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EVALUATING THE PAPERWORK REDUCTION ACT: ARE BURDENS BEING REDUCED?

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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EVALUATING THE PAPERWORK REDUCTION ACT: ARE BURDENS BEING REDUCED?

WEDNESDAY, MARCH 29, 2017

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 11:00 a.m., in Room 2360, Rayburn House Office Building, Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, Luetkemeyer, Brat, Radewagen, Knight, Kelly, Blum, Bacon, Velázquez, Evans, Lawson, Adams, and Schneider.

Chairman CHABOT. Good morning. I call this hearing to order.

While the burden of federal paperwork is felt year-round by individuals and small businesses, there is no more relevant time to discuss federal paperwork than in the weeks leading up to Tax Day. Right now, individuals and businesses are pouring over tax forms and mind-numbingly complex instructions to make sure they get things right. The Paperwork Reduction Act, or PRA, was enacted back in 1980 and amended and reauthorized in 1995. It was aimed at minimizing the burden of federal paperwork, as well as maximizing the usefulness of the information collected. Congress recognized that requests for information imposed significant burdens on the public and that if information was not used efficiently, it reduced the government's effectiveness as well.

Before requesting or acquiring information from the public, the PRA requires federal agencies to seek public comment. Then agencies must submit the proposed collections of information to the Office of Information and Regulatory Affairs, or OIRA, under the Office of Management and Budget for review and approval. As part of that process, agencies must determine whether the information collection is needed, estimate its burden, and certify that it meets specific requirements. I actually practiced that OIRA last night and I still cannot get it right for some reason. I have a mental block to that word. We will change the name of that agency, I guess.

Although the PRA has been on the books for a number of years and Presidents of both parties have directed federal agencies to find ways to reduce and streamline federal paperwork, the overall burden continues to grow. Currently, federal paperwork is estimated to annually take $11.6 billion—yes, with a B—hours to respond to or comply with and cost nearly $1.9 trillion. Yes, with a T. However, the burden may be higher as OIRA and others have raised concerns about the accuracy of agency burden estimates.

While nearly 75 percent of the overall federal paperwork burden is generated by Treasury, onerous requests from other agencies contribute as well. Examples of these include Census surveys, OSHA reporting, and recordkeeping requirements, and third-party or public disclosures, such as food labeling requirements. Laws enacted in recent years, like Obamacare and the Dodd-Frank Act have added hundreds of millions of hours to the total. Today, we will be discussing how effective the PRA has been in reducing the federal paperwork burden on small businesses and issues that require additional attention or perhaps legislative action to resolve.

I want to thank all the witnesses for being here today, and we look very much forward to your testimony which we will be getting around to very shortly.

And I now yield to the ranking member, Ms. Velázquez, for her opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

The federal paperwork burden continues to grow for small firms. In fiscal year 2015, the public spent an estimated 9.78 billion hours responding to federal information collections. This total represents a net increase of 350 million burden hours, or about 3.7 percent from the estimated 9.43 billion hours that the public spent responding to federal information collections in fiscal year 2014.

For small firms, paperwork requirements are particularly burdensome. Due to economies of scale and a lack of in-house lawyers and experts, paperwork compliance can be especially costly.

The Paperwork Reduction Act was created in 1980 and amended in 1995 with the intent of curtailing the growth of paperwork, but, unfortunately, it has not done so. One question the committee seeks to address today is whether current law provides OMB with the right tools to limit this growth or if changes must be made to the PRA to improve its effectiveness.

At today's hearing, it is my hope that our witnesses can talk about the underlying weaknesses of the law and whether agencies have adequate resources to comply with it. While OIRA has a difficult task, small businesses deserve to know exactly why their paperwork burden continues to grow.

However, we must also remember that data collection exists for a reason. Agencies rely on data to make informed decisions achieving important policy outcomes. These goals include ensuring worker safety, preserving clean air and water, and safeguarding taxpayer dollars and benefit programs.

Ensuring that agencies are considering the economic impact of their regulations and paperwork requirements on small firms is critical. However, it is also important that regulations adequately protect the public interest. That is why it is so crucial our agencies receive adequate funding. Without proper resources, it is impossible for them to evaluate and streamline paperwork burdens or provide the necessary compliance assistance to level the playing field for small firms.

In today's testimony, we will surely hear about both the successes of OIRA and the obstacles that are preventing the office from reducing paperwork requirements for small businesses. The PRA should not serve to discourage agencies from conducting proper regulatory flexibility analysis. All too often we see agencies im-

plementing regulations that ignore or understate economic impacts on small businesses. In many instances, this is because of a lack of communication between the agencies and the small business community.

I hope today's panel offers insight into what type of reforms may be needed to improve this communication. I also hope to hear about the role new technology and electronic filing can play in reducing regulatory burden.

Finally, I will note that these mechanisms were designed principally to reduce the burden on small businesses. Just as we work to ensure these processes are helping small firms, we must also be vigilant that these programs are not hijacked to benefit large corporations at the expense of their smaller competitors.

I look forward to working with Mr. Chabot to ensure this important law is meeting its full potential for small businesses, and I want to take this opportunity to thank all the witnesses for being here today.

Chairman CHABOT. Thank you very much. And I would be remiss if I did not mention that yesterday was a big day on Capitol Hill and in New York City because it was Ranking Member Velázquez's birthday yesterday. So we hope she had a good one. There we go. [Applause.]

I always say this is a very bipartisan Committee, so.

And if Committee members have an opening statement prepared, I would ask that they submit them for the record.

And I will take just a moment to explain our timing rules here which is pretty simple. We operate by the 5 minute rule as other Committees do. Each witness gets 5 minutes. There is a lighting system to assist you in that. The green light will be on for 4 minutes. The yellow light will come on when you have got a minute to wrap up and then the red light will come on, and we would ask you to kind of stay within that time if at all possible. And then we are also restricted to 5 minutes ourselves as well.

And I would now like to introduce our very distinguished panel here today. Our first witness is Sam Batkins, the director of regulatory policy for the American Action Forum here in D.C. His research focuses on examining the rulemaking efforts of administrative agencies, and he has testified before Congress and state legislatures on his findings in the past. Before joining the American Action Forum, Mr. Batkins worked at the U.S. Chamber of Commerce and the National Taxpayers Union. He received his bachelor of arts in political science from Sewanee: The University of the South, and his juris doctorate from the Columbus School of Law at Catholic University of America. Mr. Batkins is a member of the Maryland Bar.

Our next witness is Ms. Leah Pilconis, the environmental law and policy advisor for the Associated General Contractors of America, AGC, in Arlington, Virginia. She spent the last 16 years establishing and directing the environmental program at AGC which represents general contractors and specialty contracting firms in the construction industry. In her role, Ms. Pilconis monitors and regularly comments on federal legislation and serves as the liaison in the Environmental Protection Agency and other agencies. She also develops compliance tools for construction contractors and par-

ticipates in government advisory panels. Ms. Pilconis holds a bachelor of science in biology from Gettysburg College and a law degree from the Dickinson School of Law at Pennsylvania State University. She is admitted to practice law in Pennsylvania. We welcome you as well.

And our third witness is Frank Cania, president of driven HR, a human resources consulting firm based in Pittsford, New York. He has been a business and HR professional for more than 30 years, and his primary focus is helping business owners, managers, and other HR professionals navigate state and federal regulatory compliance

Mr. Cania is certified by the HR Certification Institute as a senior professional in human resources and by the Society for Human Resource Management as a senior certified professional. He graduated from the Shepard Broad College of Law at NOVA Southeastern University with a master's degree in employment law.

In addition, Mr. Cania volunteers his time as a team captain for a national legislative advocacy team for the Society of Human Resource Management. He is testifying on behalf of that organization today and we welcome you as well.

And I would now like to yield to the Ranking Member to introduce our fourth witness.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

It is my pleasure to introduce our distinguished witness, Ms. Sally Katzen, a senior advisor at the Podesta Group and a professor of practice and distinguished scholar in residence at New York University Law School. She has served as Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget and as the Deputy Director for Management at OMB.

Before joining the Clinton administration, Ms. Katzen was a partner in the Washington, D.C., law firm of Wilmer Cutler and Pickering, specializing in regulatory and legislative matters. She has also served in leadership roles in the American Bar Association and as President of the Women's Legal Defense Fund.

She graduated from Smith College and the University of Michigan Law School where she was the first woman editor-in-chief of the Law Review. Welcome, and thank you for being here.

Chairman CHABOT. Thank you very much.

And Mr. Batkins, you are recognized for 5 minutes.

STATEMENTS OF SAM BATKINS, DIRECTOR OF REGULATORY POLICY, AMERICAN ACTION FORUM; LEAH F. PILCONIS, ENVIRONMENTAL LAW AND POLICY ADVISOR, ASSOCIATED GENERAL CONTRACTORS OF AMERICA; FRANK CANIA, FOUNDER AND PRESIDENT, DRIVEN HR; SALLY KATZEN, PROFESSOR OF PRACTICE AND DISTINGUISHED SCHOLAR IN RESIDENCE, NEW YORK UNIVERSITY SCHOOL OF LAW; SENIOR ADVISOR, PODESTA GROUP

STATEMENT OF SAM BATKINS

Mr. BATKINS. Thank you so much, Chairman Chabot, Ranking Member Velázquez.

As we have already mentioned, I think the short answer to the title of this hearing is, no, paperwork burdens have not been reduced. As of this morning, as we mentioned, it stood at 11.6 billion hours of paperwork, which is up from 7 billion hours of paperwork roughly 17 years ago. To put 11.6 billion hours into some context for this incredibly large figure, it is roughly 35 hours for every person in the United States. That is 35 hours, a week's worth of compliance for every man, woman, and child in the U.S. And small businesses are particularly affected.

There was a 2013 Minneapolis Federal Reserve study which found that hiring two additional compliance officers could reduce profitability of small banks by 45 basis points and cause one-third of those small banks to become unprofitable.

Now, the vast majority of these burdens as we have mentioned are within Treasury and IRS, but due to passage of recent legislation, a lot of non-Treasury burdens have also increased. Since 2006, the non-Treasury burden has increased roughly 93 percent. That is non-Treasury burdens.

Now, we have heard a lot of figures on 11.6 billion hours and I think the big question whenever you are talking about cost-benefit analysis is, are these figures reliable? And I know talking to former OIRA officials, they say maybe the PRA is not the top priority. And according to Professor Stuart Shapiro of Rutgers University, in his interviews we found phrases like "unreliable," "pseudoscience," and random numbers at best describing paperwork estimates, which is generally not encouraging, I think.

And I will just give you two examples of that. The National Credit Union Administration somewhat recently estimated that a routine truth in savings form was going to impose 43 billion hours of paperwork. They arrived at that figure by multiplying several numbers together. They should have added them, apparently. The actual total was less than 10 million hours.

Likewise, IRS once estimated that its summary of benefits coverage under the Affordable Care Act was going to cost $1.7 trillion. Now, I have no doubt that the coverage requirements cost something, but I do not think it was the GDP of Canada. Later, they revised those figures downward as well to less than $10 million in compliance costs.

Beyond those estimates there are also problems with just monetizing general paperwork hours. Sometimes agencies will state that several hundred thousand or a million hours does not contain any monetizable cost, which I find somewhat difficult to believe. And sometimes agencies will go through the work of monetizing the cost and go through the work of benefit-cost analysis, and they will publish in the Federal Register. You will see it online at the back end of OIRA's website, but those totals will not be reported in the agency's subtotals, and they will not be reported for the typical information collection.

There is also the question of management under the PRA. Now, last fiscal year, according to the information collection budget, there were 283 violations of the Paperwork Reduction Act specifically by Federal agencies. That is up 58 violations from the previous fiscal year. And because these violations happen all the time, maybe that is not too surprising. Maybe that number is not too

shocking. But one thing that strikes me is that, for some reason, every year two agencies lead the list of paperwork violations and it is Health and Human Services and Department of Defense. And every year, for basically the last 4 or 5 years, HHS and DOD have led the pack and there really has not been a change. And from what I can tell, there has not been any reform needed to address HHS and DOD.

Finally, on the reform front, I think reform could greatly benefit small businesses because paperwork compliance generally imposes fixed costs that as a percentage of overall revenues burdens small businesses the most and they are acutely affected by paperwork costs.

