in that law or in the way that it is interpreted through regulation, it is my hope that our subcommittee would be a part of that discussion, but I remain a strong advocate of H.R. 1950 inasmuch as it simply calls for a streamlining and application of existing standards and I also would endorse the principle that performance measured is performance enhanced.

One clarification, for the record, according to my understanding, the time clock for the 90 days begins after the initial SAC meeting and so it would accommodate the quarterly schedule that many states do employ in their meeting, thereby giving as much as a six-month initial window with another 30–day extension on top of that in reality.

That being said, again, thank you to our witnesses and to my colleagues. This hearing is adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

MIKE PENCE, INDIANA
CHAIRMAN

ROBERT BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
Subcommittee on Regulatory Reform
and Oversight
2361 Rayburn House Office Building
Washington, DC 20515-6315

Statement of Mike Pence
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
September 25, 2001

Our hearing today addresses the need for reforming the regulatory procedures used to approve apprenticeship programs in the United States. I am proud to be a cosponsor of H.R. 1950 – the Apprenticeship Enhancement Act of 2001 authored by my good friend from Mississippi, Mr. Wicker. I look forward to his testimony and that of the other witnesses who will discuss the procedures for registering a federal apprenticeship program and the problems that they face in receiving such approval.

As the Secretary of Labor recently noted in her Labor Day address on the state of the workforce, America more than ever needs a skilled workforce. The office buildings of our cities, the shopping centers of our suburban towns, and the homes of our rural counties are all built by skilled craftsmen who have mastered their art through apprenticeship programs. What concerns me and should concern every member of Congress, the Administration, and businesses is whether America has the processes in place to train a new generation of skilled craftsmen.

Since at least the time of the Middle Ages, young men (and now young women) have learned trades at the hands of masters. The thousands of year old process of training new workers continues today. During the heights of the worst economic disaster in American history – the Great Depression – Congress enacted the National Apprenticeship Act to ensure that employers did not take advantage of young workers' need for training and jobs.

The National Apprenticeship Act requires that the Secretary of Labor promulgate standards to ensure the welfare of apprentices. The Act also requires that the Secretary work with the states to carry out this function. I think it is absolutely vital for the future of this country to ensure that apprentices are protected yet trained well enough that they have mobility to move where the labor markets dictate they are needed.

The Department of Labor regulations set forth the criteria by which any employer should be able to obtain approval of an apprenticeship program. Approval is sought either from the United States Department of Labor or a state apprenticeship council given that authority by the federal government. An applicant that meets the criteria set forth by the Secretary should have the program approved with all deliberate speed without regard to who is sponsoring the apprenticeship program. If the applicant does not meet the criteria, the Department or state apprenticeship council should provide a written explanation of the deficiencies so the applicant can modify the program accordingly. The appropriate government agency then should meet quickly when the application is resubmitted to approve the modified program.

Yet, these simple procedures are not evident in the approval of apprenticeship programs. In certain instances it has taken years and multiple lawsuits to obtain approval of a qualified apprenticeship program. Such behavior, whether at the federal or state level, is unacceptable. That is one reason I have decided to cosponsor H.R. 1950. It would provide regulatory certainty to a process fraught with unbridled discretion and endless meetings of federal and state bureaucrats. Ultimately, H.R. 1950's reforms will help all employers interested in providing our young men and women with training in skilled crafts that this country will need for economic growth in the 21st century.

STATEMENT
of the
Honorable Robert A. Brady
Ranking Member, House Small Business
Subcommittee on Regulatory Reform and Oversight
September 25, 2001

Thank you, Mr. Chairman.

We are here today to discuss changes to a venerable institution, the federal apprenticeship program, in ways that will help alleviate a worker shortage in the skilled trades. As the population ages and the number of potential workers declines, we are looking for ways to help meet the need for skilled labor.

The apprenticeship program, which has existed since 1937, has a record of great success. Four hundred forty thousand workers are trained under apprenticeship programs held to high and exacting standards of excellence in the skilled trades. We depend on these workers for the sound engineering and endurance of buildings, public works and our infrastructure.

The federal apprenticeship program is responsible for such common assurances, as when you buy a new home and turn on the faucet, you don't blow an electrical fuse.

Sometimes we take for granted how well our buildings are put together. In Japan, they build homes to last 30 years. In America, we build them to last a century. That's the result of high standards of training in skilled trades like construction, roofing, plumbing, and electrical engineering.

The men and women who have graduated from apprenticeship programs are the professionals who built this country.

Unfortunately, that success is frequently taken for granted. And it apparently has been lost on some people who perceive a problem and propose to solve it by cutting the corners that make the program so strong in the first place.

Clearly we want the strongest apprenticeship program possible. The proposal under consideration does nothing to strengthen the current program and in some instances weakens it.

Proponents of this bill see backups and lack of action on applications as the problem. I can understand their frustration. There is a labor shortage in the skilled trades and training programs are needed. But the solution is not to waive the standards that maintain apprenticeship programs at such high quality.

This bill would allow approval of an application simply for waiting long enough. That's like saying if you wait long enough at the border without getting a visa, we'll just let you through for your trouble. Or being accepted to college just because there were too many applications this year. The result would be more programs of lower quality, damaging the current strong graduation rates from apprenticeship programs.

Rather than looking for ways to gut apprenticeship programs, we should be working to strengthen them through adequate funding and providing enough staff at the Department of Labor to process all the applications in a timely fashion --- while also applying those vital high standards. As demand for skilled labor has increased, the number of employees processing applications at the Office of Apprenticeship Training, Employer and Labor Services has actually fallen over the past six years.

So from my perspective, the solution to the problem is increased funding and personnel, not creating a new bureaucracy for appeals that lowers standards for apprenticeship programs at the same time.

I have two other concerns relating to this legislation. First, I am worried that the automatic appeal process will be used as leverage against labor agreements. For example, if a union opposed management on an issue, the company could create a separate inexpensive worker pool simply by waiting out appeals on a new apprenticeship program. This undermines the traditional working relationship between labor and management.

Second, I am worried that this streamlining procedure will co-opt each state's ability to regulate and maintain standards for apprenticeship programs. Again, the automatic process of approval on appeal could simply create unregulated apprenticeship programs outside the supervision of any government body.

At best, Mr. Chairman, the proposal in this bill is only a small piece to the puzzle. I look forward to working with my colleagues on finding a sensible solution to the current skilled labor shortage, one that maintains high training standards in our apprenticeship programs and ensuring the quality workmanship that makes America proud.

But we don't want to fix a minor problem in a way that would weaken a strong program that has literally built this country from the ground up.

Remarks by Representative Roger Wicker
September 25, 2001
House Small Business Subcommittee on Regulatory Reform Oversight

Thank you Chairman Pence and Ranking Member Brady for the opportunity to testify before your Subcommittee on the issue of removing bureaucratic roadblocks in the apprenticeship program approval process. By streamlining the approval process, qualified apprenticeship programs can receive the approval they need to start training future workers.

Apprenticeship programs allow individuals to earn while they learn under experienced workers through a combination of on-the-job training and classroom instruction. There are approximately 400,000 apprentices in the United States who are our future electricians, carpenters, plumbers, pipefitters, and mechanics. Graduates of apprenticeship programs are typically more educated, work more safely, are more productive, are better skilled, are more likely to become supervisors, earn higher salaries, and experience less unemployment. We should all share the goal of expanding the number of qualified apprenticeship programs so that one million apprentices are served.

Apprenticeship program sponsors seek to register their programs with the government because only registered apprenticeship programs are permitted to pay apprentice wages on projects which receive any federal funding. Many states and cities also require the use of registered apprentices. Without an approved program, employers must pay trainees the same wage as experienced and highly skilled workers. This incentive is largely responsible for the growth of apprenticeship programs.

Two years ago, contractors from my home state of Mississippi came to Washington to discuss the challenges facing the construction industry. There were many items on their list of issues, but the one upon which they all agreed was the critical shortage of skilled workers.

One of the electrical contractors related the type of apprenticeship program horror story which discourages other potential program sponsors from even formulating an application. In seeking approval for a line erectors apprenticeship program in the state of California, this company spent nearly $1 million and five years before the program was approved after a successful lawsuit. It took the same

company two years and $250,000 in the state of Washington to not even get an answer. It's not that the program was denied because of a poor plan, but the State Apprenticeship Council in that state did not even give the program sponsor an answer. After these experiences, this company no longer seeks approval of their apprenticeship programs in states that are governed by State Apprenticeship Councils.

The other contractors in the room all nodded their heads in understanding. Either they, or someone they knew, had similar experiences. The cost in time and money to attain approval for apprenticeship programs is a strong disincentive to sponsoring programs of their own. Therefore, not enough new programs are submitted for approval, and the costly and lengthy delays in the approval process are denying job training opportunities to the thousands who are in programs that are awaiting approval.

To address these concerns, I have introduced H.R. 1950, the Apprenticeship Enhancement Act. This legislation does not change the standards which are required of apprenticeship programs in any way. Without sacrificing standards, we can create more apprenticeship programs, thereby creating more job training opportunities. All this legislation does is to remove bureaucratic roadblocks so that apprenticeship programs which meet federal standards can be approved in a timely manner, and that potential program sponsors are not discouraged by approval processes that can cost hundreds of thousands of dollars and many years.

I first started to develop this legislation in the 106th Congress, working with the Education and Workforce Committee, the Clinton Administration Department of Labor, and various affected stakeholders, ranging from labor unions to business trade associations. After many months of discussions and numerous compromises, the bill was introduced at the end of the last Congress. Unfortunately, there was not sufficient time to act on the bill, so I introduced an identical version in this Congress. The bill currently has 24 bipartisan cosponsors.

H.R. 1950 requires the U.S. Department of Labor's state Bureaus of Apprenticeship and Training and State Apprenticeship Councils to act on applications within 90 days after an application is submitted. This should be plenty of time for these government agencies to make a decision. It should not take more than three months to determine if an apprenticeship application meets the 22 basic elements of an acceptable apprenticeship program.

However, H.R. 1950 allows for unforseen circumstances. If for any reason either a SAC or BAT can not render a decision within 90 days, they can notify the applicant of the status of the application, and then make a decision within the next 30 days.