As we have mentioned, I think in terms of reform, agencies could do a better job of monetizing paperwork burden hours and OIRA could do a better job of reporting the effort the agencies go through to actually monetize those hours. Like the reforms from 1996, I think Congress could also examine maybe setting reduction targets for cumulative paperwork burden hours. The enforcement there is tricky. But just for perspective, if Congress shaves 10 percent off the cumulative paperwork figure, that is going to save a billion hours of paperwork and, conservatively, $38 billion a year in compliance costs.

Online modernization is also another reform option. There are roughly 2,000 OMB control numbers that contain forms that cannot be submitted online. It is the year 2017. I am not sure why there are so many forms that just cannot be submitted or obtained online.

And finally, increasing public participation with major collections I think could be a key point. Those collections with over a million hours of paperwork, maybe moving them from notices to proposed and final rule status to increase transparency I think would be key. Thank you so much.

Chairman CHABOT. Thank you very much.

Ms. Pilconis, you are recognized for 5 minutes.

STATEMENT OF LEAH F. PILCONIS

Ms. PILCONIS. Thank you. Chairman Chabot, Ranking Member Velázquez, and members of the Committee, thank you for inviting the Associated General Contractors of America to testify today. AGC represents more than 26,000 construction contractors, material suppliers, and related firms. These members build everything but single-family homes.

My name is Leah Pilconis, and I am AGC's environmental law and policy advisor. I maintain liaison with the U.S. Environmental Protection Agency and other regulatory agencies, and I help our members comply and understand environmental rules and requirements.

Ninety-one percent of today's construction firms are small businesses. The U.S. Environmental Protection Agency is an information-based agency. The agency constantly requires the collection or generation of data in developing and implementing its programs. AGC members will tell you that the paperwork associated with the environmental requirements has become a huge and growing bur-

den and responsibility, delaying, if not threatening, construction projects and greatly increasing the cost of doing business.

Both EPA's National Pollutant Discharge Elimination System Stormwater program under the Clean Water Act, which is a permit program, and the Spill Prevention Control and Countermeasure program under the Oil Pollution Act, impose duplicate paperwork requirements on construction site operators to develop written plans for managing oil storage and oil spills. The list of overlapping documentation requirements includes site maps and diagrams, inspection and maintenance logs, training, notification and response obligations, and recordkeeping. If a construction site has a site-specific stormwater plan that addresses oil storage and spill control containment and cleanup, then EPA should allow that plan to also satisfy the agency's Oil Pollution Act requirements.

Another area of overlap imposing duplicate paperwork requirements is the regulation of lead paint dust during construction work. On every single job where any detectable trace of lead coatings is present, OSHA's lead and construction standard requires air monitoring, training, and a compliance plan to keep all services free as practicable of lead, which includes comprehensive recordkeeping requirements. Yet, EPA has a separate program that also entails extensive recordkeeping requirements. Moreover, EPA is looking to expand the reach of these requirements.

EPA should recognize that OSHA rules adequately protect the spread of lead paint dust during all construction and terminate its efforts to expand current regulations. EPA should also explore revisions to its current program to minimize duplication with the OSHA rules.

The number and cost of environmental regulations, which invariably involve recordkeeping components and the penalties associated therewith, are at an all-time high. Many environmental fines are being levied against construction firms for relatively minor paperwork violations, not for environmental harm or contamination.

EPA has terminated industry partnership programs and defunded compliance assistance online centers. Congress should enact a right-to-cure process for paperwork violations with no threat of penalty and also provide relief to small business contractors who inspect and promptly correct compliance problems.

I would also like to discuss the fundamental policy shift at EPA to require the regulated community to electronically report their paperwork, to demonstrate compliance, and to make that information readily available and searchable by the public. Online public access to data introduces new burdens on industry related to privacy, data quality, security, and competition. There is also the cost to monitor company feeds for errors and to consult with government to ensure that the information provided includes proper context. These lifecycle costs were not factors in the paperwork burden analysis of EPA's 2015 nationwide rule that shifts its entire NPDS permit program to electronic reporting. Congress should reconsider how the electronic management of information should be factored into burden estimates as it explores the future of using web-based technologies for information collection. Thank you.

Chairman CHABOT. Thank you very much.

Mr. Cania, you are recognized for 5 minutes. Am I pronouncing that right?

Mr. CANIA. Yes, that is correct, Cania.

Chairman CHABOT. Okay. Thank you.

Mr. CANIA. Thank you.

STATEMENT OF FRANK CANIA

Mr. CANIA. Good morning, Chairman Chabot, Ranking Member Velázquez, and members of the Committee. I am Frank Cania, founder and president of Driven HR, a Pittsford, New York, based human resource consulting firm, and we provide HR services to small businesses. I am also a proud fourth-generation entrepreneur.

I appear before you today on behalf of the 285,000-member Society for Human Resource Management, SHRM, where I have been a member for over 20 years. Thank you for holding this hearing on the Paperwork Reduction Act, designed to reduce the total paperwork burden imposed by the Federal Government on employers of all sizes.

The PRA dramatically impacts small businesses, who typically do not have an HR person or department equipped to handle all of the filing requirements, Federal and State. Let me explain some of those challenges.

Mr. Chairman, under the ACA, employers with 50 or more employees are required to provide coverage to those working at least 30 hours per week, as defined by the ACA, or face a fine. To avoid IRS fines, employers need to provide their employees with one of two forms. Form 1095B is provided by self-insured employers with less than 50 employees, while Form 1095C is provided by those with more than 50 employees. Both forms present challenges.

Take, for example, the form's reporting requirement regarding health coverage for the 95 percent of employees working an average of 130 hours or more per month. Small businesses often fall into the trap of thinking the reporting requirement is an annual average rather than a monthly average. This commonly made and honest mistake required one of our clients to reissue every employee's form, to avoid potential IRS fines.

Another Driven HR client who converted to self-funded coverage, and relied on their payroll service provider to produce their 1095C forms, did not realize that they were required to provide information regarding employee dependents on the form. Again, this honest mistake required our client to reissue new forms to avoid potential IRS fines.

Although these may seem like nominal costs, they add up quickly. Each client paid an initial setup fee of $250, and an annual $600 service fee, as well as a $5 per form fee. Not including administrative costs, a client with 50 employees will pay a minimum of $1,100 to properly file. Compounded over multiple forms, you quickly see how these costs eat into a small business's operating margin.

In addition, the government requires this complex form, yet employees are not required to submit it with their individual tax returns. This begs the question, what purpose does this form serve if the employee and the IRS already have the information?

Now I would like to transition to USCIS Workplace Immigration Form I-9. Every employer, regardless of size, is required to complete an I-9 for every employee. However, employers acting in good faith to properly verify their workforce often are faced with unwarranted liability due to the current I-9, and its confounding instructions.

For example, Mr. Chairman, the current I-9 restricts an employer's ability to provide commonsense guidance to employees, while still acting in good faith. Employers may not suggest which documents an employee may present to establish employment authorization and identity. Employers even risk liability when explaining which documents are most commonly presented, even when new employees request that information.

The process becomes even more complicated if the employee selects "alien authorized to work" status. Here, the employer is required to track the expiration dates of the work authorization, both in sections 1 and 2 on the I-9. Yet, an employer is prevented from asking to see the documents used in section 1 to verify that information. Further, an employer tracking the wrong dates may be accused of failing to complete a timely reverification.

I-9 challenges are compounded for employers with multiple locations. One client, for example, owns a chain of 24/7 businesses. He has trained multiple employees at each location to properly complete the I-9, even paying a bonus for error-free forms. Despite this, most have missing information or some other error. He then required managers to travel to various locations to complete I-9s. This was cost-prohibitive, time-consuming, and it took them away from their primary responsibilities.

While the cost of compliance is high, the cost of simple paperwork errors is often higher. The penalty for even a single mistake on the I-9 ranges from $216, to $2,126 per form. The current PRA estimates the paper I-9 takes 35 minutes to complete, and 26 minutes for the computer form. These estimates have not changed, even though the I-9 instructions more than doubled with the most recent update.

Mr. Chairman, my testimony today only scratches the surface of regulatory and reporting burdens for small businesses, and for every Federal requirement there is often a State requirement with corresponding fines and penalties for paperwork violations. Even for honest mistakes. In my experience, small business owners are struggling to comply, and this damages their ability to grow their businesses and reward their employees.

Thank you for the opportunity to testify, and I am happy to answer any questions.

Chairman CHABOT. Thank you very much.

Ms. Katzen, you are recognized for 5 minutes.

STATEMENT OF SALLY KATZEN

Ms. KATZEN. Thank you, Mr. Chairman and Ranking Member Velázquez, members of the Committee. I appreciate the opportunity to testify today.

As you know from my written testimony, I willingly join the chorus and concur with the conclusion that the paperwork burden has increased rather than decreased, and that small businesses have a

legitimate concern, if for no other reason than they have fewer, sometimes appreciably fewer, resources and institutional capacity than larger companies to comply with the paperwork burden.

I would like to use my limited time to offer some different perspectives from the other witnesses and other views about the situation we are facing now. First, even though the paperwork burden is not being reduced to the extent anyone would like, I believe that the PRA, and OIRA's implementation of the PRA, has been an important tool in restraining the Federal Government's appetite for data. There has been no empirical study of the effect of the PRA because there is no counterfactual baseline to compare it with, but my experience over 7 years at OIRA and OMB and since leads me to believe that PRA has affirmatively discouraged some, perhaps many, program offices in various agencies from proposing new ICRs unless they are statutorily mandated. And this is because they believe that the multiple steps set out in the PRA and recited in the chairman's opening statement is so time-consuming and labor-intensive, and the difficulty in negotiating with OIRA is so exhausting, that it is not worth their effort.

The second point is there is only so much the agencies can do to reduce paperwork. Among other things, it is Congress that has assigned the agencies many programmatic responsibilities for which they need information to be able to carry out their tasks. It is Congress which has directed the agencies to ensure that participants in their programs meet specified qualifications and satisfy eligibility and participatory conditions. It is Congress that has demanded accountability for monies distributed to a host of recipients of Federal funds. Each of these requires some sort of paperwork as we know it.

The agencies and PRA cannot change these statutory requirements, nor make exceptions for selected individuals or small businesses that get swept up in what Congress has specified, and I would not be surprised if, even as we sit here talking about trying to reduce the burden of paperwork, there is a hearing in some other office of the Congress now establishing a program which will have an accountability element, a reporting element, a requirement that would produce additional paperwork.

Third, and critically important, if we are identifying potential barriers to burden reduction, perhaps the most significant is that burden reduction requires sustained funding. It was true in 2003 when the task force set up by the 2002 amendments to the PRA issued its final report and specifically recommended additional funding for this purpose for agencies. It is even more critical now after many years of straight-line or decreased funding for many of the agencies in the executive branch.

An agency cannot simply wish away paperwork burden. It takes staff time and resources, both of which are in very short supply in many agencies. If you are serious about doing something about paperwork, the agencies must be provided adequate resources to accomplish that task.

I see my time is running out. I wanted to address the very different types of paperwork, their origins, and their implications for small businesses, but I will try to conclude by noting that I am not saying there is nothing that can be done to reduce paperwork. I

recognize paperwork is difficult, particularly for small businesses. I discuss some possibly productive steps in my written testimony, but those are going to reduce paperwork burden only at the margin.

There is no silver bullet that is going to dramatically change the numbers, particularly with, as the chairman noted, 70 percent of it as a result of our Tax Code, which is not just the 1040s, but all of the deductions and exceptions, and accelerated depreciation, and oil and gas depletion allowances, and real estate loss carryforwards that are set by Congress and which business would not take advantage of if the burden of filling out the forms and providing the documentation were not substantially offset by the benefits that they receive by claiming these deductions.

In any event, I hope you will try to approach this in the thoughtful way that this Committee has traditionally approached these types of issues, and I greatly appreciate your attention.

Chairman CHABOT. Thank you very much. We appreciate the testimony of all the witnesses. And we will go to the questioning now. And Mr. Batkins, I will go to you first, and I recognize myself for 5 minutes.

Should small businesses receive a waiver for first-time nonharmful paperwork violations if they promptly correct the problem?

Mr. BATKINS. From my perspective, the goal of regulation generally is to correct market failures when they happen and to protect health and safety. So if you have an instance where it is a routine paperwork collection and it is simply a reporting or recordkeeping instance where you do not have a repeat pattern of violations by a particular industry who is trying to flout Federal law, then I do not think that agencies should initially take punitive steps because of an error or two that happens to pop up in PRA.

Chairman CHABOT. Thank you very much. And that is, I think, I will go to you next, Ms. Pilconis, and that was something you were talking about there in some detail. Would you want to expand upon that in any way?

Ms. PILCONIS. I would just add that particularly in the environmental area with the rules that U.S. EPA writes and enforces, the penalties for noncompliance are extremely high and they are going up every year because Congress has now authorized the regulatory agencies every January to assess and potentially increase penalties, civil penalties for fines under the environmental statutes. So, for example, the Stormwater Permit program impacts nearly every single construction project, and penalties for a violation, potentially even a paperwork violation under the Stormwater Permit program could reach up to $52,400-plus per day per violation. So huge, huge penalties. I believe that, you know, a right to cure for small businesses, considering how much of a paperwork burden there is and how little compliance assistance is out there and the limited staff and resources that they have would be appropriate.

Chairman CHABOT. And you had mentioned that 91 percent of folks in the construction industry are small business by definition, so I think——

Ms. PILCONIS. Correct.

Chairman CHABOT.—this is an area certainly this Committee would want to follow up on. So thank you. Thanks, both of you.

Mr. Cania, I will go to you next. I would like to start with the I-9 forms that you had mentioned. How many pages long is the I-9 form currently? And also, how long are the instructions? You mentioned how burdensome they could be and the guidance book associated with it? Would you comment on that?

Mr. CANIA. Sure. And I have copies with me if you would like to see them later.

Chairman CHABOT. Okay.

Mr. CANIA. The basic I-9 form is——

Chairman CHABOT. We all want copies of them, too, and everybody in the audience.

Mr. CANIA. Not a problem. And we can begin filling them out immediately.

The I-9 form is two pages. Page 1, or section 1, is for the employee to fill out. Page 2, or section 2, is for the employer to fill out. There is also a third page of acceptable documents, a list of acceptable documents. The instructions are now 15 pages long for a 2-page form, and the instruction manual is a slim 69 pages.

Chairman CHABOT. That is something. And you also mentioned, I think their estimate is 35 minutes to complete the I-9 form. How accurate is that currently?

Mr. CANIA. It really depends on the business. We are asking employees to fill out section 1, page 1, and if they are employees with either English as a second language, or no understanding of English, and need an interpreter, it could take over an hour to fill out a simple one page form. So, it may not be that accurate.

Chairman CHABOT. Thank you.

Ms. Katzen, let me conclude with you if I can. You had mentioned the agency department that is most responsible for paperwork, obviously, the IRS. And I know that I used to do my own taxes. I do not anymore. Stopped doing that, I do not know, a dozen years ago or so. But I remember going to the local library and they had all the forms out there and you would go pick stuff up, et cetera. Well, as we all know nowadays you file electronically, and there will be a couple of forms there, but you have got to print them yourself at your own computer.

What progress have we made? What could we do better to reduce the paperwork? It would seem that if you are doing things electronically now, by definition it ought to reduce the paperwork, but it does not seem to have done so. So would you comment on that?

Ms. KATZEN. Yes, Mr. Chairman. The situation with IRS is particularly puzzling or difficult to solve because when you used to go to the library, you could also pick up the telephone and reach somebody, usually on the third ring, to answer a question about how to proceed, or to send you a form or to help you through the process. Given the cuts to the IRS budget that have been systematically supported by this Congress the last several years, the waiting time now for getting assistance is well over 2 hours, if you bother to stay on the phone. IRS does not have the resources to provide the kind of assistance that they would like to provide. It is difficult to suggest a solution when they are so stressed and so tight on resources that they have had to give up almost all of the compliance assistance that had been there in the past.

The code is very complicated, as I tried to say at the end of my statement, and that is because of decisions that have been made that those types of offsets and deductions are all appropriate, and I think somebody has to talk to somebody and see that they are all on the same page. If you want the system to work, and maybe that is an assumption that I am making that others do not share, but if you do want the system to work, you need to give them the resources to enable it to happen.

Chairman CHABOT. Thank you. To follow up, I would also suggest that if they did not spend time and effort focusing attention on targeting certain groups for their political persuasions maybe they could spend some of those resources on serving the public and their customers. But we try not to be terribly partisan on this Committee, so I will just leave it there.

My time is expired, and I will now recognize the Ranking Member for 5 minutes.

Ms. VELAZQUEZ. Try harder.

Thank you, Mr. Chairman.

Ms. Katzen, thank you so much for all of your testimony.

So here on this committee we are trying to make sure that we address some of the issues that hinder small businesses and small business growth. So, on the one hand, we are here discussing paperwork reduction and how we can reduce the number of regulations that impact small businesses, but then you said we need more resources, we need more staff to be able to conduct evaluations and decide where we can make the paperwork reduction work. So how do you reconcile that with the Trump administration policies, like a hiring freeze and cuts to agency budgets, how will that impact the ability of agencies to evaluate and streamline paperwork burdens?

Ms. KATZEN. Well, it does not help. It is particularly concerning because so many of the departures from the civil service are at the senior ranks, where they have experience and proficiency in carrying out their various responsibilities. The budget cuts for the domestic agencies will require them to abandon certain substantive programs, but will also make a further cut in their ability to provide the supplemental services that we have been talking about, including providing analysis of what they are doing right and what they are doing wrong. No company, no small business, would simply issue an edict about personnel without first studying the effects that it would have on its day-to-day operations.

Ms. VELAZQUEZ. So given the budget cuts and the hiring freeze, some have suggested that to make the PRA more effective, the volume of requests being sent to OMB need to be reduced. This could be done by limiting OMB review to significant paperwork collections and shifting more responsibility to the agencies. Do you believe that delegating more authority to agencies on less significant information requests will help OIRA focus on bigger paperwork issues?

Ms. KATZEN. That is a very interesting point because, with the review of regulations that is also done by OIRA, in 1993 President Clinton signed an executive order that limited review to only the "significant" regulations so that we could focus on the most important ones. That approach could well translate to applicability in

this area. Be careful what you wish for, though, because to the extent you remove OIRA review, you unleash the agencies, and those who are concerned about agencies running amuck and asking for too much information they do not need would have no restraints. So it has to be done carefully and judiciously.

Ms. VELAZQUEZ. Ms. Katzen, you have expressed concern that it is misleading to focus on the overall burden hours of federal paperwork because not all of the hours are the same. Can you please describe the different types of paperwork burdens and why it will be constructive to distinguish them from one another?

Ms. KATZEN. Yes. Thank you very much, Ms. Velázquez, because that is the heart of the issue. You have to know what the substance is of the paperwork burden so that you can address it. In addition to 70 percent being from tax compliance, there are—as the chairman noted—the Census Bureau and BLS and the Bureau of Economic Information at the Department of Energy. These agencies, statistical agencies, collect critical information because we know that good decision-making requires information.

This is the information age. It requires knowledge and that is often in the hands of individuals or companies or State and local governments. That information not only aids government decision-making, but also, once scrubbed of personal identifiers, is often redistributed to the public, which finds that kind of information critical for making all sorts of business decisions.

We also have the third party disclosures which the chairman mentioned, and he talked about food labeling. One can have a different view about the merits of that, but I will ask you to think about drugs and the content information, and the dosage information, and the counterindicator information that are on that packaging. That is all paperwork. That I think is all of a very different ilk.

You have in the rulemaking area, information as to the costs and benefits, which comes from the private sector. That helps good decision-making. Without that you are operating on conjecture and speculation. And at that point, I think the rules that we would be promulgating would be even more burdensome, less effective, and less efficient, particularly on small businesses.

I could go on, and in my written testimony I go through a variety of different types of paperwork, but to quote a famous author, not all animals are the same. Not all paperwork is the same. And you have to understand the distinctions that can be and should be drawn.

Chairman CHABOT. The Ranking Member's time is expired.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman CHABOT. Thank you.

Ms. VELAZQUEZ. I yield back.

Chairman CHABOT. Thank you.

The gentlelady from American Samoa, Mrs. Radewagen, who is the Chairman of the Subcommittee on Health and Technology is recognized for 5 minutes.

Mrs. RADEWAGEN. I want to thank you all for appearing and testifying today, and I want to thank Chairman Chabot and Ranking Member Velázquez for holding this hearing. Anything we can

do to make it easier for our Nation's small businesses to operate is a goal I believe we can all work on.

Professor Katzen, I found your written testimony fascinating. You have already talked about it a little bit since you have been on the opposite side of these small businesses, but I do think you make a fair point that many of these burdensome requirements are a product of decisions made right here in Congress.

All of you can answer this. What would you recommend that we do here in Congress that can have actual enforceable impact on relieving these burdens? Mr. Batkins?

Mr. BATKINS. Sure. One area that the Government Accountability Office has focused on is duplication, fragmentation, and overlap. And while I certainly think just from our fiscal agencies, they are vital collections so we know what is going on in the Nation with the census and so on, there are probably countless collections that do, as we have heard today, impose fragmentation, duplication, and overlap. And thankfully, with the Paperwork Reduction Act it is slightly different than just regulation as a whole because we know that there are roughly 9,500 OMB control numbers, so someone could sift through all of them and determine which ones actually do overlap.

The second point I would make is I think retrospective review is pretty critical in terms of getting better estimates and determining if the collections are effective. And I think that is a point initially when agencies are calculating burden hours and calculating the impact of a particular collection, they are sort of in the dark as we heard sort of made-up figures or random numbers at worst was one definition.

So I certainly think that maybe after the 3-year collection has expired and OMB and the agencies have the available data, that they can go back and determine if the collection was successful, if their data is correct. That is the point that President Obama made when he issued the Executive Order 13610. So I think retrospective review could be an important component.

Mrs. RADEWAGEN. Thank you.

Ms. Pilconis? My time is short.

Ms. PILCONIS. Okay. Thank you.

So I concur with what Mr. Batkins said regarding seeing where there is duplication and overlap. I would also add that it would be helpful to require agencies to respond in writing to serious objections from the Small Business Administration Office of Advocacy where they perceive there to be an impact on small businesses.

Also, as Ms. Katzen said, talking about OIRA's involvement being a powerful tool to discourage some of the program offices from proposing too many new ICRs, I reference in my written statement some concerns that we have about the generic ICRs where everything is just being kind of lumped together into one ICR. This has been done with EPA's NPDS permit program, where in that case you are really not truly looking at the burden of putting new requirements into these stormwater permits that do apply to all, like for the construction program, all sites, and really are impacting small businesses. So it is a concern with the generic ICFs and the fast-tracking permits that you are not really looking at the burdens.

Mrs. RADEWAGEN. Mr. Cania?

Mr. CANIA. Well, although one of my employees would not agree, I think I am relatively tech savvy, and I am sure the people in my office are laughing right now because of that statement. But, I think if we could use technology to more effectively work with small businesses, especially in gathering and reporting of information, that would decrease the time necessary, and also increase the effectiveness of the data-gathering programs.

Mrs. RADEWAGEN. Thank you.

Professor Katzen?

Ms. KATZEN. I would concur with Mr. Batkins' suggestion that this be wrapped into the retrospective review that the agencies try to undertake. Again, they need resources to be able to devote their attention to that subject, but that is, I think, one of the most important things.

As to consolidation and standardization and enhanced use of electronic reporting, which is required by statute now, I would just refer you to the report of the task force that was set up in 2002, which set forth in great detail some of the real traps to moving in that direction. But that, too, is something that I think should be nibbled at around the edges.

Mrs. RADEWAGEN. Thank you, Mr. Chairman. I yield back.

Chairman CHABOT. The gentlelady yields back.

The gentlelady from North Carolina, Ms. Adams, who is the Ranking Member of the Subcommittee on Investigations, Oversight, and Regulations, is recognized for 5 minutes.

Ms. ADAMS. Thank you very much, Mr. Chair and Ranking Member Velázquez. Thank you as well for hosting the hearing and thank you very much to all the witnesses for your testimony.

Reducing the paperwork burden for our Nation's small businesses is certainly important, so we still need to maintain a sufficient level of data reporting that would allow us to gather important information on small businesses.

Ms. Katzen, one of my initial questions you already addressed, so I want to ask you about after the OMB receives a package of materials to review pursuant to the Paperwork Reduction Act it is required that they provide for an additional 30-day period for public comments. And I am a big supporter of transparency and public participation in the rulemaking process. So how many people are commenting on information collection requests during this period, and how do you believe we can encourage more participation during the comment periods?

Ms. KATZEN. The amount of people who comment will vary considerably depending upon the particular information collection request at issue. Some generate a lot of comments, some very few.

The second—if I can call it the second comment period, because the agencies have already had their own comment period—was originally designed because of the suspicion that some regulated entities would not want to speak truth to power; they would not want to tell their regulating agency, this is stupid. And so, instead, they said, well, then OMB will have a separate process whereby they can gather the information. I think that that should be reviewed and consider cutting back to some extent in certain circumstances.