If after 30 days there is still no verdict, the application will be forwarded to the U.S. Department of Labor. The purpose of this provision is to eliminate the possibility of a "pocket veto" by a BAT or SAC.

In addition to these reasonable timelines, HR 1950 also requires a written justification for any disapproval of an application. With this explanation, sponsors of programs which are denied can work with a SAC or BAT to improve their programs so they submit a new and improved application. The legislation also allows for an appeal to the Department of Labor if the applicant believes that their program was improperly denied.

This legislation does not change standards, and it does not provide for unlimited appeals on the part of a program sponsor. Instead, this bill does just one thing: it asks for an answer from a government agency.

There are other issues surrounding apprenticeship programs which Congress should examine, but my legislation does not seek to address those. While we should debate those issues, we should also agree on this simple, good government proposal which would remove bureaucratic roadblocks to job training opportunities.

Testimony of
Ken Dunham

on behalf of

The Associated General Contractors of America

Presented to the

U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight

Hearing
on
The Department of Labor's Apprenticeship Approval Process

September 25, 2001

The Associated General Contractors of America (AGC) is a national trade association of more than 33,000 firms, including 7,500 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing development.

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The Department of Labor's Apprenticeship Approval Process
September 25, 2001
U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform & Oversight

Good Morning Mr. Chairman and distinguished Members of the Committee, I am pleased to be here this morning to discuss the issue of apprenticeship training. My name is Ken Dunham and I am the Executive Director of the Inland Northwest Chapter of the Associated General Contractors (AGC) in Spokane, Washington. I serve as a trustee for the open shop/non-union carpenters' and construction equipment operators apprentice program as well as serving as both a trustee and apprenticeship committee member for an AGC-Teamsters' Union apprenticeship program.

The Associated General Contractors of America (ACC) is the largest and oldest national construction trade association, founded in 1918. AGC represents more than 33,000 firms, including 7,500 of America's leading general contractors, and 12,000 specialty-contracting firms. Over 14,000 service providers and suppliers are also associated with AGC, through our nationwide network of chapters. We represent contractors in both the open shop and collective bargaining sectors of the industry.

Consistently ranked among the most critical business issues of our members is the chronic shortage of skilled construction labor; therefore, the matter of apprenticeship training is very important to AGC's membership. Streamlining the approval process for apprenticeship training is a priority for AGC and we believe changes need to be made to the system. The construction industry needs more skilled workers. By encouraging the development of more registered apprenticeship programs, we raise the bar for training programs across the industry which will result in more skilled and better trained craftspeople in all aspects of construction. Congressman Wicker's bill, HR 1950, to help bring some accountability to the approval process is a great start to the process of raising both the number and the skill levels of our workers throughout the construction industry.

AGC believes that apprenticeship programs are the backbone of the construction industry. Without them, the industry would certainly be unable to meet the nation's continuing demand for new construction and maintenance of the infrastructure so necessary to our standard of living and our quality of life. The vitality of the industry and virtually all the firms which comprise it are dependent upon a continuing stream of trained workers to both compensate for normal attrition and to grow the industry and meet consumer demands.

This is especially critical now. Like many American industries, construction is facing the mass retirements of the baby boom generation. According to anecdotal evidence provided by our member firms, the average age of today's construction journeyworker is nearly 50. The Department of Labor's Bureau of Labor Statistics estimates that total job openings in construction trades will average in excess of 142,000 per year during this decade. At the same time, we graduate less than 50,000 per year from our registered apprenticeship programs. If

allowed to continue, that shortfall of approximately 92,000 per year will restrict the ability of the construction industry to respond to the nation's needs. Concurrently, access to apprenticeship programs is being restricted both to program sponsors and those wishing to enter the industry.

It is this concern for the future of the construction industry that brings me here today. We need to abandon those practices that have restricted apprenticeship registration and individual's access to programs in favor of expanding both registration and accessibility. Congressman Wicker's bill addresses those issues and serves to bring to light some of the problems that have exacerbated these workforce shortages. Whether it is through HR. 1950, other legislative action, regulatory reform, or a combination thereof, the processes currently in place for apprenticeship program registration must be modernized.

Background - How the Approval Process Works

The Bureau of Apprenticeship and Training and State Apprenticeship Councils Approve and Register Programs

The Department of Labor's Bureau of Apprenticeship and Training (BAT) performs oversight and approval of apprenticeship programs and program registration. In this regard, the BAT ensures conformance with 29 CFR part 29, "Labor Standards for the Registration of Apprenticeship Programs", the existing regulations addressing program registration.

The BAT carries out its mission through a series of state and regional offices that exist, at least in part, to assist potential program sponsors to develop and implement apprenticeship programs.

In Washington and several other states, the BAT has relinquished its role to a State Apprenticeship Council (SAC) and it is generally therein that the problems of registration exist. For all practical purposes, SAC's are composed of union officials, members, and sympathizers who sometimes use the registration denial as a thinly veiled attempt to restrict the open shop's ability to compete and to assist organized labor in their market recovery efforts. It is happening in Washington State and is reported, by my associates in other states, to be true elsewhere.

Why AGC Advocates Change

The current regulations permit this type of manipulation because they place little accountability on the backs of those who control program registration. There is no regulatory requirement for a SAC to act expeditiously. Therefore they can, and often do, table or ignore program applications indefinitely. There is no requirement that SAC's must even substantially explain their reasons for program denial and there is certainly no requirement that denial be based on the merits of the program or the registration application. This often results in either a total absence of accountability or even denials based on such minor factors as grammar, spelling, or simple semantics. Little effort is made to veil such actions since there is little or no recourse for a program sponsor other than to appeal to the same body that initially made the denial. These are problems that HR 1950 would address directly by setting up a time frame for a SAC to review an application and require written explanations for denials of program approval. Such explanations would give the applicants the information they need to correct deficiencies in the submitted

program application.

How AGC and its Chapters are Involved in the Process

As I am sure you know, apprenticeship programs are expensive and time-consuming to establish and administer. The economies of scale dictate that small contractors, the propensity of the industry, must band together at the local level to jointly fund and participate in the program. That most often happens through AGC chapters which provide the financial, administrative, and operational oversight of apprenticeship programs for a group of its member firms. Small businesses cannot alone provide the resources necessary to develop or implement apprenticeship programs for their small number of employees due to the extremely high costs of facilities, equipment, instructors, and materials, all of which are absolutely necessary for quality programs. It is, therefore, true that the denial of program registration sponsored by an association for its members is actually a denial of the ability to train and compete for a number of small businesses. This is an extremely high price for companies to pay simply for being small businesses.

Current Problems and First Hand Experiences

This hearing is to focus on the current procedural problems faced by businesses that seek to establish federally approved apprenticeship training programs. With my experience with apprenticeship training programs in Washington State, I hope to be able to provide the Committee with an illustration of how the approval process works in reality and impress upon you the need for reform and accountability in the system.

I have oversight of our organization's apprenticeship and training programs. In this capacity, I serve as a trustee for the open shop/non-union carpenters' and construction equipment operators apprentice program as well as serving as both a trustee and apprenticeship committee member for an AGC-Teamsters' Union apprenticeship program. This background has allowed me to have the rare perspective of serving in both union and open shop programs. I would like to take this time to review for you some of the problems and issues we have dealt with in the state of Washington, and from discussions I have had with others in my position in other states whose problems mirror those that the open shop sector of construction has experienced in my state.

Apprenticeship programs have been in place in the state of Washington from at least 1941. Early on, there was not much of an issue of access to apprenticeship for the non-union segment because most of the apprenticeship programs were administered as joint labor and management programs and the unions viewed the realm of apprenticeship as solely theirs. The perspective of the union programs is that they should, and do, control apprenticeship and that point of view continues today in Washington and several other states. Attempts to open up the process to non-union programs have met with some success in certain areas. However, patchwork acceptance of open shop programs does not help fill the need for more trained workers that AGC feels is so important to the viability of the construction industry. AGC feels that there is a place for both the union-affiliated apprenticeship programs and apprenticeship programs for the open shop segment of the industry. AGC would like to see more apprenticeship programs put in place from both union and open shop sources in order to meet the ever-increasing skill shortages we face.

There were several small open shop construction trade programs approved in Washington in the early 1980's. This was the result, I am told, of pressure from the Federal Bureau of Apprenticeship to get the state to open up its programs and the threat of decertification of the state apprenticeship council. Though the SAC did approve these few programs, they were very small in scope and the number of workers being trained. Until directed by court action in 1994, no other open shop programs were approved in the state.

Despite this opposition, my predecessor at the Inland Northwest AGC attempted to gain approval for construction trade apprenticeship programs without success prior to his retirement. I came to the association in September of 1993 and applied for carpentry and a construction equipment operators apprenticeship programs in January of 1994. Without notification, that particular January SAC meeting was abruptly cancelled and the agenda (including Inland Northwest AGCs applications) put off until an April 1994, meeting. The council denied the programs after they heard union objections to what was termed jurisdictional issues (even though no labor agreement was involved) and that the proposed programs were unnecessary because union-sponsored programs were in place. No amount of argument or discussion was going to dissuade the council from their denial – even though staff of the state BAT had assisted in the document preparation and believed our programs should have been approved. The political pressure was just too great.

In August, 1994, the Inland Northwest AGC filed suit against the State of Washington Department of Labor & Industry as well as each member of the SAC individually for their denial of the program.

At the same time, we re-submitted the two programs for the October, 1994, council meeting. The minor issues that had been used by the council in April to reject the programs had been corrected and we again had staff approval of the program. Yet, the applications were once again denied. I was told that the State was now concerned about the lawsuit and that had made an impact on the council members.

In January 1995, the two programs were finally approved after a council meeting punctuated by much shouting, threats, and the attempt of the council to go into an illegal closed meeting to discuss strategy against the AGC programs. The end result was that the programs were finally approved. This action then resulted in the withdrawal of the lawsuit.