I think the major kind, the big, the significant paperwork should retain a second comment period for OIRA, but I think some of the less significant ones could well do with just one.

Ms. ADAMS. Okay. Thank you very much.

So the Paperwork Reduction Act requires OMB to provide direction and to oversee the privacy, the confidentiality, security, disclosure, and sharing information, and in the past few years there has been some troubling data breaches of personal information held by the Federal Government. So what is OMB doing to ensure that information collected from the public is secure?

Ms. KATZEN. This has been one of the very difficult hurdles for full-out electronic reporting which some of my copanelists have called for. We used to be afraid of Big Brother. Now we are afraid of hacking, with good reason. And this is something which was in a separate office that was established under President Obama. I do not know if it will continue under President Trump—to try to minimize the government's vulnerability—but it is a real risk. And to harden the system to preclude those kinds of hacks, you are going to have to, again, devote resources, which the agencies may or may not have.

Ms. ADAMS. Okay. So when an agency experiences a breach, does OMB help them implement more effective data security measures?

Ms. KATZEN. Yes. Part of OMB reports through the deputy director for management, a position in which I served for a year and a half. And that is designed to be a troubleshooter, a helper in troubleshooting with agency issues. And I know the deputy director for management under President Obama was extraordinarily proficient in this regard, Beth Cobert. No nominee has yet been named by President Trump, but I look forward to having that individual be of assistance in this regard.

Ms. ADAMS. All right. Thank you very much.

Mr. Chair, I yield back.

Chairman CHABOT. The gentlelady yields back.

The gentleman from California, Mr. Knight, who is Chairman of the Subcommittee on Contracting and the Workforce, is recognized for 5 minutes.

Mr. KNIGHT. Thank you, Mr. Chair. I thoroughly enjoyed these four comments and their discussion. There were a couple that hit me. One was on the stormwater from Ms. Pilconis. If you know anything about California, we have done extensive regulations on stormwater so that if there is a storm, you have to collect all that water, period. It cannot leave your sight if you are under certain industries, a lot of industries in my district, like aerospace. It makes it very difficult.

So I guess my first question would be to you. How much discussion is there at the Federal level with States? And I am not going to go over State lines here because States can do what they want to, but if a Federal regulation is doing what we are trying to get done, is there any discussion between the Federal Government and that state who is trying to implement something that is duplicative? Is there ever any discussion like that?

And I will do a follow-up question here real quick. Go ahead.

Ms. PILCONIS. Okay. So with regard to the stormwater program specifically?

Mr. KNIGHT. Well, specifically, I used that just because that one is an overreach.

Ms. PILCONIS. With the stormwater, and with the stormwater program, though, the regulations have established the program, and then EPA has authorized States to actually implement the program instead of the agency. So in California, your State environmental agency has written the permit and is implementing the permit. EPA still has oversight. So in that case, the overlap is really with regard to enforcement, but the industry is applying for the State permit, not the Federal permit.

Mr. KNIGHT. Okay. So when this starts, this is kind of a good discussion when we talk about States like me that have kind of an overreach sometimes, and there is already a law on the books. There is a regulation that kind of goes down this road, correct?

Ms. PILCONIS. Yes. The Federal regulations set the minimum standards, and there is actually a minimum stormwater management standard in the Code of Federal Regulations that say this is the minimum technology requirements that need to be in all stormwater permits across the Nation, all State permits. And then States can take it farther. So California has taken it very far.

Mr. KNIGHT. Yes, we have.

Ms. PILCONIS. For construction, the most stringent permit in the Nation. And actually, in my written statement, if you look online, because California posts all stormwater permit violations online for the public to view, if you do a search of those violations you can see that the vast majority of them, they are almost all paperwork violations. And less than 1 percent are actually labeled as any kind of environmental discharge.

Mr. KNIGHT. I was in the legislature when that sterling legislature was coming down the line.

Ms. Katzen, to you, I enjoyed your passion and your emotion about Congress. I agree with you. I do. I think that there should be an aggressive agenda, especially coming out of small business, to alleviate some of these problems that small business has to go through. I know when people talk about the hours, the hours are money or lost revenue for that small business. That is exactly what an hour is. It is not that I am pulling someone off the line or pulling them out; it is that I am not making money because that person is not working.

And so I guess my question to you is if we do have a little bit more of an agenda that we are trying to pull away from budget items, and I know you brought up the IRS and lowering the amount of money that IRS is getting, then it is harder for them to do what they are supposed to do, and part of that is to look at businesses and their forms. Would we not then, if we are going to lower the budget, lower the regulations, lower the amount of work that small businesses have to go through? Would that be a smart way of going about this? Or, and I am putting this very simply, but would that not be the follow-on?

Ms. KATZEN. I do not think so because regulations, like paperwork, are not the same. They do not have the same purposes and they do not have the same effects. And just trying to reduce some-

thing could lead to unintended consequences and pernicious results.

Mr. KNIGHT. Understand. Understood. But if we do alleviate business of certain regulations that are out there that are paperwork, then we are taking some of the burden away from the bureaucracy, taking away some of the man-hours of the bureaucracy. We are also allowing business to now work.

Ms. KATZEN. And that would occur, but there might also be a reduction in information that leads to either government decision-making or individual decision-making. There might also be a reduction in protections—the hardhats required, third-party disclosures—and those are choices. And you can choose to make those choices, and you will make those choices as you will.

Mr. KNIGHT. Absolutely. And I am sure in 15 years, after more regulations are put on, people will go, how did we live in 2017 without these regulations that we are trying to take off now in 2035? But, at some point, we do have to look and say business is overburdened. We have to do some maybe pullback in certain areas.

Ms. KATZEN. And I think that is the basis for President Obama's very aggressive retrospective review that Mr. Batkins talked about and that I suspect will be forthcoming with the new administration as well.

Mr. KNIGHT. Thank you very much.

Mr. Chairman, my time is expired.

Chairman CHABOT. Thank you. The gentleman yields back.

The gentleman from Pennsylvania, Mr. Evans, who is Ranking Member of the Subcommittee on Economic Growth, Tax, and Capital Access, is recognized for 5 minutes.

Mr. EVANS. Thank you, Mr. Chairman.

Ms. Katzen, I want to follow up on something. It looked like you were running out of time. You were pointing directly at Congress, and I want to spend some time on you, giving you a little bit more time to tell me exactly those points you were getting ready to make about where the responsibility is. Because I think in any of these hearings we need to be very honest and put it on the table. I mean, this does not just magically happen. Somebody is responsible for it. So let us go into a little bit more when you say about what Congress is responsible for.

Ms. KATZEN. One of the areas that I did not mention that I feel very passionately about is that, when Congress establishes a program, be it a grant or a benefit-type subsidy, it legitimately demands accountability. It wants to make sure that the agency is providing those funds, which are taxpayer funds, to the recipients, only to those recipients who are eligible and qualified. And so even with small business loans, you do not just get a small business loan by calling up SBA and say, please send me the following amount of money. You have to fill out a form. You have to demonstrate you are a small business and you have to explain how this is going to advance the overall objectives of the agency. That is accountability, which both sides of the aisle have subscribed to, appropriately so. That, I think, is a very important aspect of our government. It goes beyond what Congress is doing. It goes to the issue of a democracy and decision-making in a democracy and Congress' role in setting

up those kinds of requirements, which have to be held to account through paperwork.

The other type of thing that I am particularly familiar with is the role of paperwork in rulemaking. We hear a lot about rules. They need to be data-based. They need to be based on what we have information about, and that kind of information often has to come from the public. Congress has taken several steps to insist that agencies base their decisions on sound, best reasonably available data. They have to get it. Where are they going to get it from?

And so I think, again, Congress has the right ideas and the right objectives, but it does add to the paperwork burden every time.

Mr. EVANS. So then do I hear you saying that Congress is the problem? I am listening to you very clearly. I am just asking, I mean, you know, this is your chance. Say it if you think that is what it is. I am just curious.

Ms. KATZEN. I would rather say, sir, that Congress is part of the solution.

Mr. EVANS. Okay. Okay. Okay. Okay.

Ms. KATZEN. I borrowed that from one of the Republican presidents. I am just turning it a little bit to my advantage here.

Mr. EVANS. Okay. I just want to understand.

Ms. KATZEN. But I think awareness—and that is what this Committee is bringing, awareness—of the consequences of making decisions. And yes, Congress is participating in this venture.

Mr. EVANS. Okay. A little complicit in some ways, huh?

Ms. KATZEN. Yes, sir.

Mr. EVANS. Okay. Just thought I would ask. I thank you and yield back the balance of the time.

Chairman CHABOT. I thank the gentleman for yielding. I would just note that that is the case whether the Republicans are in control or the Democrats are in control. So thank you.

And seeing no one on this side yet, we will go to Mr. Lawson from Florida, who is the Ranking Member of the Subcommittee on Health and Technology. You are recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman. I just realized that I was in a very peculiar position today. And what I mean by that is because all of my adult life I have been in business, and I hated a lot of the paperwork required from the government. And so now I am in a peculiar position, you know. And Mr. Chairman, I want to thank you for putting me in this position. And what I mean by being in a peculiar position is that now I am not too sure what I am doing, but I know my opposition to a lot of paperwork because I hated it. And so I guess this question will go to Ms. Pilconis.

Someone who has been as a small business owner and operated most of my life, I understand the burden that small businesses have. Can you answer the simple question, do you believe that the Federal Government has met the first purpose listed in the 1995 act to minimize the paperwork burden for individuals; small businesses; education and nonprofit institutions; Federal contractors; State, local, and Tribal governments; and other persons resulting from the collection of information by or from the Federal Government?

That is the question that I do not know whether I could answer, so I want to see what comes from the other party because I have been opposed to all of it.

Ms. PILCONIS. I think the procedures that are in place are moving in the direction of evaluating the burden. I do not think that the burden is always accurately evaluated. I think that very often, particularly with my involvement with the Environmental Protection Agency, the numbers that they are coming up with when they are trying to say how much is this going to cost industry, how many hours is it going to take industry to comply, the numbers are always very, very low. In actuality, it is going to cost a lot more. It is going to take a lot more time. So I do not think that the outreach and the information to the true actual small business owners who are going to be having to implement these requirements is as great as what it should be to get true burden estimates. I think that the goal of reducing the paperwork hours has not been accomplished.

I think the goal of trying to assess the burden, there have been steps in that direction. I think more can be done.

Mr. LAWSON. Mr. Chairman, with no disrespect to many of my colleagues who might not have been in business, I resent the fact that small businesses have to pay CPAs and other people to do all of this paperwork that is required. And I used to often have the conversation with my CPA, you know, why should I have to pay for all of this? You know, because it is probably going and sitting on a shelf that is just there. But you have got to pay to have it done or you will not be in compliance.

And so if anyone else cares to comment on that, Ms. Katzen, it would be helpful to me. I understood your remarks a few minutes ago, but from Congressman Evans here saying is the Federal Government at fault? You know, I think they are and I probably put the words in your mouth even though you might come from a different angle.

Ms. KATZEN. Well, I would agree in part with the observation that information which is requested but is not used should not be requested in the first instance. I have no problems with that. And, in fact, one of the things that I did when I was the administrator of OIRA was to institute a policy in which, when an information collection request expired—3 years, which is its term—and was resubmitted to OIRA, we would ask the agencies to document how that information had been used. If they cannot show it has been used, it should not be renewed. That was my approach. And I think that that is a philosophy that underlies the Paperwork Reduction Act. Where the information is used, however, then I think it is a different judgment.

The question here is: Is that something which is appropriate to ask for and useful in making the government better at doing what it is required to do? That is the test there. And so I think discriminating views and reviews of these issues would be salutary.

Chairman CHABOT. The gentleman's time is expired.

The Chairman would note for the gentleman from Florida that there is a famous quote from a cartoon that used to appear in the newspaper. I am thinking like 50 years ago, Pogo. I do not think they are around anymore. And the quote was, "We have met the

enemy and he is us." So Mr. Sherman is nodding down there because he is familiar with that quote, too.

I was trying to remember the quote and I came up with, you know, "I have met the enemy and it is me," and I knew that was not right, so Viktoria here checked it out. Google, you can find anything nowadays, but that is what it was.

So in any event, the gentleman's time is expired. The gentleman from Illinois, Mr. Schneider, who is the Subcommittee Ranking Member of Agriculture, Energy, and Trade, is recognized for 5 minutes.