It should not take such a lengthy amount of time, difficulty, and threat of legal action to move forward with apprenticeship applications. If there is something inherently wrong with the training suggested, this should be fixed, but the delay and/or refusal of approval should be based on merit, not on territorial disputes. The industry needs more skilled workers. More registered apprenticeship programs help both union and open shop contractors by creating better craftspeople. Workers should not be denied the ability to be trained just because they are not interested in joining a union. There should not be a monopoly held by unions on apprenticeship programs. There needs to be better access to training for both union and open shop contractors – it should not be a case of either/or, rather both groups should have more options.

The two programs that were eventually approved thrive today with approximately 35 carpenter apprentices and 30 equipment operators apprentices in place at any given time. It has been the

policy of AGC to enroll apprentices into the program in proportion to the needs of the construction industry. Apprenticeship is a hands-on program and we are also concerned that apprentices have regular employment since many are sole providers for themselves and their families, while others are using their new skills to begin new careers. We have been pleased to see the range of ages, the racial, gender and cultural diversity, and the variety of previous experience of our apprentices.

The challenges to our programs continue today and range from staff of the SAC program making unwarranted, unreasonable, and often contradictory demands for data and program oversight. I have observed that same level of oversight and interference is not present in the union program on which I also serve as a trustee and a committee member.

The latest issue with the state of Washington Apprenticeship Council was the July 2001, denial of approval for an open shop laborers apprenticeship program. The SAC rejected the program after vague, confusing and often contradictory arguments were made against the program on the grounds it was unnecessary because a union program was in place, that AGC jurisdiction lines did not conform with union jurisdiction lines, and challenges were made on the professional and trade qualifications of the proposed committee members. None of these were valid explanations – the program involved had again garnered the necessary staff approval and the attacks were nothing more than a reason to deny an open shop program approval. The AGC has not yet filed suit against the state or the council at this point. We have re-submitted the program for the next SAC meeting this October.

There has been some mention of a major re-write of the Washington State law concerning access to apprenticeship programs. While the proposed law on its face does open up the process to open shop programs, the proof of real change will be what final rule is adopted and whether or not the Washington State Apprenticeship and Training Council adheres to that law and subsequent rules. Unfortunately, the track record thus far does not lend itself to positive thinking.

I am firmly convinced that none of what has been suggested for the new law would have come about if it had not been for the audit program conducted by the U.S. Department of Labor in 1999 and for the personal attention paid to the problems in Washington by national BAT Director Anthony Swoope. His attention and diligence of the regional BAT officials is noted and appreciated. AGC, both National and the Inland Northwest Chapter, has worked well with the BAT staff at the U.S. Department of Labor. We thank them and appreciate our working relationship.

Suggested Ways to Improve the Process

Earlier we heard from Congressman Wicker some of the issues he sees facing the apprenticeship process and how his bill would be a good start in updating that process. AGC does support Congressman Wicker in his efforts and applauds HR 1950 as a step in the right direction. By establishing a set process and timeline for how the approval process works, we can begin to help address the delays that many programs face. This will help get more trained workers out onto sites were they can be active participants in our country's building future.

This would be but a first step in addressing the needed changes to the apprenticeship process. AGC welcomes all attempts, legislative or regulatory, to improve a system so vital to the construction industry and the nation's economy.

In the past, there have been efforts to improve, revamp and update the regulations governing apprenticeship. AGC has been supportive of those efforts. In the early 1990's, the Department of Labor (DoL) developed an initiative to improve the nation's apprenticeship and training system. Though this effort was eventually aborted, some of the ideas that DoL put forth, such as: competency-based instruction, portability of registration for all industries, revisions for the improvement of sponsor and agency accountability in program registration, the requirement of periodic renewal of programs, the establishment of benchmarks for related instruction hours, and the creation of clear and concise procedures for the recognition or de-recognition of a State Apprenticeship Agency acting on behalf of the Secretary of Labor are all items on which we agreed with the DoL.

AGC feels that this is a good time to revisit many of these ideas and use the legislative and regulatory processes in concert with one another to improve the apprenticeship system. We want to work with Congress and the DoL to improve the apprenticeship process. AGC is confident that we can find common ground to begin such reform. These improvements will help the construction industry and the general public who work in the buildings our workers construct, drive on the roads we maintain, fly out of the airports we build, drive over the bridges that are erected, and live in the houses that are created.

Reform to the apprenticeship process will create a win-win situation for the workers who learn new and valuable skills as well as those who employ them. It will help lift the level of training and craftsmanship to a new level and enhance the quality of work. HR 1950 is a start – we want to continue to work with legislators and agency employees alike to help improve apprenticeship programs and increase access to them.

Conclusion

Thank you for your time and interest in this crucial matter. The construction industry needs more skilled workers. By enabling more workers to take part in apprenticeship programs you can help keep this industry moving in a positive direction.

I am happy to answer any questions you might have regarding my testimony and the situations I have faced over the years in attempting to have apprenticeship programs registered. It is my hope that together, we can find a positive way to address some of the concerns raised and help workers get a quality education in the construction industry.

Statement of Associated Builders and Contractors

John Bonk
M. Davis & Sons, Inc., Wilmington, DE

Removing Red Tape from the Department of Labor's Apprenticeship Approval Process

Before the House Small Business Committee Subcommittee on Regulatory Reform and Oversight

September 25, 2001

Speaking for the Merit Shop

1300 North Seventeenth Street
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INTRODUCTION

Good morning, Mr. Chairman and members of the Committee. My name is John Bonk and I am President of M. Davis & Sons, Inc., located in Wilmington, DE. On behalf of Associated Builders and Contractors (ABC), I would like to thank Chairman Pence and the members of the Subcommittee on Regulatory Reform and Oversight for this opportunity to address ABC's concerns regarding the hurdles and often overburdonsome procedures faced by businesses when they seek approval of their apprenticeship programs. I will be summarizing my comments, but I would request that my full statement be submitted for the official record. Additionally, ABC Chapters from Hawaii, Washington and California will be submitting additional comments regarding this issue, and we request that their statements also be included in the record.

For over 100 years, M. Davis & Sons, Inc. has offered fully integrated industrial/mechanical construction including computer-aided design/build, custom/shop fabrication, shutdown capabilities, electrical services and general industrial/mechanical maintenance. We have built our reputation through providing quality workmanship for our clients and safe, healthy worksites for our employees. Our practices are governed by the PSM safety program and the Continuous Improvement principles of Total Quality Management. We normally have 60-70 registered apprentices. In addition, we employ a full-time Training Manager and spend in excess of $300,000 per year in training.

M. Davis & Sons, Inc. has been a member of the Delaware Chapter of ABC for 20 years. ABC is a national trade association representing more than 23,000 merit shop contractors,

subcontractors, materials suppliers and construction-related firms within a network of 82 chapters throughout the United States and Guam. Our diverse membership is bound by a shared commitment to the merit shop philosophy within construction industry. This philosophy is based on the principles of full and open competition unfettered by the government, and nondiscrimination based on labor affiliation and the awarding of construction contracts to the lowest responsible bidder, through open and competitive bidding. This process assures that taxpayers and consumers will receive the most for their construction dollar.

ABC – COMMITMENT TO APPRENTICESHIP TRAINING

ABC's commitment to quality training is unquestioned. Beginning in 1960, with the establishment of ABC's first apprenticeship program in Baltimore, ABC recognized that the future of the construction industry lies in its ability to attract and retain the men and women necessary to meet the nation's construction needs. In 1980, ABC began to develop the "Wheels of Learning" craft training modules. The Wheels of Learning curriculum has since evolved into the merit shop construction industry's "Standardized Construction and Maintenance Curriculum," endorsed and utilized by 28 national associations and thousands of public schools and community colleges.

This commitment to education and training continued in the 1990's, when ABC brought together 11 of the nation's largest contractors to develop industry wide, standardized craft training programs. In 1994, ABC created the National Center for Construction Education and Research (NCCER), now located at the University of Florida's School of Architecture. ABC's multi-million dollar investment in training clearly illustrates our commitment to the future of the

industry. This commitment continues today, as ABC continues to work closely with the NCCER in the development, revision and publication of Wheels of Learning training manuals and interactive CD-ROM. The Wheels of Learning is a competency-based, task driven, modular craft training curriculum based on today's construction industry practices. The NCCER continues to develop and evolve the Construction and Maintenance Curriculum, to the point where it now covers over 30 craft areas and is built upon industry-wide skill standards. ABC and NCCER continue to dedicate themselves to developing and maintaining a training process that is internationally recognized, standardized, portable and competency-based.

ABC provides formal apprenticeship training programs that are registered with the Department of Labor's Bureau of Apprenticeship and Training (BAT). These programs meet all federal and state requirements for formal apprenticeship and prevailing wage work including employer-sponsored classroom instruction and on-the-job training. Upon successful completion, craft workers are recognized at the journey-level in their trade and are awarded their BAT certificate.

Craft Training Programs, while less formal than registered apprenticeship programs, are no less rigorous and demanding of high standards of performance. Craft training is more flexible and enables chapters to meet specific local skill needs of the construction industry employers. These programs utilize the same Wheels of Learning curriculum used in ABC's registered apprenticeship programs. ABC craft training programs are competency-based, allowing craft workers to move through the training at an accelerated pace based on performance achievement. Both entry-level and more experienced craft workers benefit from ABC craft training programs.

PROBLEMS WITH CURRENT DOL PROCEDURES

The depression-era National Apprenticeship Act of 1937 (also known as the Fitzgerald Act), which serves as the basis for the voluntary national apprenticeship system, is no longer responsive to the needs of both employers and employees. The regulations which govern apprenticeship do not address the new and innovative training techniques that are utilized by employers and employees today. Current Department of Labor procedures to approve apprenticeship programs impede and in some cases prevent some contractors, who have nonetheless invested a significant amount of time and resources, from being able to offer registered apprenticeship programs. Inconsistent actions and decisions made by state apprenticeship councils run contrary to the goal of expanding apprenticeship opportunities through the establishment of new apprenticeship programs.