Mr. SCHNEIDER. Thank you. And as always, I want to thank the witnesses for making your time available for us. We cannot do what we need to do without hearing from you. Your experiences and insights are greatly appreciated. And I apologize if I am repeating what others have said. As the chairman will understand, we are balancing three Committees meeting all at the same time. So if anyone has figured out how not only to reduce paperwork, but to be in three places at the same time, I would be very grateful.

Chairman CHABOT. The chair would note that the member is at the most important of those Committees.

Mr. SCHNEIDER. Yes, absolutely.

But I do have one quick question for Mr. Batkins. In your submitted testimony, you have a graph on "Non-Treasury Cabinet Agency Paperwork." And having looked at a lot of these graphs in business, it kind of has a hockey stick aspect to it, but in 2015, 2016, there is a dramatic spike in hours. You may have explained this earlier, but what was driving that one spike? Is there any key information from that line?

Mr. BATKINS. Sure. Well, as we mentioned, a lot of these are programmatic changes from Congress, and from what we can tell, the largest gain in paperwork was from the Department of Health and Human Services. They went from roughly 400 million hours, still number two behind Treasury, and now they are up over a billion hours in paperwork. So a lot of that was driven by HHS.

Mr. SCHNEIDER. Okay. Thank you.

I want to turn to Ms. Katzen and something you have said and talked about also in your testimony. But as we all know, I was the poster child of hating paperwork when I was in business and knew that it was not the best use of my time, would always outsource it to somebody else. So while there is a burden, there is also a benefit that you touched on of the data that comes from some of that paperwork, and data being turned into information that in my business life we also utilized to some extent.

How would it be best to go about balancing the demands of collecting information, knowing the information is accurate, that a small business is a small business, that an applicant for a loan is qualified for the applicant? How do we manage the burden and the benefit and what are some potential opportunities, perhaps for this Committee, as we look for ways to reduce that burden?

Ms. KATZEN. Well, thank you for the question. I think the short answer is "carefully" to try to balance those things. There is not a "one size fits all." There is not, as I mentioned earlier, a magic bullet that can be used. It has to be done agency by agency, program by program. And as I stressed in my opening comments, to do that

the agencies need the capacity and the funding. And absent that, they are working with both hands tied behind their backs.

We have heard repeatedly that the estimates of burden hours are not always accurate. How do you test the estimates? You have a focus group or you do a trial run. The agencies do not have the funds to do that. And so they calculate what they think is the right answer, and then, as Mr. Batkins was saying, you have an opportunity during the renewal stage for people to say, "I filled out the form and it did not take 45 minutes; it took 3 hours and 45 minutes." It is a process of development. Unless the resources are given to the agencies, though, you will not make much progress.

Mr. SCHNEIDER. Thank you. I appreciate that in making sure that as we are designing these structures that we include in that the trial and error and learning aspect of it. I say that as not just a businessman, but as an engineer. That is the only way you get it done. If you do not learn from what you do, if you are not smarter, you are not moving forward.

I like what you said. You talked about when you were at OIRA you had the rule, show us how the data is used. Is there any way, because obviously you are no longer at OIRA, are there things that we can do to institutionalize or enforce that kind of review?

Ms. KATZEN. I am always reluctant to urge legislation because I think the kind of work that I did is called management, and it is very difficult to legislate good management. And therefore, I am reluctant to say you should codify something in some statute. But a little comment from this Committee to OIRA about working in that direction—thinking about these kinds of things—could well go a long way. Government agencies are responsive to communications from Congress, and sometimes you can have them think about what the nature of the problem is, and work with them to come up with a solution, which is a lot better than simply dictating the outcome.

Mr. SCHNEIDER. I agree. I am out of time. I would add the one thing, I think our role in Oversight and the question we ask in Oversight can play an important role in that as well, making sure that we continue to work to ease the burden on all businesses, but in particular small business here in our country. Thank you very much. I yield back.

Chairman CHABOT. Thank you.

We are going to go into a second round. I am going to ask just one question here, and if any other members, I mentioned it to the Ranking Member as well, it will not necessarily be 5 minutes. But first of all, just by clarification, Mr. Batkins, I think you said the couple hundred thousand hours going up to a billion hours in HHS, I think at the end you said, of course, that was because of HHS. I think you meant because of ACA, right?

Mr. BATKINS. Well, the ACA certainly drove a lot of those burdens, correct. I think we have pegged something like 170 million hours from the ACA, which if you take a step back I think makes sense given the scope of the law overall. But it was not all ACA-driven, but a significant portion was ACA.

Chairman CHABOT. And for those dozens of people who might be watching this at home, the ACA is the Affordable Care Act, or Obamacare in some terminology.

My question is for Ms. Pilconis and Mr. Batkins. If an agency wants to pay people to respond to an information request, the PRA requires agencies to explain that decision. What problems could result from paying people to respond to government requests? Either one can go first.

Mr. BATKINS. Sure. I mean, if you talk to some statisticians, you might run into the problem of getting perhaps a nonrepresentative sample if you are paying people, incentivizing people who really need or who really want that $50, even though it is a somewhat nominal amount to comply. But I know from the agency's perspective, for some of the surveys they will claim that it is really difficult to get a representative sample at all, so we have to sort of incentivize. Obviously, through Congress' perspective, you know, this is money going out the door. I am not sure if there is a total catalogue of all the money that is spent on paying representatives to answer these Federal forms.

Chairman CHABOT. Okay. Ms. Pilconis?

Ms. PILCONIS. I do not have anything specific to add to that except to share an example of where I know that EPA is offering to pay people who respond to a survey, and that is with the agency's efforts to expand its lead paint program and in continuing to try to look for some sort of justification to show that there is a need for more rules. And there is a survey out there now. There is concern that they are not going to get enough response and so they are offering the $50 payment. So it is an area where we have recognized there is already overlap; have stated many, many times that it does not warrant EPA expanding the program. But yet now we are in a situation where we are surveying industry and paying industry, which is costly and taking time on the part of the government. I think it is important to evaluate when you are offering money and spending those resources.

Chairman CHABOT. Thank you very much. And I will yield my time back. I took about 2-1/2 minutes.

The ranking member is welcome to take as much time as she wants.

Ms. VELÁZQUEZ. Sure. Thank you, Mr. Chairman.

Mr. Batkins, you mentioned that there is not much public participation. Any suggestion as to how we, the federal government, can increase public participation?

Mr. BATKINS. Sure. I have noticed this before when you look at the dockets on RegInfo and you will see maybe one or two comments total. I think part of it, this is just from my perspective of someone who visits the Federal Register every day, the second-most important website that we visit, but from my perspective it is sort of proposed rules, final rules, which is a relatively small sample. If you wanted to see what was going on in the Federal Government, you could see what EPA was doing with directives.

And then there is an entire class of notices, and usually there are hundreds of them. And that is usually where all the PRA requests are. And just one idea is putting maybe these major collections, I am not sure what hourly threshold you would want or how you would define a major collection of information, maybe upgrading that to sort of a proposed and final rule status. So it is with all of the other significant regulations that come out. And also, signifi-

cant revisions to existing collections, elevating those as well might be one way to increase public participation.

It is also my understanding that most of the comments are generally directed when the proposed and final rule are coming out, and after the PRA, the ink is sort of already dry on the regulation and there tends to be less interest once the rule is already finalized. Obviously, all the lobbying is sort of initially and then it sort of tails off.

Any other suggestions?

Ms. PILCONIS. Well, I just wanted to add that in talking with our members, it is confusing when the information collection request is kind of buried in the proposed rule and it is not really called out. I know it is supposed to be, but it is not always called out as a paperwork request, and it is not always identified as an issue or flagged as an area where the government is really soliciting feedback on the time and the burden and the cost.

So in that respect, where it is not like a true ICR, it is often, I think, an area that kind of gets meshed into the 300-page Federal Register notice and there is not enough attention drawn, particularly to small businesses, which is why I was suggesting maybe getting SBA more involved where there is a concern with small businesses, having the agencies respond to that, because it seems that it is kind of, in that regard, getting lumped in.

Ms. VELAZQUEZ. Do you have any suggestions?

Mr. CANIA. Yes. I would say if the agencies worked with organizations like SHRM, and put out a request through SHRM for information, I know that whenever there is an issue that is up for debate, and SHRM puts out a legislative notice asking whatever your view is, please notify your member of Congress, your Senators, the response is very healthy. And so I think having some type of a partnership like that with the various organizations, you could increase the participation of the responses, probably dramatically.

Ms. VELAZQUEZ. Do you have any?

Ms. KATZEN. I think I have said enough today. But if I come up with something, I will let you know.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman CHABOT. Thank you very much. The gentlelady yields back.

And the gentleman from California I think had a final question.

Mr. KNIGHT. Thank you, Mr. Chair. I am happy to know that there might be as many as 36 people watching.

Just a quick question. I went on to reginfo.gov. It is a difficult site. I am happy that people go on every day and look at that stuff.

My first question is just other websites, you know, over the last 15 years, it seems like everything has gone to the Internet and we do not go down to the library, even though that was easier than trying to do your taxes on line, I can tell you that. Is it better now? Or is it just another kind of hurdle that we are jumping through and then we have got to fill out the paperwork anyway or we have got to sign something anyway?

And I do that because I look on a lot of these government sites. The VA was the first one we looked at and it was difficult for my folks back home to get through the VA, so we made our own VA site of local things that were happening in the VA, and it helped

out our veterans tremendously. But I know you cannot do that all over the country. You have got to have one main site. But is RegInfo helpful? I am not going to ask Mr. Batkins because he is on it every day, but Mr. Cania?

Mr. CANIA. I would say it has gotten better. I have developed relationships with members of a number of different agencies, both Federal and State. And so when I need information I will generally try to reach them first, but then going onto RegInfo is helpful. I was on there actually this morning and I noticed that they recently added a mobile app, which, again, is helpful for folks in trying to get information. The more we can put out there in a user-friendly manner, the better off everyone is going to be.

Mr. KNIGHT. And I always say if you cannot get there in two clicks, you are going to lose a lot of people. And some of these sites, it is like five clicks in before you get to where you need to. And by that time I have lost interest or I am calling somebody.

Mr. CANIA. Sure. Sure. And the other way to look at it, also, is if you have to scroll very far.

Mr. KNIGHT. That is true, too.

Mr. CANIA. You are not going to get——

Mr. KNIGHT. As politicians, if you are not above the fold on the first page, people are not reading.

Mr. CANIA. The same goes with information on a website. People do not want to scroll.

Mr. KNIGHT. And I have got a question just for you. Beta testing new forms before they are proposed by an agency, would that help reduce paperwork for small business or the burden?

Mr. CANIA. I think it could help tremendously. And again, working with organizations like SHRM to put the form out there. SHRM could develop teams of HR folks, again, you know, being our expertise, to use the forms and go through, and not only point out where some of the redundancies might be with other forms, but also working to show areas that are more likely to cause mistakes or issues, errors for small businesses. I think any time you can involve the ultimate final user in a beta process, you are going to wind up with a much better final product.

Mr. KNIGHT. Thank you, Mr. Chair. I yield.

Chairman CHABOT. Thank you. The gentleman yields back.

And we would like to thank the panel for their very excellent testimony here really this morning. You have provided thoughtful recommendations on improving compliance, as well as specific suggestions on minimizing federal paperwork and red tape. Hopefully, this information is going to be helpful to this Committee as it continues its oversight work and considers what should be done in attempting to meaningfully reduce federal paperwork burdens. So thank you very much for contributing to that.

And I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record. Without objection, so ordered.

If there is no further business to come before the Committee, we are adjourned. Thank you very much.

[Whereupon, at 12:33 p.m., the Committee was adjourned.]

APPENDIX

Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?

United States House of Representatives
Small Business Committee

Sam Batkins, Director of Regulatory Policy*
American Action Forum

March 29, 2017

*The views expressed here are my own and not those of the American Action Forum.