The first step on the road to obtaining U.S. Department of Labor approval of an apprenticeship program through the Bureau of Apprenticeship and Training or the State Apprenticeship Council is to establish an apprenticeship committee. This is the body that will develop a set of apprenticeship standards, including the constitution and bylaws that will dictate the course of the apprenticeship. This includes affirmative action procedures, record keeping requirements, number of hours an apprentices would spend in various phases of on the job training and classroom learning, the crafts to be covered in the proposed program and the curricula for the program. The standard will also outline duties and obligations of the employer and apprentices. During this early stage, legal counsel is typically retained, at the cost of the employer and initial contact is made with the BAT or SAC representatives. Ideally, the BAT or

SAC representative would be receptive to the program and advise the employer during the initial drafting of the program. Unfortunately, that is not often the case.

Now the employer has the apprenticeship standards developed, and their application completed, they would submit their proposal for approval to either their state BAT or SAC. *(The following states have State Apprenticeship Councils: Arizona, California, Connecticut, Delaware, DC, Florida, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin.)* In a BAT State, the BAT director, in consultation with the regional BAT office, will review the material and will then approve or disapprove the program. In a SAC state, the SAC director takes the application for the proposed apprenticeship program before the State Apprenticeship Council, a politically appointed body of individuals generally representing labor, management and the general public. As you can imagine, because of the political nature of the SACs and the infrequency of SAC meetings, the process for getting standards approved is often much slower and more difficult in a SAC state than a BAT state.

At this point, anywhere from 3 to 6 months and sometimes longer has been spent trying to develop and have accepted an apprenticeship program that meets federal requirements. In fact the ABC Western Washington Chapter spent over 20 years working to have their apprenticeship program approved. (ABC Western Washington will be submitting comments for the record.) In addition, it costs thousands of dollars to develop an apprenticeship program that meets federal requirements. However, there is no uniform specified time for the BAT or SAC to act on

applications, nor is there a requirement to provide written decisions for approval or denial of a program. There is often no way to know the legal or factual grounds on which a program has been disapproved. There is no fair recourse for apprenticeship program sponsors, who have spent valuable time and money and have been unfairly delayed or denied approval.

DELAWARE STORY

Delaware has a state sponsored apprenticeship program. While the State Department of Labor employees who administer the program are dedicated individuals, the program is antiquated and hamstrung by bureaucracy. Because of the time and effort it would take to register ABC's apprenticeship program in Delaware, the contracting community has accepted the status quo. Over the years, Delaware has lost much of its manufacturing base and construction could fill the job void this has left. Unfortunately, numerous apprenticeship problems preclude this. It is hard to keep students in the apprenticeship training because they get bored with the outdated training methods. Lack of reciprocity with neighboring states make it economically unwise to utilize apprentices in some instances. In Delaware, and nationally, we have an ever-increasing need for skilled people which is going unanswered. The contracting community is willing to invest the time and money it would take to establish good apprenticeship programs, but are reluctant in the face of government.

MODERNIZATION OF APPRENTICESHIP TRAINING

The Department of Labor must work to modernize current apprenticeship regulations to meet the goals and needs of employers in the 21st Century. The depression-era National

Apprenticeship Act of 1937 has not been adequately modernized to reflect the new and innovative training techniques that are used by today's employers and their workforce. The regulations, which were last modified in the 1970's, do not address the global economy and diverse workforce that business owners face today. The system must be able to meet the demands of employers and employees now and in the future. In modernizing the apprenticeship requirements and regulations, DOL and the Federal Bureau of Apprenticeship and Training must achieve equal access to apprenticeship programs for all employers and employees, regardless of labor affiliation.

Inconsistent state actions run contrary to the goal of expanding apprenticeship opportunities through new apprenticeship programs. There is a desperate need for faster, more efficient and more consistent practices for registering apprenticeship programs. (Clearly, the passage of the Apprenticeship Enhancement Act of 2001 is one remedy.) This includes the possible development of a standardized, systematic model or process for comprehensively delineating work processes would help sponsors more quickly prepare training plans which would be then more readily approved by registration agencies.

Procedural hurdles must be removed to allow more businesses to participate in the apprenticeship process. According to the Bureau of Labor Statistics, to remain at the current level of present workers, the construction industry will need over a quarter of a million (250,000) new trained craft workers per year to replace an aging and retiring workforce. Registered apprenticeship programs should be an essential component of a comprehensive 21st century workforce policy.

In order to achieve meaningful reform of the federal apprenticeship regulations, ABC feels it is essential for DOL and BAT to address the following troublesome aspects of the current procedures:

- **Due Process** – Through the enactment of the Apprenticeship Enhancement Act of 2001, sponsored by Rep. Roger Wicker (R-MS) and Ruben Hinojosa (D-TX), the federal government could restore much needed balance and fairness to the approval of apprenticeship programs. This legislation would provide for a specified time frame for the Department of Labor to process apprenticeship program applications; written decisions for approval or denial of programs; and a clear path for judicial review of unjustly denied applications. These provisions would help expand apprenticeship opportunities and alleviate skill shortages.
- **Reciprocity** - The construction industry, like all other industries, has been forced to adjust and modernize its business practices to remain competitive in today's global economy. Construction firms are often headquartered in one state, but do work in many surrounding states. Specialty/niche construction firms may be awarded contracts nationally and internationally due to their prowess in a specific field. It is essential to require one state's apprentices to recognize those registered in another state. Apprentices should be able to work in more than one state.
- **Portability** – Registered apprentices currently in training need to have the ability to move from state to state and enter into another states' registered apprenticeship program at the same level they had attained in the prior state without penalty.

- **Competency-Based Training –** Employees who have previously acquired skill sets should not be required to begin the apprenticeship-training program from the beginning. Additionally, craftspeople seeking to diversify their skill, and have already completed other training programs, should not be forced to start at the entry level. Competency-based training would allow flexibility for employees entering programs with different level of skills. Competency-based training would allow apprentices to advance at the pace most efficient and effective for them individually, instead of being tied into a restrictive and inflexible four-year program.
- **Distance Learning and Technology –** In order to achieve apprenticeship reform, the Department of Labor must increase their usage of technology and the Internet. There is a great need for flexibility and variable options in training methods. This includes the creation of computer-based training programs, the use of interactive CD-ROM technology for teaching and learning, use of videos and the World Wide Web as teaching instruments, and improvements in the efficiency of information dissemination through technology. To that end, ABC has established a new outreach program entitled "Try Tools" (www.trytools.com). This interactive, web-based program is designed to help answer students questions regarding careers in construction. The program is designed for all age groups – elementary students can download coloring books, high schoolers can access craft training information and college students can find course requirements for construction management programs.

CONCLUSION

The construction industry needs roughly a quarter of a million new skilled workers every year. The average age of our workforce is 47 and the pervasive but erroneous negative images

associated with careers in construction makes recruiting bright, young people extremely difficult. These factors, in conjunction with the numerous problems faced by companies trying to establish new apprenticeship programs through DOL's antiquated process, illustrate the desperate need for reform of the National Apprenticeship Act. Red tape and other procedural hurdles must be removed, and the application process streamlined, to allow the construction apprentice program to reach its full potential.

ABC's mission is to offer real solutions to these critical issues – from image enhancement and school-to-career programs that strengthen recruitment efforts, to assessment that helps elevate the quality of our existing talent, to standardizing training that prepares a skilled workforce that faces them in the 21st Century. The time is ripe for the federal government to modernize and reform the regulations that govern the national apprenticeship system to reflect the needs and goals of both employers and employees in today's global economy.

I thank you for this opportunity to be here today and I welcome any questions that the committee may have.

Before the

The House Subcommittee on Regulatory Reform and Oversight
September 25, 2001
Testimony of Air Conditioning Contractor of America

Submitted by John Herzog, Staff Vice President
For Public Policy

Mr. Chairman and members of the subcommittee, thank you for the opportunity for ACCA to contribute to the national dialogue on improving the recruitment and training of America's skilled workforce. Originally, Dick Stilwill, Chapter Manager for the Oregon Chapter of ACCA, was to testify. The original hearing date coincided with our Chapter Leadership Conference here in Washington. The events of September 11 changed that. Consequently, he asked me to deliver his message on not only their experience with state approved apprenticeship programs in Oregon and Washington, where they also have members, but the general need for more trained workers. I have also spoken with other ACCA chapter leaders who operate apprenticeship programs to relay their experiences.

Mr. Stilwill has forty years in the HVACR industry during which time he has built, fixed, and sold HVACR equipment and now manages the chapter (see Addendum for his background).

As you may know, ACCA is the nation's largest trade association of those who design, install and service residential and commercial heating, ventilation, refrigeration and air conditioning systems (HVACR). We're a federation of 60 state and local affiliated organizations representing approximately 9,000 member companies nationwide. For purposes of today's hearing, it should be noted that approximately 20% of our membership is union affiliated, and largely involved in commercial and industrial work. The balance is unaffiliated, focusing on residential and small commercial business.

Prior to the events of September 11, the number one concern of our members – union and non-union – was the labor shortage in our industry. This is almost a universal concern throughout the nation. ACCA's top priority is recruiting and training the skilled labor force of tomorrow. It is not a union-non-union issue but simply one of putting enough qualified people on the street to meet the needs of our community. Unlike some other industries facing shortages, HVACR installation and maintenance cannot go offshore. We are a part of America's infrastructure. If your air conditioner or furnace breaks down, you want it fixed today. With an increasing labor shortage in our industry, that is becoming increasingly problematic. Discounting changes that the war on

terrorism might bring, the Bureau of Labor Statistics projects the HVACR industry will face a labor shortfall of 104,000 by 2004. The entire industry employs 600,000 to 800,000 people so you can see that this represents a significant shortfall.

Part of the solution lies in the way we train technicians. To begin, we support H.R. 1950, the Apprenticeship Enhancement Act for it addresses part of the problem. We have a paternal interest in the legislation since in the early stages of its development we were involved in recommending a compromise solution to what had become an impasse. We believe the taxpayers of this country deserve timely and comprehensive responses from their government. It should be no different for the Bureau of Apprenticeship Training or State Apprenticeship Councils. The legislation addresses this. That's just good government. However, during my research, I also discovered other barriers to training that deserve attention in either regulation or legislation.

ACCA became involved in apprenticeship training through our own chapters nearly twenty-five years ago when our National Capital Chapter introduced a program for our local members. It was subsequently approved by the Bureau of Apprenticeship Training of the Department of Labor and over the years, has been duplicated by chapters in other areas of the country. We also have chapters who have developed their own programs through community colleges or union arrangements, often based upon local ordinances.

At the end of this testimony, I have listed the names and contact numbers of those referenced in the testimony who can give you specific details on their experience.

Today, I would like to focus on specific problems that our Oregon chapter of Air Conditioning Contractors of America (ORACCA) has run into in considering whether to pursue approval for a program through their SAC. Our Oregon chapter is often allied with a local chapter of another trade association. As a matter of fact, they share a lobbyist to represent their position at the state capitol.

Dick said they have considered applying for an apprenticeship program through the state but have been discouraged by the experience of this other trade association.

Oregon has adopted a "random selection pool process," as well as a "ranked selection process." A ranked process is allows persons with experience to rise to the top of the selection list, based upon a point process. In either case, a contractor interested in hiring someone to put through an apprentice program can only select the person at the top of the list. They hire sight unseen. There is no need for a face to face interview.

Dick said that prior to 1999, Oregon operated on a method D selection process approved by BAT. This involved the applicant getting an "intent to hire" slip, obtaining a list of training agents, going through the traditional hiring process and becoming gainfully employed. The addition of the affirmative action stipulations, which is already

addressed in the BAT requirements, changed the process. It created these alternative processes that have failed to meet the needs of the contractors or students.

One of the requirements for the current pool selection methods is that the applicant needs a high school diploma or equivalent, with the added stipulation for HVAC only, that he or she have at least a "C" or better in algebra. Because, the present program is heavily slanted toward affirmative action, if there are not enough minority or women applicants, the chapters and contractors who administer the programs are required to discard the list and start the recruitment process anew.

There is also the issue of survivorship of a family business to the next generation. Company owners can't even place their children in a program with their own company, unless the timing is absolutely perfect. If the son or daughter wants to proceed, chances are they will end up at a competitor, or skip SAC approved apprenticeship training altogether.

You might ask why SAC programs are so important. One can still get access to BAT-approved programs. The key difference is what drives the state program. The only way you can work on public projects in Oregon and meet the prevailing wage requirement is through a SAT-approved apprenticeship program. This assumes you want to use apprentices, and very few businesses, regardless of size, can afford only to have journeymen on a job. It would quickly price them out of the market.

Another voice is that of John Egge, owner of MP Plumbing Co., Clackamas, OR, and the legislative chair for the local chapter of a trade association. He was the first non-union member of the State Apprenticeship Council and has been involved in the process for 35 years. He told us that in his opinion, SAC states are a regulatory hindrance to the apprenticeship process. He suggested that if you compare the participation rate in BAT and SAC states for unlicensed trades, you'll find the participation rate is much greater in the BAT states than in those requiring SAC only. This clearly tells you which programs are the most effective. When dealing with unlicensed trades, such as HVACR in Oregon, the contractors have an option. In licensed trades, such as plumbing in Oregon, you have no choice. You must sign up for SAC.

He stated that the apprenticeship process in the State of Oregon was so tied up in bureaucracy that the HVAC/R or plumbing companies were not getting employees who were either adequately trained or had longevity on the job. The litmus test for new programs in Oregon is there can't be another program in the state that can meet the needs of the people applying for the new program, regardless of cost or distance involved. On the other hand, BAT standards allow a group of employers to get together and form a new program, known as a committee, with no additional hurdles.

John also referred to the problem in the State of Washington. The 9th District Court of

Appeals ruled that the state had to offer non-union programs to parallel union ones. Unfortunately, the Washington SAC is, in fact, in direct conflict with the court ruling by creating new regulations to block non-union programs. The result is that there are hardly any non-union programs in Washington, thus precluding their youth from an opportunity to go after "family-wage jobs."

Dick reported that in his experience as a sales manager for an HVACR supplier, selling into the State of Washington, the training companies were interested in how much they could make off the students in their programs (HVAC/R). He said they sold students tools from a list supplied by the school, but the school did little to instruct the students on how to properly use them, especially the test instruments.

So, in summary, the process for an apprentice to an HVAC/R company in Oregon is:

> No right to interview the person. Must accept who is on the top of the list. Applicant required to have a valid driver's license, be insurable and pass a drug test. Get at least a C in high school algebra. And need not be qualified via experience.

ORACCA has not pursued an apprenticeship program due to the amount of paperwork, cost and overall regulatory nightmare involved. Dick said they estimate the application process would cost them at least $10,000, and the payback, in terms of potential employees for his members, would not justify the expense.

In summary, Dick said that Oregon, Washington and California are all SAC states for purposes of working on public works projects so commercial contractors have little choice but to pursue SAC programs. He understands from colleagues in states that can use the BAT process, that their experience is considerably better, with fewer restrictions and requirements. He also said the SAC state programs affecting our Oregon chapter – Oregon and Washington – are heavily union influenced so that non-union programs have faced unnecessary obstacles.

This pattern of not wanting to approve additional programs as long as at least one exists in the state is repeated in Florida. Our Florida State Chapter executive, Janice Ficarrotto, told me the state does not want to charter another program, regardless of location, if one already exists. Unlike Oregon, however, she has a choice. If federal any funding, no matter how significant the amount, is involved in a local government project, BAT apprentices are qualified to work on it. Consequently, when she wanted to start another program recently for an electrical association she also represents, she bypassed the state process and went straight to BAT because she said BAT is not only very helpful and responsive but understands what apprenticeship training is supposed to be about. She reports this is not the case with their SAC. And she should know. Janice was appointed to the Florida SAC for a four-year term a few years ago, but resigned in frustration after two years. Apropos of the Wicker bill, she said she was

able to get another program through the SAC while serving on the Council, but only because she knew the people involved. After four to six months of not getting a response on their application, she called the Chairman of the SAC and raised Cain. Only then did she receive the approval. If she hadn't this contact, who knows how long it would have taken.

The Florida SAC also has financial problems which impact training. It is operating on a shoestring after having its budget cut to $1.3 million a year. And yet, it is still responsible for overseeing 347 programs. As a result of the budget problem, the SAC lost their staff specialist and the program was transferred to the Division of Florida Labor and Employment Security within the Department of Education...the unemployment program.

Finally, I can report on the apprenticeship program approved for our Central Maryland chapter about six years ago. Because of potential related costs, a contractor member, Bob Chasen, volunteered to lead the effort to get the program adopted. He did this while running his business. At the time, he was unaware of the BAT program so they pursued State approval only. Fortunately, he modeled his program after that of the National Capital Area chapter, which I referred to earlier, that had been approved years before. He said the process took approximately six months, but the state was helpful. The primary problem was the application had to be letter perfect before it could be presented to the Maryland Apprenticeship and Training Council for final approval. To get to this point, the state provided a review committee of state employees to evaluate the application. Until it received their go-ahead, he couldn't present it to the Board. This is what took six months. When he did go before the Board, he found that most of the members had union connections or focused their concerns on people who couldn't read or write, drop outs, etc. The reality of our industry is that our technicians need basic educational skills because the equipment we work on is fairly complex. Nevertheless, he was bombarded with questions such as how his program was designed to help the 8th grade drop-out, or if the union already has a program, why do you want to start another one? In summary, he thought the process was especially tedious, particularly for a volunteer with a business to run, and was totally unprepared for the questioning from the Council. He thought that what he had gone through the previous six months had answered all the necessary questions.

As you can tell from some of these experiences, chapters who have dealt with the BAT have experienced considerably more positive results. Several chapters have commented how helpful the local DOL representatives have been in guiding them through the process. We also met with the people at BAT here in Washington and understand their desire to improve the process for they too are well aware of the labor shortage in these critical blue-collar trades.

We obviously believe that getting a prompt response to one's application should not even be an issue. The fact that it is, however, shows that something needs to be done.

Mr. Wicker's bill fills that piece of the puzzle. However, we still need something that will help attract people to the industry and then, train them so they can advance in their careers as they gain experience. This takes apprenticeship training. Consequently, many of the building trades as well as your members and yourself, Mr. Chairman, are supporting the Skilled Workforce Enhancement Act (SWEA). Sponsored by Representatives Mark Foley (R-FL), Nydia Velazquez (D-NY and Chairman Don Manzullo (R-IL), the bill enjoys considerable bi-partisan support with nearly 50 co-sponsors this year. Last year, under the sponsorship of House Small Business Committee Chair Jim Talent (R-MO), it enjoyed 89 co-sponsors. Equally encouraging is the support that senior members of the House leadership have given the legislation.

As you know, SWEA provides a financial incentive to train new workers. The legislation would allow employers to claim a tax credit of up to $15,000 per year per employee for up to four years for each new apprentice trained in a recognized and formal apprenticeship program. This tax credit is limited to companies with 250 or fewer employees and will not only encourage the training of more new workers, especially by the very smallest of firms, but will expand career opportunities for today's youth. Our goal is to find and train desperately needed new workers, union and non-union alike. Unfortunately, those with more limited views of apprenticeship training oppose SWEA.

Conclusion

In summary, Mr. Chairman, we support the goals of Mr. Wicker's legislation as part of a solution to a growing problem. However, other creative initiatives such as SWEA are also needed if we're going to meet the challenge of a declining work force.

Thank you for the opportunity for ACCA to address this critical problem.

Addendum:

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STATEMENT OF MR. ROBERT J. KRUL
NATIONAL APPRENTICESHIP COORDINATOR
UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS

ON BEHALF OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT
AFL-CIO

SMALL BUSINESS COMMITTEE HEARING ON THE APPRENTICESHIP ENHANCEMENT ACT

Good morning. My name is Robert Krul. I am the National Apprenticeship Coordinator for the United Union of Roofers, Waterproofers and Allied Workers. I am also a member of the Building and Construction Trades Department Apprenticeship Committee and have served on the Federal Committee on Apprenticeship.

I have served in my current capacity as National Apprenticeship Coordinator since 1979. I am a 29 year member of Roofers Local 74 in Buffalo, New York and a graduate of my local union's apprenticeship program. I am proud to say I was the "Outstanding Apprentice" of my class, and I was also an apprenticeship coordinator and instructor in my local union.