Chairman Chabot, Ranking Member Velazquez, and Members of the Committee, thank you for the opportunity to appear today. In this testimony, I wish to highlight the following points:

- The short answer to the title of this hearing is, no, burdens are not lower. In 1997, after amendments to the Paperwork Reduction Act (PRA), the cumulative burden was 6.9 billion hours. Today, it stands at 11.6 billion hours. Small businesses are particularly affected, with 3.3 billion hours of compliance burdens and $111 billion in costs.
- The figures above are shocking, but are they accurate? Many have referred to burden calculations as "artificial" or "pseudo-science." The American Action Forum (AAF) has documented several instances of extreme calculation errors. Where there are mistakes, the PRA is also rife with missing cost data.
- The PRA suffers from historical mismanagement from federal agencies who routinely violate the law. Last fiscal year, the Office of Information and Regulatory Affairs (OIRA) reported 283 violations, but there are no consequences for agency violations. Individual or business violations, however, can carry stiff penalties.
- Finally, there are several reform options for Congress as it examines updates to the PRA. Agencies could begin to monetize the costs of paperwork collections, meet targeted reduction goals from Congress, move more reporting requirements online, and foster greater public participation for new or major changes to an existing collection.

Let me provide additional detail on each in turn.

Growth in Federal Paperwork

Reducing the amount of paperwork Americans fill out should largely be a bipartisan exercise. No one should praise spending hours on tax, health care, or housing forms. However, Americans currently labor under more than 11.6 billion hours of paperwork according to the recent tally from OIRA.

Office of Information and Regulatory Affairs (OIRA)
Inventory of Currently Approved Information Collections
March 23, 2017

Government-Wide Totals for Active Information Collections

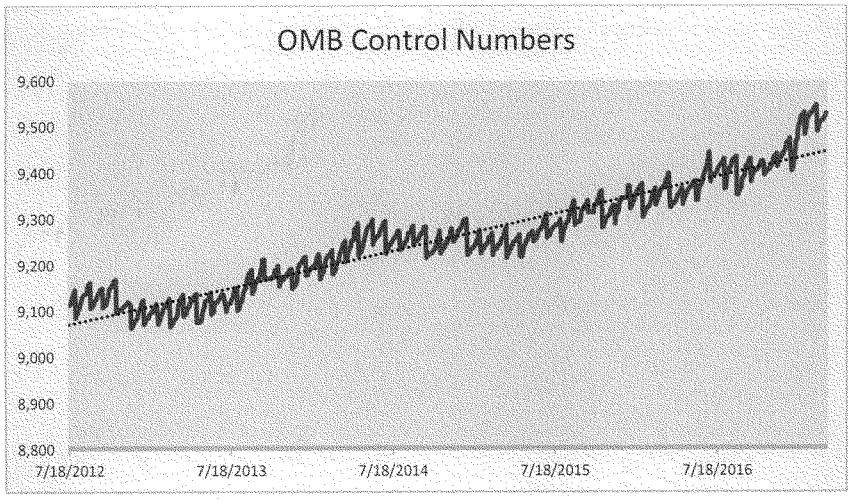
ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
9,529	110,046,446,906	11,610,281,056.5	$128,011,244,222

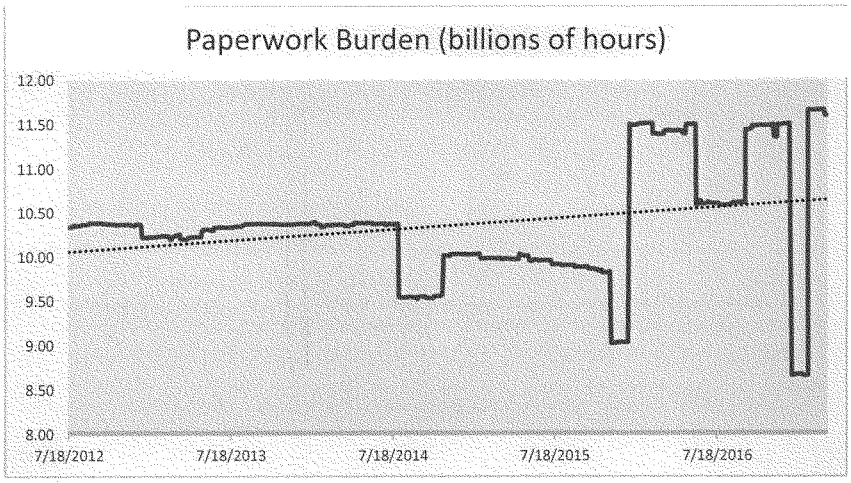
For perspective on this incomprehensible figure, it is roughly 35 hours for every man, woman, and child in the U.S. That is a work-week dedicated simply to filling out federal forms and retaining information for federal regulators.

When Congress last amended the PRA in 1996, it set a goal to reduce government-wide burdens by 10 percent in fiscal years 1996 and 1997, and at least 5 percent from 1998 through 2001. That never happened. Congress's goal was a paperwork reduction from seven billion hours to roughly

4.6 billion hours. Instead, by 2001 the burden grew to 7.65 billion hours and to 8.2 billion hours in 2002.

During the Obama Administration, this pace only quickened. In May of 2009, there were 8,674 OMB Control Numbers, the macro requirements that impose paperwork burdens and require OIRA approval. Today, there are more than 9,500, an increase of 9.8 percent. When AAF attempted to quantify the total number of federal forms last year, we found more than 20,000, mostly from health care and agriculture. Furthermore, since 2012, AAF has tracked daily paperwork totals, both for hours and control numbers. The growth in the graphs below is pronounced.





The huge dips and spikes in the hourly graph represent major tax collections expiring and renewing. For example, the U.S. Business Income Tax expired on December 31, 2016, eliminating "on paper" burdens of 2.8 billion hours. An emergency request for renewal was not sent to OIRA until January 17, 2017, with next day approval requested. It was not approved until February 9, 2017. During this month-long gap, U.S. businesses still had to pay and file taxes, but the Internal Revenue Service (IRS) did not legally have the authority to impose the requirements.

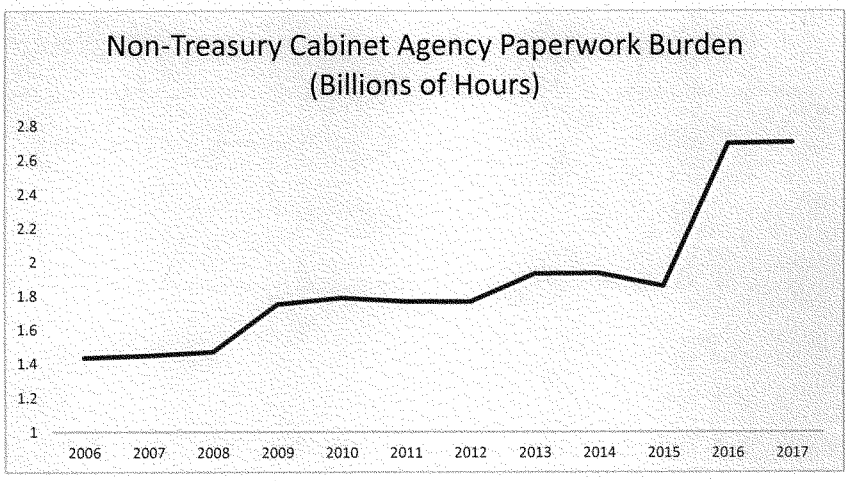
Small businesses are particularly affected by paperwork and compliance burdens. According to OIRA, there are 74 OMB control numbers that directly affect small establishments. Combined, these requirements elicit 1.3 billion responses from businesses, impose 3.3 billion hours of paperwork, and generate $5 billion in "on paper" costs. However, that $5 billion is misleading because only 31 of the 74 control numbers monetize the costs of paperwork. Using a central wage rate of $33.36 per hour (the average wage for a compliance officer) and applying it to the unmonetized hours, yields $111 billion in annual paperwork costs, not $5 billion. This is driven largely by the OIRA representation that the 2.9 billion-hour Business Income Tax does not impose monetizable costs. I will discuss this phenomenon later in the testimony.

Broadly, higher paperwork burdens can have profound impacts on smaller establishments. According to a 2013 Minneapolis Federal Reserve study, hiring two more compliance officers in small banks reduces profitability by 45 basis points and causes one-third of banks to become unprofitable. AAF research has reached similar conclusions from rising regulatory burdens.

"Compliance officer" has become a popular occupation in the nation recently. In 2013, there were 227,500; today, there are more than 257,000, an increase of 12.9 percent in just three years, outpacing overall nonfarm payroll growth of 5.7 percent.

Although IRS is often seen as the main driver of paperwork in the U.S., it is not alone. The agency (Treasury broadly) does impose 8.2 billion hours, or 71 percent of the cumulative government total. Other agencies have drastically increased their regulatory burden. For instance, in fiscal year 2009, the Department of Health and Human Services (HHS) imposed 494 million hours of paperwork. Today, the total stands at 1.3 billion hours, an increase of 181 percent in just one administration. Likewise, EPA's burden has increased 22 percent since 2009 and the Commodity Futures Trading Commission has pushed its paperwork total up by 58 percent since 2013.

The totals above should not be shocking to many, considering there were fundamental changes to the nation's energy, health care, and financial services industries during the last eight years. Although Treasury represents an out-sized burden, due mainly to tax collections, other agencies have also drastically added paperwork. The graph below depicts cabinet agency burdens with the Treasury totals excluded.



As the graph demonstrates, Treasury alone doesn't paint the whole picture of the PRA. Non-Treasury burdens have been growing steadily during the last decade, jumping from 1.4 billion hours in 2006 to 2.7 billion hours today, an increase of nearly 93 percent. The numbers are stark, whether considering paperwork or control numbers. The bigger question is whether these figures are verifiable and how is the ultimate cost on the economy increasing because of the PRA?

Accuracy of Data and Benefit-Cost Calculations

Imagine a lowly agency that routinely imposes less than one million hours of paperwork suddenly seeking to impose 43 billion hours with one collection. There is a formal request in the Federal Register and a second notice as well. Then, the notice arrives at OIRA with no immediate correction.

That agency, the National Credit Union Administration (NCUA), originally estimated a routine "Truth in Savings Act" request would impose 43 billion hours of paperwork, require 2.6 ***trillion*** periodic statements, and each response from a credit union would take 1.58 million hours, the equivalent of 790 employees working full-time at a bank to fulfill one federal requirement. If those estimates appear unbelievable, it is because they were. The actual ongoing hourly total was just 7.1 million hours. The stark difference was not a typo, but the result of agency officials multiplying totals together when they were supposed to add them. This arithmetic error turned a routine and non-controversial requirement into potentially the largest federal collection of paperwork ever. Unfortunately, this is not an isolated example and significant mistakes are common with PRA requests.

Last April, IRS and OIRA approved a revision to the Affordable Care Act's "Summary of Benefits and Coverage Disclosures." The burden hours declined from 649,000 to 431,000. Strangely, the cost of compliance increased from $5 million or $7 per hour, to $1.7 ***trillion*** or $4 million per hour of compliance. There is little doubt these new health care summaries imposed some burdens, and created some benefits for consumers, but few could believe one paperwork collection imposed burdens equal to the GDP of Canada.

AAF highlighted this error last April, but it remained public on OIRA's website until last week when the agency revised the burden down from $1.7 trillion to $9.2 million. Part of the problem was the number of responses; originally at 213 billion, it was revised down to 71 million. In its brief explanation, the agency noted costs were, "incorrectly reflected in our previous submission." If IRS is off by roughly $1.7 trillion and NCUA erred by 43 billion hours, how many other egregious errors exist within PRA analyses?

Many former OIRA staffers have stated that PRA data is largely unreliable. Although sorting through 4,000 to 5,000 control numbers annually takes time, there is anecdotal evidence that OIRA does not consider these approvals a priority. According to one report from Rutgers University Professor Stuart Shapiro, an official noted, "I think tabulating and counting burden hours is an artificial exercise that has no use in the real world." Another remarked, the process of burden-hour calculation was "pseudo-science." Based on the numerical examples above, it is a mix of pseudo-science and poor calculation.

Finally, one underreported aspect of the PRA is the extent to which there is no real estimate of costs or benefits. Although benefits of transparency may be difficult to quantify and monetize at times, even a back-of-the-envelope calculation should be possible for monetizing costs. For example, last year AAF reviewed the 50 largest paperwork collections and found only seven monetized the cost of those requirements.

The listed cost of those seven collections was $44 billion, but when the remaining 43 requirements are monetized at a reasonable hourly rate, AAF found more than $61 billion in additional costs. The most egregious example is the aforementioned U.S. Business Income Tax. At 2.9 billion hours of paperwork, one would expect at least some attempt to estimate costs. Instead, the listed burden is $0.