I thank the Committee for this opportunity to address an issue that the 14 unions of the Building and Construction Trades Department feel is of utmost importance. I believe that my background in apprenticeship provides me the credentials to offer viewpoints on H.R. 1950 on behalf of the organized segment of the apprenticeship training community.

I'd like to begin by giving you a little background on the current state of apprenticeship programs in our country. There are currently 37,000 registered apprenticeship programs in the United States. In order for an apprenticeship program to become registered with the Department of Labor, it must meet the criteria outlined under *Title 29, Code of Federal Regulations, Part 29.5.*

The Office of Apprenticeship Training, Employer and Labor Services (OATELS), a division of the Department of Labor formerly known as the Bureau of Apprenticeship and Training (BAT), oversees this process. OATELS also oversees twenty-seven (27) State Apprenticeship Councils (SAC) that are authorized to register apprenticeship programs as well. Apprenticeship programs may be operated and administered by both private and public sponsors, including employers, employer associations, and joint labor/management organizations.

In the year 2000, there were 360, 511 apprentices registered with OATELS. Approximately 55% of this number were apprentices who were enrolled in union building trades apprenticeship programs. By contrast, The Associated Builders and Contractors, which claims to perform 80% of the construction work in this nation, trains only 15,000 apprentices each year, a number that equals only 4.1% of the total U.S. apprentice population. Thus, an inverse relationship seems to exist: the segment of the construction industry that claims to perform 80% of the construction work , represents only 4.1% of the number of registered apprentices, while the segment of the construction industry that performs 20% of the construction work, represents 55% of the number of registered apprentices.

There are reasons for this disparity that go directly to the structure and administration of these programs, the standards they are registered under and the quality of those programs in terms of the type and level of training that is offered in them. Our belief is that when these programs are measured for quality of training and numbers of apprentices graduated, the union programs outperform the nonunion programs by a wide margin.

The international unions of the Building and Construction Trades Department have developed apprenticeship training programs that are overseen by joint labor/management committees. Financing for labor/management apprenticeship programs is negotiated on a local union level

through the collective bargaining process and is guaranteed. Joint Apprenticeship and Training Committees (JATCs), comprised of equal numbers of labor and management representatives, ensure that these collectively bargained contributions are spent properly on apprenticeship and training activities. The JATCs also ensure that the apprenticeship program will meet and operate under OATELS standards. The amount of monies expended by the unions of the Building and Construction Trades Department on an annual basis is significant. Our best annual estimate is approximately $400 million dollars per year through actual monetary contributions and in-kind contributions in the form of donated materials and instruction time in the training facilities.

I might point out that unlike the funding for training in the unorganized sector of the industry, hourly contributions negotiated by labor and management during the collective bargaining process go towards funding labor/management training programs. Our programs are not taxpayer funded, our funds are not monies assessed to construction users and owners as an add-on to their construction costs, and they are not costs passed on to the apprentices or trainees. Together, labor and management pay for our own training.

In fact, in the unionized sector of the construction industry, apprentices incur no costs for their training. They "earn while they learn".

With that brief background of the current apprenticeship training system in mind and the significant differences between the organized and unorganized segments of the construction industry noted, I'd like to now turn to the bill that this distinguished committee is considering and offer reasons why the organized sector of the construction industry is opposed to it.

H.R. 1950, The Apprenticeship Enhancement Act, purports to streamline the process of registering apprenticeship training programs and increase the numbers of programs in this country. In this period of extreme shortages of skilled workers in all industries in this nation, and most particularly in the construction industry, the purpose of the legislation at first glance seems to address a pressing need.

But no matter how noble one thinks the purpose of the bill is, the unions of the Building and Construction Trades Department and the organized segment of the apprenticeship community have one salient point regarding its enactment: what will be the price to the current standards of apprenticeship training that have served this country well for at least 64 years?

Under the current system, the Department of Labor has issued national guidelines defining apprenticeship training criteria for numerous occupations and minimum standards governing apprenticeship training that all those making applications for an apprenticeship program must abide by. These standards include items like affirmative action goals, health and safety training, classroom hours, curricula, wage progressions for apprentices, and other aspects of the program that ensure the welfare of the apprentice is protected and most importantly, that actual training will be conducted and the apprentices will learn a trade or craft. I'd like to repeat that last part ---*that actual training will be conducted and the apprentices will learn a trade or a craft.*

The regulations currently governing apprenticeship training encourage the development of these programs as a result of cooperation between and among employers and labor organizations. Apprenticeship programs that meet the minimum federal standards are approved by the Department of Labor's Office of Apprenticeship Training, Employer and Labor Services (OATELS). They then become eligible for certification/registration, either through the federal or state agencies established for those purposes.

So as you can see, the system as it exists was designed to make sure that everyone who submits an application for an apprenticeship program adhered to a given set of national standards for a particular industry or trade, protected the welfare of the apprentices being trained, and ensured that the apprentice completed his or her training by learning a craft or trade.

H.R. 1950 will undermine the Department of Labor's Office of Apprenticeship Training, Employer and Labor Services (OATELS) and the State Apprenticeship Councils (SAC). A contractor wishing to receive approval for a training program that may not meet the standards established for that particular industry or trade can play a waiting game and file continual appeals in order to receive an apprenticeship training program approval from the Secretary of Labor's office without being held to the OATELS or SAC standards. And a pragmatic question that can be asked is: where will the OATELS division of the Department of Labor get the necessary manpower and funding to accommodate these appeals, delays and challenges. If indeed there will be no additional funding for OATELS forthcoming, then manpower and budgets currently allocated towards enforcement of standards would be diverted towards these challenges and appeals, all at the expense of the current apprenticeship system of quality and standards enforcement. This will also make it difficult for OATELS to respond to new applications in a timely manner.

Those established sets of standards have served the apprenticeship community for over six decades. Are we ready to say, in this time of a critical shortage of skilled workers in the construction industry and other industries, that we are ready to " *lower* the bar"? Are we ready to say that construction workers need not be completely skilled in what they do? That they only need partial training or task training in order to work in this industry?

If the answer to those questions in your mind is "yes", then I hold out to you that the workers who eventually rebuild the World Trade Center and The Pentagon need not be of top quality or utmost skills. If mediocrity in the form of so-so work that leads to future problems is our goal, then let's lower the bar of excellence. Let's make construction work so mediocre an occupation that no one will ever be attracted to perform it in the future, and our skilled worker shortage will be manifested in the form of inferior buildings that need constant repair and maintenance, and a shortage of skilled workers in this industry the likes of which this country has never witnessed.

I have never understood why it is that many in this country look down at construction work as just another occupation that requires no marketable skills or standards by which to judge those skills. Just think of the standards and skills that must be measured in a host of occupations and vocations in our everyday life. As an example: Lawyers must pass a bar exam in order to practice law; accountants must pass a standard certification to receive their Certified Public Accountants license; and pilots must conform to a set of established standards in their training before being allowed to fly. And for the general public, all of us must pass tests and demonstrate proficiency before being issued a driver's license. Does anyone believe that construction requires little or no skills or education?

For each of these examples, there are always individuals who do not pass muster with the tests administered or the standards established in a particular industry, craft or profession. Is the answer to accommodate them by changing or weakening the standards or tests? Of course not!

The same should be true of apprenticeship standards. Yes, the standards are tough, but they are tough for the same reasons that any industry's standards are tough-----to ensure that men and women who enroll in these apprenticeship and training programs will be properly trained to safely and competently perform their work. Instead of "lowering that bar", we should be committed to making sure that the standards of apprenticeship that have served us so well over the last six decades are never weakened. In fact, they should be strengthened and protected.

I understand the frustration of those who come before you today and relate that they have experienced difficulty in registering what they feel is a bonafide apprenticeship training program that meets the required standards. I am not here to attempt to convince you that this system is never in need of repair.

But I would hope that conjecture, anecdotes and what seems to be a few minor administrative infractions will not be the catalyst for amending the National Apprenticeship Act of 1937. This legislation has at its core the standards that have preserved the integrity of all apprenticeship programs registered in this country since the Fitzgerald Act's enactment. To change that legacy

without the consultation of the best minds of the apprenticeship community would not seem the prudent thing to do, nor would it help the system become any better.

The committee should look to the Federal Committee on Registered Apprenticeship (FCRA) for guidance on how to address the issues raised by H.R. 1950 and its proponents. In fact, the FCRA has been working for the past two years on the very area of concern addressed by H.R. 1950.

The FCRA is composed of representatives from business, labor and the public sector. Thus there is a true cross section of expertise in the apprenticeship and training arena that advises the Secretary of Labor on matters concerning apprenticeship. I could not think of a better avenue through which to pursue recommended changes to the registration process in particular and the apprenticeship system in general.

The FCRA focuses its attention on quality of training, public relations, affirmative action and non-traditional apprenticeship programs. And as I mentioned, one of the areas that the FCRA has been dealing with is the very issue that the proposed legislation intends to address. The FRCA is composed of equal numbers of public, management and labor sector participants. This approach to the apprenticeship training system is more in keeping with the purpose and intent of the Fitzgerald Act, which is to promote cooperation between the federal government and state agencies engaged in the formulation and promotion of apprenticeship standards.

I and my colleagues in the Building and Construction Trades from both labor and management who participate in apprenticeship training programs, urge the committee to utilize the expertise and experience of the FCRA to determine if a legitimate need exists for a streamlining of the registration process for apprenticeship as outlined in Mr. Wicker's bill. If such a need does exist, then we ask that those who have equity in the apprenticeship training process be the ones who recommend changes to the system. And I might point out that those individuals come from both the organized and unorganized portions of the construction industry

Then and only then should changes to the current system be contemplated so that the original intent of the Fitzgerald Act,"....to safeguard the welfare of apprentices...."can be carried forth. I urge the committee to preserve the bar of excellence in the form of rigidly adhered to standards of apprenticeship. The youth of this nation and others who desire training in our registered apprenticeship programs deserve nothing less than meaningful training and education, a good paying job with a solid future, and the opportunity to advance in their chosen professions.

I pray that we do not short change our youth by lowering that bar of excellence that has served this country so well for the last 64 years.

I thank the committee for this opportunity to speak to you regarding the future of apprenticeship, and I would be happy to respond to any questions.