View ICR - OIRA Conclusion

OMB Control No: 1545-0123
Status: Active
Agency/Subagency: TREAS/IRS
Title: U. S. Business Income Tax Return
Type of Information Collection: Reinstatement with change of a previously approved collection
Type of Review Request: Emergency
OIRA Conclusion Action: Approved without change
Retrieve Notice of Action (NOA)

ICR Reference No: 201611-1545-003
Previous ICR Reference No: 201401-1545-006
Agency Tracking No: Ready
Common Form ICR: No
Approval Requested By: 01/18/2017
Conclusion Date: 02/09/2017
Date Received in OIRA: 01/17/2017

Terms of Clearance:

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	08/31/2017	6 Months From Approved	
Responses	10,900,000	10,900,000	0
Time Burden (Hours)	2,997,500,000	2,997,500,000	0
Cost Burden (Dollars)	0	0	0

This is a gross omission by OIRA in its PRA role because the supporting statement from IRS does list $52 billion in costs and 275 hours (nearly seven weeks) per business to file. No reasonable person would deny that there are significant compliance burdens with this collection. Yet since 1981, this collection has grown from 26 million hours to 2.9 billion (a 115-fold increase), but never once has OIRA listed a cost figure for the U.S. Business Income Tax.

Looking to other agencies, the Federal Trade Commission (FTC) publicly reported a cost burden under the PRA of $41 million. Yet, the "Care Labeling Rule" and a collection for textiles imposes more than $540 million in annual burdens, more than 12 times what FTC represents publicly. AAF also found HHS's purported PRA burden of $852 million omitted more than $5 billion in costs that were contained in supporting documents, but not reported online.

It's striking that $60 billion in unreported costs were found in just the 50 largest collections. There are countless more requirements that have either not calculated or publicly reported the costs of imposing millions of hours of paperwork. The text of the PRA is clear that "financial resources expended" is a factor in the definition of burden. This does not appear to be the practice of many federal agencies.

Agency Violations

When business complies with federal regulation, they are held to a high legal standard. Generally, failure to comply results in fines and other penalties. For EPA, the average fine for relatively minor paperwork violations from 2009 to 2014 was $12,300, or about 14 weeks of earnings for the typical American worker. However, agencies frequently violate the PRA and there are few consequences other than a listing of violations in the administration's annual "Information Collection Budget" (ICB).

For the past several years, the ICB has demonstrated a continual pattern of agencies flouting the PRA process, mainly the Department of Defense and HHS. In the most recent fiscal year, the Obama Administration reported 283 PRA violations, an increase of 58 violations or 25 percent more than the previous year. Generally, a violation occurs when authority to collect information or impose a recordkeeping requirement lapses.

The ICB does have a ranking system and in the most recent edition, four agencies made the "poor" list, indicating 25 or more violations. Defense (59 violations), HHS (49 violations), Homeland Security (35 violations), and IRS (30 violations) all routinely failed to comply with the PRA. In addition, OIRA classified three agencies as "needs improvement:" Agriculture (14 violations), Treasury (11 violations), and Veterans Affairs (11 violations).

Given the problems with Defense, HHS, and Homeland Security, policymakers might expect actions to correct these deficiencies. However, HHS and Defense frequently lead all agencies in the number of PRA violations. HHS led the pack in 2013, with 80 violations; Defense had 71 violations in 2012 and HHS had 57. Finally, Defense had 74 violations in 2011 and HHS was close behind with 68. Given the track record of these agencies for roughly the past six years, why aren't they and OIRA working together to correct PRA procedure? Why are other agencies able to comply with a relatively straightforward law, yet HHS and Defense seem unable?

Although this is not a direct violation of the PRA, we have found several instances of agencies using federal money to pay respondents for information. In this EPA request, respondents could receive $50 for completing the full survey. In addition, one HHS survey of five Chinese regions offered, "a 100 Yuan (equivalent to 15 US dollars) ... for completing the survey." Finally, another HHS collection offered web participants $10 and focus groups $30 per person for their participation. This might increase response rates for agencies, but it could result in a non-representative sample, and of course, it does spend taxpayer money.

Finally, there is the ministerial matter of simply publishing the ICB. Like the Unified Agenda and OIRA Reports to Congress, the ICB has somehow morphed into a political football. It wasn't until October of 2014 when the Obama Administration released its 2013 and 2014 ICB together, a gap of 20 months from the 2012 ICB. To compound the delays, the Obama Administration waited more than two years to issue the next ICB. Like the Unified Agenda, a basic report outlining paperwork at the federal level should not be a political matter and reporting should be annual, given the ICB reflects paperwork within a given fiscal year. In the future, OIRA should work to publish the ICB in a timely manner every year.

Reform Options

One primary duty of the Administrator of OIRA is to, "minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected." It's clear, from a wealth of academic and other peer-reviewed studies, that small businesses are most adversely affected by large paperwork impositions. What evidence is there that the federal government is actively attempting to reduce paperwork on small entities?

For instance, during the Obama Administration, there were 17 PRA actions that reduced paperwork by more than one million hours. However, just one of these 17 deregulatory actions directly affected small businesses and a Regulatory Flexibility Act analysis was only performed for four of them. Of the 17 largest reductions under the PRA during the last eight years, just one directly benefited the smallest businesses. Why, when the impacts of hiring additional compliance officers are most pronounced for the smallest institutions?

AAF has studied this phenomenon in the past. We found that a ten percent increase in cumulative regulatory costs results in a five to six percent decrease in the number of small business establishments (fewer than 20 employees). On the other hand, the largest businesses (more than 500 employees) actually saw growth in the number of establishments, by two to three percent, in the face of rising regulatory burdens. Thus, it appears that high regulatory burdens impact small businesses the most and a disproportionate share of the deregulatory actions do not benefit these businesses directly.

Monetize and Report Costs

With regard to the PRA, as discussed above, agencies should attempt at least a back-of-the-envelope monetization of hourly burdens. The PRA speaks directly to "financial resources expended," but agencies either decline to monetize notable hourly burdens or OIRA, for some reason, fails to report these tabulations online.

As an example, the Consumer Financial Protection Bureau (CFPB) currently has 50 active control numbers. Of those, only 14 provide cost estimates for hourly burdens online. One of its largest collections, Regulation V, imposes 4.1 million hours of paperwork, but OIRA lists $0 in burdens. Yet, the supporting statement declares $110 million in associated labor costs, more than CFPB's total listed burden of $42 million. Likewise, its implementation of a Dodd-Frank collection imposed 387,500 hours of paperwork, but in the supporting statement, CFPB bluntly declares, "There will be no annualized capital or start-up costs for the respondents to collect and submit this information." Does anyone believe there are *no costs* to comply with more than 380,000 hours of paperwork? Unfortunately, the examples above are only a fraction of the discrepancies and omissions replete with PRA compliance.

Setting Reduction Targets

To address the rising volume of paperwork, Congress could set hard caps on growth and even targeted reductions, as it did with the 1996 amendments to the PRA. Unfortunately, agencies never met those reduction targets and paperwork increased. Legislators can learn from those past mistakes and devise a way to make reductions enforceable. This will require coordination with OIRA and perhaps even some penalties or incentives for agencies during compliance. Reforms could address the cumulative amount of paperwork and the number of control numbers. Although a ten percent reduction might sound trivial, that would equal 1.1 billion hours or $38.6 billion in annual savings (assuming $33.26 per hour).

Online Reporting

There is also the issue of general modernization in reporting under the PRA. When EPA moved its National Pollution Discharge Elimination System online, the agency claimed $156 million in total savings to the industry over ten years, $23 million annually, and nearly 200,000 fewer paperwork burden hours. Unfortunately, submitting forms online is still not possible for many agencies. For example, there are 5,257 control numbers that contain forms in the federal government; only 3,284 may be submitted electronically. In other words, there are nearly 2,000

forms that cannot be submitted online. Congress, federal agencies, and OIRA could work to drastically lower that number to provide cost savings to government, individuals, and businesses.

Increase Public Participation

The paperwork burdens under the PRA are incredibly top-heavy. The ten largest collections impose 70 percent of all paperwork hours. However, the largest, most impactful requirements, are treated the same as the smallest, most routine collections.

Congress and the administration could examine opportunities to place more scrutiny on the largest paperwork requirements and deemphasize routine collections. This could take the form of proposed and final rule status for significant measures, as opposed to treating them as one of hundreds of weekly notices in the Federal Register. Historically, even major collections receive few substantive comments. If the goal of PRA reform is to increase public participation and accuracy, perhaps more scrutiny of major collections is one method to explore.

Conclusion

The PRA has existed for more than a generation, but flaws remain in a law ostensibly designed to "reduce" paperwork. That goal has clearly failed, as the PRA has turned OIRA into a manager of paperwork, one where "pseudo-science" reigns and little hard data exist. Reforming the PRA to increase public participation, eliminate redundant forms, and strengthen benefit-cost analysis, should be a bipartisan exercise. For the next generation of the PRA, government should strive to produce better data while imposing lower costs on respondents and the federal government.

Thank you. I look forward to answering your questions.

Statement of

Leah Pilconis
Environmental Law & Policy Advisor

With

The Associated General Contractors of America

to the

U.S. House of Representatives

Committee on Small Business

For a hearing on

"Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?"

March 29, 2017

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

Statement of Leah F. Pilconis
The Associated General Contractors of America
Committee on Small Business
United States House of Representatives
March 29, 2017

Chairman Chabot, Ranking Member Velazquez and members of the committee, thank you for inviting the Associated General Contractors of America (AGC) to testify on the construction industry's experience in meeting the federal government's requests for "information" and whether the Paperwork Reduction Act (PRA or Act) is accomplishing its goals of minimizing the resulting burden on the public and maximizing the practical utility of the information collected.

My name is Leah Pilconis, and I am AGC's Environmental Law and Policy Advisor. The association represents more than 26,000 construction contractors, suppliers and service providers across the nation, through a nationwide network of 92 chapters in all 50 states, DC, and Puerto Rico. AGC contractors are involved in all aspects of nonresidential construction and are building the nation's public and private buildings, highways, bridges, water and wastewater facilities and more.

One of my core functions for AGC is to monitor, summarize, and regularly comment on federal legislation and regulations that may implicate either the scope or nature of the construction industry's obligations to the environment. On behalf of AGC, I maintain liaison with EPA and other federal agencies that interpret and enforce federal environmental laws. In a pro-active effort to help AGC members meet federal environmental requirements, I also develop and disseminate practical "compliance tools" for construction contractors, and help to organize and hold environmental seminars, forums, and other programs for such contractors. I have served as a construction industry representative on government advisory panels tasked with evaluating the small-business impact of federal rules on the management of stormwater runoff during active construction and post development; the scope of federal control over construction work in water and wetlands; and the control of lead-paint dust during renovation, repair and painting activities.

AGC supports the objectives of the PRA and the White House Office of Management and Budget's (OMB) implementation of the Act. The PRA is an important tool to ensure that the federal government avoids the unnecessary collection of information and streamlines the information collection process. The federal government's information collections take an enormous toll on the construction industry, which includes predominantly small businesses.[1] Responding to federal reporting requests and documentation requirements consumes large amounts of time, resources, and funds. Any effort to reduce these burdens will benefit both the construction firms that face them and, in turn, the U.S. economy.[2]

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[1] Currently there are 660,000 construction firms in the United States (residential and nonresidential), of which 91 percent are small businesses employing fewer than 20 workers. See the most recent year of available data online at http://www.census.gov/econ/susb/?eml=gd&utm_medium=email&utm_source=govdelivery.

[2] The construction industry plays important role in the U.S. economy. It operates in every state; employs more than 6.5 million workers (2015); nonresidential spending in the U.S. in 2015 totaled $672 billion ($390 billion private, $282 billion public); construction contributed 4.0% to national GDP (2015). Source: Ken Simonson, Chief Economist, AGC of America, from Prof. Stephen Fuller, George Mason University, CFMA Annual Financial Survey and U.S. Government Sources.