MECHANICAL • ELECTRICAL • SHEET METAL ALLIANCE

Presented to the

U. S. House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight

Hearing

on

The Department of Labor Apprenticeship Program

September 25, 2001

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Alliance Statement to Members of the House Small Business Committee

The Mechanical/Electrical/Sheet Metal Specialty Construction Alliance represents the high-skill, specialty construction industry, which comprises over 60% of the industry's employment. The Alliance is the broadest ongoing coalition in the industry made up of three of the leading independent employer trade associations in the industry: the Mechanical Contractors Association of America – (MCAA - founded in 1889); the National Electrical Contractors Association of America – (NECA - founded in 1901); and the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA – founded in 1953).

Taken together, the Alliance represents over 12,500 member companies in over 260 local associations across the country. Alliance member companies span the entire spectrum of size by measure of either employment or annual business volume. The preponderance of Alliance members would qualify as small business by current standards ($17 million in annual volume.) Alliance members also have in common their participation in local collective bargaining and long-standing labor/management investment in jointly administered apprenticeship and journeyman upgrade training programs nationwide.

It is an established fact that the construction industry generally – and the Alliance specialty trades in particular – lead the American economy in the establishment and ongoing development of the most effective workforce training and development system. The Alliance company members invest well over $300 million annually in the their workforce training/development system. Taken together, Alliance apprenticeship and training programs number of over 700 – with over 250,000 apprentices and journeymen participating in entry-level and ongoing career development programs annually nationwide. The high-technology characteristics of the industry combined with rapid ongoing technological changes in the equipment, material, means and methods of specialty construction, service and maintenance demand the most sophisticated training infrastructure in the economy. Virtually all Alliance programs have currently, or will soon, gain college credit accreditation for their training programs. Alliance companies have made and continue to make that quality-based investment; too many others have not.

Alliance employers have invested for the long term in a complete training infrastructure: the best curricula, the most modern and complete training facilities, the best training equipment, the highest quality distance learning and internet training facilities, highly competent and well-trained faculty, an active enforcement of ongoing training accreditation standards (both internally and by third parties), foreign language training material, and recruitment of a full complement of actual trainees which is rapidly expanding in response to workforce demographics. The result has been high participation and rate of graduation. Those who present merely curriculum, professed commitment and research organizations often confuse that effort with actual programs and concrete results.

Conclusion: The Alliance does not support H.R. 1950, the Apprenticeship Enhancement Act of 2001, for three general reasons:

1) **The premise of the measure is not valid** – administrative procedures are not even remotely related to the failure of some sectors of the industry to invest sufficiently in workforce training and development;

2) **The procedural aspects of the proposal are similarly flawed** - the established mechanism of Federal apprenticeship policy administration should be used, rather than legislative micromanagement, to modernize apprenticeship policy.

3) **The substantive aspects of the measures are lacking in the most important feature of the stated goal** – training program oversight.

This statement will elaborate on all three points.

1. **The industry training deficit is not related to administrative procedures.**
The training deficit in the industry is the result of a long-standing failure of too many in the "merit shop" sector of the industry to carry its fair share of the responsibility for workforce development. The National Apprenticeship Act is not out of date – its policy is stronger and more relevant than ever. The failure of the training system in some sectors of the construction industry – and not in others is much more simple – it is the failure of the open shop sector to actually pay for and operate an effective training system.

This persistent and long-running free ride has inevitable consequences that should not be laid off easily to anecdotal charges of administrative defaults or small business impediments. Alliance employers and their investment in proven training mechanisms put the lie to all that. (The Alliance associations are arranging an invitation for members of the Committee and staff to visit one of our many local training centers for a close-up look at our system.)

Another way to state the point is as follows: it does not follow that the indisputable need for more and better trained workers in the construction industry requires or even is answered in part by legislative micromanagement of Federal apprenticeship policy administration.

We submit that the very recent General Accounting Office report, **Registered Apprenticeships: Labor [Department of] Could Do More to Expand to Other Occupations (GAO-01-940), September 2001,** clearly outlines an administrative approach and reliance of established expert mechanisms – the Federal Committee on Registered Apprenticeship and the National Association of State and Territorial Apprenticeship Directors, among others. That recent GAO report also refers to a 1992 GAO report: **Apprenticeship Training, Administration, Use and Equal Opportunity (GAO/HRD-92-43, March 4, 1992).** The 1992 report further establishes the bona fides of the jointly administered apprenticeship and training system in construction as the leader in vigorous pursuit of the strong national workforce policy enacted by Congress in the Fitzgerald Act in 1937. Attached are reports of a number of studies establishing the effectiveness of the jointly administered labor/management multiemployer apprenticeship and workforce upgrade training system in construction.

2. **The proposal circumvents expert administration of national apprenticeship policy.**

In the most recent GAO report cited above, the Labor Department accepts GAO's recommendation to more vigorously pursue national apprenticeship policy. And, DOL further notes that it will do so with even greater reliance on the policy expertise of the Federal Committee on Registered Apprenticeship, the National Association of State and Territorial Apprenticeship Directors, and other state workforce development bodies (boards established under the Workforce Investment Act, for example).

The Alliance would urge lawmakers to consider whether this and perhaps other recent apprenticeship proposals aren't legislative policy overreactions to some few anecdotal reports of administrative disputes. If there are systemic problems with Federal and state administration that are amendable to Federal legislative remedies, then the established administrative expertise should be called on in advance for a coordinated policy review and consideration. Moreover, the first set of considerations should be whether the Federal/state balance of existing policy is maintained in any overall balanced reform proposal. In the case of H.R. 1950, that test is not met. The proposal would reverse the careful Federal deference to state and local workforce development autonomy and expertise set up in the Fitzgerald Act and recently reenacted in the Workforce Investment Act. Also, courts uniformly defer to state autonomy in these areas, most recently the U.S. Supreme Court in the Dillingham Case. The Alliance submits that any alleged misadministration of local procedures is best remedied with local administrative, legal or political procedures. The national apprenticeship policy should not contemplate Congress as a state administrative appeals board hearing complaints and taking policy action based on anecdotal reports from interest groups.

3. **The specific aspects of the proposal are both too broad and too narrow.**

The Alliance submitted written comments on the precursor of H.R. 1950 in the 106th Congress, the then-called MERIT Act – the Modernization and Expansion of Registered Industrial Training Through Apprenticeship Act. While some of the Alliance objections were dealt with in drafting H.R. 1950, the most fundamental objections remain unremedied. On H.R. 1950, the Alliance again submits the following detailed comments:

3.1 **Section 2, Purpose, is both too broad and too narrow.** In requiring certification and registration of all apprenticeship programs, without qualification as to compliance with standards, the measure goes too far. But most significantly, and even more telling, is the failure of the measure to provide for any oversight of the ongoing efficacy of such programs – betraying a far too narrow reach.

3.2 **Section 5, subsection (a)(2), would apparently ban valid input from non-sponsoring entities.** It is ambiguous at best; the meaning of "without sole regard" is difficult to parse. Still, the intent is highly insular and contrary to existing policy; workforce development policy is a public policy issue – barring expert involvement in those decisions would not seem to be in the public interest.

3.3 **Section 5, subsection (e) too is dangerously ambiguous.** At best it is unclear whether the burden of the time limit is meant to apply to initial determinations whether an

occupation is "apprenticeable" in the first instance; or, if it is meant to apply only to programs in occupations already deemed "apprenticeable."

In conclusion, the Alliance submits that H.R. 1950 is much more than a simple measure mandating reasonably timely administrative procedures. Because of that the Alliance would urge the Congress to rely on established expert and proven administrative procedures to pursue the administrative details of Federal workforce policy.

Documentation Builds: Joint Apprenticeship Programs Carry Industry Workforce Development

Joint construction industry management/labor apprenticeship programs outstrip non-union programs in the Commonwealth of Kentucky according to a recent report by William J. Londrigan, M.P.A., with Joseph B. Wise, III, M.B.A. The report was commissioned by the Building Trades Apprenticeship Coordinators/Directors Association of Kentucy, Inc., and the Greater Louisville Building and Construction Trades Council, AFL-CIO. It is based on information supplied by the Kentucky Labor Council, Division of Employment Standards and Mediation from public information on registered apprenticeship programs in the Commonwealth from January 1985 through January 1994. (*Apprentice Training in Kentucky: A Comparison of Union and Non-Union Programs in the Building Trades*, March 1997).

Documentation of Joint Program Predominance Builds

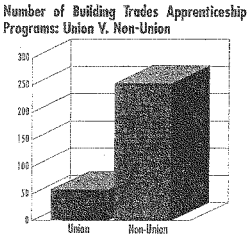
The Kentucky study is the latest in a growing body of scholarship documenting what has long been an accepted fact, yet widely disregarded in partisan political squabbles: the jointly administered labor/management apprenticeship training system has long carried and still maintains nearly the entire burden of necessary workforce development investment in the construction industry.

Just this Spring, University of Utah Economics Professor Peter Philips released data showing joint apprenticeship programs nationwide carry more than 85% of the industry's overall journeymen development. (See *MCAA Reporter* May 1997, pages 8-9). Similarly, in 1992, the U.S. General Accounting Office (GAO) documented the fact that the construction trades predominate among apprenticeship programs in all industries. (*Apprenticeship Training: Administration, Use and Equal Opportunity*, GAO/HRD - 92-43, March 1992). Current research is ongoing to include more recent documentation of the widely acknowledged superiority of the union sector's workforce development infrastructure.

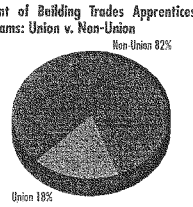
Fewer Joint Programs are Larger and More Effective

The Kentucky study documents that, while fully 82% (252 of 309) of the registered programs were unilaterally (non-union) sponsored during the 10-year period—compared with 18% joint labor/management programs (57 of 309)—only 31% of all apprentices (1,901 of 6,214) were registered in the non-union programs, as compared with 69% (4,313 of the 6,214) in the jointly administered programs. The study points out that non-union programs had an average of only 7.54 apprentices per program, as compared with an average enrollment of 75.66 for union-sector programs.

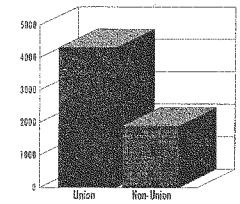
Number of Building Trades Apprenticeship Programs: Union V. Non-Union



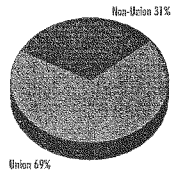
Percent of Building Trades Apprenticeship Programs: Union v. Non-Union



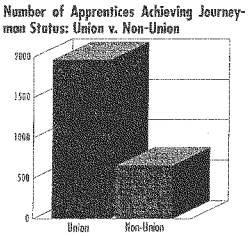
Number of Registered Apprentices: Union v. Non-Union



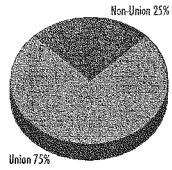
Percent of Registered Apprentices: Union v. Non-Union



Number of Apprentices Achieving Journeyman Status: Union v. Non-Union



Percent of Apprentices Achieving Journeyman Status: Union v. Non-Union



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Surpassing Success Rate

Moreover, fully 75% (1,962 of 2,620) of all journeymen are trained in union-sector programs, as compared with only 25% (658 of 2,620) in the open-shop programs.

The successful completion rate in the union sector reached 59%, while the open-shop attained merely a 39% completion rate.

Broad Industry Coverage

The jointly administered programs are not only larger and more successful, but also serve the industry more broadly by addressing the full scope of craft skills training. Non-union programs, by contrast, are concentrated in just a few crafts. The jointly administered programs in Kentucky operate across all Building Trades crafts in roughly the same percentage distribution as the national data reported in the 1992 GAO report; the open shop programs, on the other hand, are concentrated in a few trades, neglecting some crafts entirely.

Minority and Women Representation Surpasses Open-Shop Rates.

As with overall success rate, the enrollment rates for minorities and women in joint management/labor programs surpass those of non-union programs in significant measure. The union programs in the Kentucky study achieved a 7.9% representation rate of male minority apprentices, and 8.2% of women apprentices (reaching 16.1% overall enrollment of women and minority persons), as compared with comparable open-shop program enrollment of only 5.4%, 2.8% and 8.2% respectively. The report points out that the union sector rate of 8% male minorities reflects the rate of representation in the population as a whole. In absolute numbers, there were 850 women and minority apprentices (out of 6,214) in the union sector programs, as compared with 156 (of 6,214) women and minorities in the non-union programs. (The report points out that 206 of the non-union programs had no women or minority apprentices).

Similarly, the success rate of women and minority apprentices in the union programs achieving journeyman status passed 10% (10.9%), surpassing the success rate for minority and women individuals in non-union programs by a factor approaching 2 (5.9%). In absolute numbers, 214 women and minority individuals earned journeyman credentials in the joint programs, as compared with just 39 in non-union programs over the 10-year period.

Conclusion

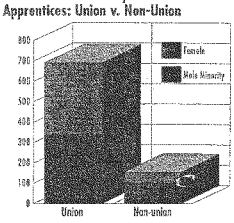
The report sums up with: "The union sector had more registered apprentices, higher completion rates, produced a much higher number of skilled journeymen, and were more diverse in race and gender. The findings also demonstrate that the vast majority of non-union apprentice training has been concentrated in the electrical occupation. Conversely, union apprenticeship programs have trained across a broader range of apprenticeable occupations and in proportion to the range of building trades occupations found on the national level. As demand for skilled journeymen continues to increase, resources must be allocated to the training method which is more effective at meeting this demand. The union apprentice training method, encompassing joint administration by labor and management, has been demonstrated as the more effective training method in the Commonwealth of Kentucky. To verify these results beyond Kentucky, additional studies of this kind should be conducted."

For more information or copies of the report, contact Marvin Hammond, Executive Director, MCA of Kentucky, Inc, 4022 Poplar Level Road, Louisville, KY 40213.

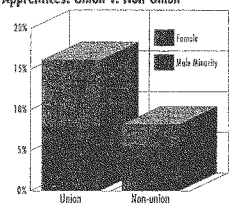
Percent of Apprentices By Top Ten Occupations

	ElectrCom	Carpenter	Plumber	Pipefitter	Sheet Metal	Roofer	Painter	Ironworker	Bricklayer	Operating Engineer	Other
National	25%	20%	9%	8%	8%	5%	4%	4%	3%	3%	11%
KY Union	28%	20%	10%	11%	5%	1%	4%	7%	2%	1%	11%
KY Non	64%	8%	5%	3%	3%	0%	1%	0%	1%	0%	15%

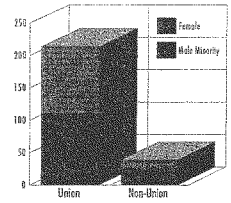
Number Male Minority & Female Apprentices: Union v. Non-Union



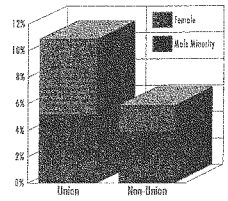
Percent of Male Minority & Female Apprentices: Union v. Non-Union



Number of Male Minority & Female Apprentices Achieving Journeyman Status: Union v. Non-Union



Percent of Male Minority & Female Apprentices Achieving Journeyman Status: Union v. Non-Union



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September 25, 2001

The Honorable Mike Pence
Chairman, Subcommittee on Regulatory Reform and Oversight
House Committee on Small Business
Washington, DC 20515

Dear Chairman Pence:

Thank you for this opportunity to provide you with information regarding Washington State's history of apprenticeship approval for open shop programs. It is important that apprenticeship sponsors have a prescribed method for seeking approval.

After more than 20 years of effort by many people and several lawsuits, and an audit by the Federal Bureau of Apprenticeship and Training, the Washington State apprenticeship system is being substantially revised.

Before Associated Builders & Contractors of Western Washington was formed, another association representing open shop electrical contractors, the Washington State Electrical Contractors Association, began petitioning the Washington State Apprenticeship & Training Council in the mid-1970's for approval of their electrical training program. WSECA was denied approval because another program already existed. Later the rules were changed to disallow any program whose wages did not parallel the original program. An antitrust lawsuit over the wage requirement was filed which ultimately ended up being remanded by the U.S. Supreme Court back to the 9th Circuit Court of Appeals. The suit took nearly a decade and more than $150,000 in legal fees. During that time, the Council again changed the rules to deny approval of open shop programs.

Beginning in 1986 CITC started submitting its apprenticeship training standards to the Washington State Apprenticeship and Training Council. In 1994 after three lawsuits and over $100,000 the Council approved CITC's apprenticeship training standards for the trades: carpentry, electrical, HVAC, painting, plumbing and sheet metal. Within 30 days a legal challenge was filed by the Seattle Building Trades Council against the Council and the Department of Labor and Industries for the manner in which CITC was approved.

From 1994 until 1998 CITC defended its programs in the Superior, Appeals and Supreme courts of this state; met with legislators, filed for "cert" with the U.S. Supreme Court and participated in preliminary hearings before an Administrative Law judge. Despite recommended approval by the law judge, the Council moved to *reject* all six of the standards presented by CITC.

During this period of time CITC also appealed to the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) to review the laws and actions of the Washington States apprenticeship system. Because of the hard efforts of ABC and Associated General Contractors and their lobbyists working with Representative Jennifer Dunn and then Senator Slade Gorton, the BAT conducted a comprehensive review of the Council and the Apprenticeship division of the Department of Labor and Industries.

In August of 1999 the BAT issued its seventeen-page findings and corrective action stating the "State Apprenticeship Law does not appear to be clear and in compliance with the federal apprenticeship regulations." It further concluded: "after the appropriate changes to the RCW, the WAC rules and Council policies must be revised to ensure the seamless operation of a State-wide system."

The Department of Labor and Industries under the direction of the governor set up a task force whose job was to make the suggested revisions to the rules, as well as preparing language for a bill that would revise the state statute, to come into compliance with federal regulations. Rick Slunaker, a lobbyist from AGC, and I served as two of the three management representatives on this committee. With a lot of hard work a bi-partisan bill was sponsored and passed. SHB1234, which amended the RCW, passed the House and Senate and was signed into law by the Governor on May 5, 2001. The revised rules are complete and have recently been the subject of public hearings. The new rules should be implemented later this fall.

What Does This Mean?

- The new apprenticeship law will allow equal access to state-approved apprenticeship training for both union and open shop employers.
- It will make the apprenticeship system more responsive to the shortage of skilled workers by increasing apprenticeship opportunities for all.
- It will allow programs to be sponsored and administered by open shop employer groups without having to have organized labor representatives on the apprenticeship committee. Now open shop workers will represent open shop workers!

After having expended more than $250,000 fighting for approval, and many years of frustration, dialogue is opening with the Council, the Department of Labor and Industries and in some cases, organized labor. While all of the lawsuits or hearings are not concluded, there is a refreshing change in Olympia.

Employers and workers should be encouraged to come together to train future skilled workers. Their energy should be used to create an excellent apprenticeship program, not to spend years petitioning an unresponsive council who use discriminatory rules to deny approval and filing numerous, lengthy and expensive lawsuits.

Sincerely,

Kathleen Garrity

Kathleen Garrity
Executive Director

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September 27, 2001

Representative Mike Pence
Chairman
Subcommittee on Regulatory Reform and Oversight
2361 Rayburn House Office Building
Washington, DC 20515-6319

Dear Chairman Pence:

The Building and Construction Trades Department, AFL-CIO, was pleased to be able to take part in your recent hearing on HR 1950, the Apprenticeship Enhancement Act. We would like to continue working with your Subcommittee to address the issues raised during the hearing.

In the testimony submitted to the committee by Mr. John Herzog, witness for the Air Conditioning Contractors of America, he states that, "Consequently, many of the building trades..." are supporting the Skilled Workforce Enhancement Act (SWEA). For the record, I would like to clarify that the Building and Construction Trades Department, AFL-CIO, and our 14 affiliates do not support HR 877.

I would appreciate your including this letter in the record of the September 25th hearing on HR 1950.

Sincerely,

Edward C. Sullivan

Edward C. Sullivan
President

ECS/bmp

O