I. The Paperwork Reduction Act

The Paperwork Reduction Act[3] provides the statutory framework for the Federal government's collection, use, and dissemination of information. The goals of the PRA include: (1) minimizing paperwork and reporting burdens on the American public; and (2) ensuring the maximum possible utility from the information that is collected.[4] OMB plays an important role as the lead agency charged with overseeing implementation of the PRA. The Act authorizes the Office of Information and Regulatory Affairs (OIRA) within OMB to "oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public."[5]

II. U.S. EPA: An Information-Based Agency

The U.S. Environmental Protection Agency (EPA) can be characterized as an "information-based" agency: the agency constantly requires the collection or generation of data in developing and implementing its programs. Information collections are defined broadly by both statute and implementing regulations. Regardless of form or format, whether an application form, a reporting or recordkeeping requirement, rules or regulations – and whether the request is oral, electronic or any other technique or technological method used to monitor compliance, OMB's PRA regulation (as well as the PRA) broadly define the "collection of information" to include the following (as further described in this statement):

1. Requests for information to be sent to agencies, such as forms (e.g., EPA's Notice of Intent for coverage under EPA's Construction General Permit), written reports (e.g., EPA's National Pollutant Discharge Elimination System (NPDES) Discharge Monitoring Reports), and surveys (e.g., EPA's Public and Commercial Building Contractor Survey Questionnaire regarding renovation, repair, and painting work);
2. Documentation and recordkeeping requirements (e.g., EPA's requirements that construction site operators develop compliance management plans for stormwater and oil spill prevention and control); and
3. Third-party or public disclosures (e.g., EPA's requirements to contact the National Response Center in the event of an oil or chemical spill on a construction site).[6]

Specifically, the PRA applies to collections of information imposed on, "ten or more persons" (e.g., individuals or businesses) within any 12-month period. Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons, thereby triggering PRA applicability.[7]

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[3] The Paperwork Reduction Act of 1995: http://www.reginfo.gov/public/reginfo/pra.pdf. PRA is codified at 44 U.S.C §§ 3501-3520.

[4] Other purposes of the Act include coordinating government information resources, improving the "quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society," minimizing costs to government of gathering, maintaining and using information, and ensuring that information is handled in ways consistent with federal laws related to privacy, security and access.

[5] The regulations implementing the PRA, which closely track the statutory requirements, can be found at 5 C.F.R. § 1320, Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act (60 Fed. Reg. 44984, Aug. 29, 1995).

[6] 44 U.S.C. § 3502(3)(A) and 5 C.F.R. § 1320.3(c)(1) ("a 'collection of information' may be in any form or format"); 5 C.F.R. § 1320.3(c) ("'collection of information' includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information").

[7] 5 C.F.R. § 1320.3(c)(4)(i)-(ii).

"Recordkeeping requirement" means a requirement imposed by or for an agency on persons to maintain or retain records; or to notify, disclose or report to third parties, the government or the public of the existence of such records.[8]

III. Does the PRA Reduce Burden?

Under the PRA, "burden" is defined expansively to mean the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.[9] In AGC's experience, program agencies chronically underestimate the burden their information collections impose on regulated industries.

One would expect that reducing the EPA's paperwork burden is among the leading accomplishments of the Act. However, it appears that the PRA has not reduced the hours Americans spend providing information to that agency.

A March 2000 Government Accountability Office (GAO) report, "EPA Paperwork: Burden Estimate Increasing Despite Burden Reduction Claims,"[10] took aim at claims of burden reduction. It found EPA's claims to have reduced paperwork burden by 24 million burden hours and saved businesses and communities hundreds of millions of dollars between fiscal years 1995 and 1998 were "misleading," and in fact were the result of agency re-estimates, changes in the economy or respondents' technology, or the planned maturation of program requirements."

In June 2016, the House Subcommittee on Energy and Power held a hearing[11] to review EPA's regulatory activity under the Obama Administration. Since President Obama took office in 2009, EPA had published more than 3,900 rules, averaging almost 500 annually, and amounting to over 33,000 new pages in the *Federal Register*.[12] The hearing highlighted growing concerns from states and affected entities about the mounting complexity, costs, and legality of EPA rules. The compliance costs associated with EPA regulations under President Obama number in the hundreds of billions and grew by more than $50 billion in annual costs during the time he was in office.

Turning to present day, the current EPA totals for active information collections,[13] as of March 21, 2017, show:

ENVIRONMENTAL PROTECTION AGENCY TOTALS:

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
416	405,108,876	186,188,315	$2,611,290,696

[8] 5 C.F.R. § 1320.3(m).
[9] 5 C.F.R. § 1320.3(b)(1).
[10] http://www.gao.gov/assets/230/228881.pdf.
[11] http://docs.house.gov/meetings/IF/IF03/20160706/105153/HHRG-114-IF03-20160706-SD002.pdf.
[12] *Id.*
[13] Information available online at www.regulations.gov.

These data point to the conclusion that—despite efforts of OMB/OIRA, agency Chief Information Officers and agency program officials—EPA has been unable to meet one of PRA's main goals, which is a net reduction in the total burden placed on the public by government information collection.

There is room for improvement in implementation of the Act and in effectively reducing the paperwork burden on small businesses. Through some combination of legislative action, regulatory reform and updated guidance, OMB should be working with the agencies to reduce duplication and burden, generate more accurate "life cycle" burden estimates, better protect confidential and sensitive information, and solicit better public input into the process that reflects actual small business experiences, as further explained below.

IV. Executive Summary: AGC's Recommended Reforms

Giving special consideration to requirements that are particularly burdensome to small businesses, AGC has recommended to EPA meaningful reforms that would produce significant savings and significant reductions in current paperwork burdens. Several of AGC's top strategies for reducing regulatory burdens are highlighted in brief below and further discussed in Section V of this statement.

A. Eliminate Duplicative Federal Recordkeeping Requirements

- **REFORM 1**: Construction site operators are required to develop plans for preventing, containing, and cleaning up oil spills under the National Pollutant Discharge Elimination System and Spill Prevention Control and Countermeasures Plan (SPCC) regulations. If a construction site operator has a Stormwater Pollution Prevention Plan that addresses oil storage and spill control, containment and cleanup measures, then EPA should allow the jobsite SWPPP to also satisfy the agency's SPCC requirements. Otherwise this is double regulation – and each plan carries significant costs for the contractor to develop. The list of overlapping requirements includes documentation, management certification, site maps and diagrams, inspection and maintenance, recordkeeping, training, designated employees, notification procedures and response obligations. The U.S. Coast Guard also is involved in spill plans if the project is on/over water.

- **REFORM 2**: On every construction job where any detectable trace of "lead coatings" are present, the U.S. Occupational Safety and Health Administration's (OSHA) Lead Standard for the construction industry requires monitoring, training, a written compliance plan, recordkeeping and establishment of a housekeeping program sufficient to maintain all surfaces as "free as practicable" of accumulations of lead dust. Yet EPA has a separate lead-safe Renovation, Repair and Painting (RRP) Program with training, certification and extensive recordkeeping requirements that it is looking to expand significantly. EPA should recognize that the OSHA rules protect the spread of lead-paint dust during all construction and terminate its efforts to expand current regulations to cover RRP work in public and commercial buildings. To date, EPA has produced no data to show the RRP activities in the existing building stock would cause a lead-based paint "hazard." In addition to EPA and OSHA, the U.S. Department of Housing and Urban Development also has a lead-based paint program.

B. Exempt Small Businesses from Environmental Penalties for Paperwork Violations

- **REFORM 3**: In early 2009, EPA terminated long-standing partnership programs with industry (e.g., the Sector Strategies Partnership with the commercial construction industry aimed at reducing regulatory burdens while improving compliance) and defunded compliance assistance online centers (e.g., the Construction

Industry Compliance Assistance Center). In the years that followed, the number and cost of federal regulations increased substantially – with EPA leading in the numbers. Reports and data show that many environmental fines being levied against construction firms are for relatively minor paperwork infractions – not environmental contamination. Policies must be put forth to recalibrate environmental enforcement initiatives to focus more agency resources on compliance education and industry collaborative efforts. Congress should enact a "right to cure" process for paperwork violations with no threat of penalty; provide relief to small-business contractors who "inspect and correct" compliance problems; reinstate a process for making a voluntary disclosure under EPA's Small Business Compliance Policy; and expand the use of EPA's Expedited Settlement Offer Policy under the stormwater, oil spill and lead-paint programs where enforcement is prevalent.

C. Reconsider How Electronic Management of Information Should Be Factored into Burden Estimates

- **REFORM 4**: The government's broad shift toward the electronic submission of compliance and enforcement information – and the online public access to that data – does not consider industry concerns related to privacy, data quality, security, ownership, competition, etc. The cost to monitor company "feeds" for errors and consult with the government to ensure the information provided includes proper context were not factors in the paperwork cost/burden analysis for EPA's 2015 NPDES Electronic Reporting Rule. EPA also may lack the financial resources and staff to maintain the robust databases it has set out to create. Sharing complicated environmental reports with the public at large could delay projects and waste enforcement resources by chasing false leads and increase frivolous citizen suits over confusing data, errors, or misinterpretations of that data. There needs to be a renewed focus on information management within the context of the PRA and, specifically, the future of using web-based technologies for information collection.

D. Prohibit Use of Generic Approvals of Information Collection Request under the NPDES Permit Program

- **REFORM 5**: OMB's PRA regulations allow agencies to use "generic" and "fast-track" processes to seek approval on an expedited basis for individual collections of the "already-approved general type." In 2010, OMB issued a memo reminding agencies that they may seek "generic clearances" from OIRA to expedite the PRA approval process for information collections that are voluntary, uncontroversial, or easy to produce.[14] In this vein, EPA does a consolidated NPDES information collection request (ICR) that authorizes information collected under the entire NPDES permitting program (for both EPA-issued permits and state-issued permits).[15] EPA claims that OMB is approving a variety of reporting requirements *generally expected* in the permits covered; however, the consolidated ICR does not restrict permits to specific information requests. It is inappropriate to lump 46 state-issued CGPs, and the EPA-issued CGP into one "generic" approval. OMB needs to more specifically analyze the information collected under every one of these permits (e.g., Multi-Sector General Permit, Vessels General Permit, previous CGPs) and not just assume the newly issued iterations will have similar reporting burdens. Under current practice, EPA incorporated new recordkeeping

[14] Cass R. Sunstein, "Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies: Paperwork Reduction Act – Generic Clearances," Office of Management and Budget, Executive Office of the President, May 28, 2010.

[15] The burdens associated with the CGP reissuance are covered under this existing ICR (OMB Control No. 2040- 0004, EPA ICR No. 0229.20) and the updated one that is currently at OMB for review (OMB Control No: 2040-0004, EPA ICR No. 0229.21).

requirements in its newly issued 2017 CGP without accurately accounting for increased burdens on industry.[16] OMB should more closely monitor agency estimates of burden and measure their accuracy against actual experience. Congress should also consider making explicit provisions for public outreach to small entities whenever it appears that they will be adversely affected by an expensive regulation. It would also reduce paperwork burdens to require agencies to respond, in writing, to serious objections from the U.S. Small Business Administration's Office of Advocacy. For example, the Office of Information and Regulatory Affairs would not approve significant rules unless the most adverse effects on small entities have been eliminated, reduced or justified.

V. AGC's Specific Comments

A. Areas of SWPPP/SPCC Overlap

Construction site operators are required to develop comprehensive, site-specific compliance management plans under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) stormwater regulations and the federal Oil Pollution Control Act's Spill Prevention Control and Countermeasure (SPCC) regulations. AGC finds these dual recordkeeping requirements to be excessively burdensome and unnecessary. The Clean Water Act and EPA's associated regulations[17] require nearly all construction site "operators" nationwide engaged in activities that disturb one acre or more of land, including smaller sites in a larger common plan of development or sale, to obtain coverage under an NPDES permit to allow their stormwater to discharge to "Waters of the United States."[18] There are more than 200,000 construction starts every year that fall into the NPDES regulated universe.[19] To secure coverage under EPA's or a state's Construction General Permit (CGP), the construction site operator(s) must first prepare a written Stormwater Pollution Prevention Plan (SWPPP) and then file a Notice of Intent (NOI) with EPA or the state permitting agency in control where the project will take place.[20]

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[16] For example, the 2017 CGP added a new requirement for the site operator to tell the public (via the notice of permit coverage already posted at the site, as per prior permit requirements) how to contact EPA to obtain a copy of the site-specific SWPPP and how to report a visible discharge of pollution from the site. This provision was not part of the proposal or the economic analysis (draft or final). EPA has failed to account for the "life cycle" paperwork burden for both industry and the agency to respond to the expected increase in public requests/reports, which may prove overwhelming for small businesses. SWPPPs are "living" documents that can be 100's of pages long with complicated drawings. Distribution of outdated compliance data, and allowing an uninformed public to serve as the government's watchdogs, may lead to unsubstantiated citizen complaints or frivolous lawsuits. (Likewise, EPA's draft economic analysis completely discounted, or underestimated, the total burden (time/cost) to collect new project information from the applicant, to electronically report SWPPPs for public examination, and to increase site inspections/documentation – but these proposed changes were not adopted in the final version of the permit.)

[17] 40 C.F.R. §§ 123.25(a)(9), 122.26(a), 122.26(b)(14)(x) and 122.26(b)(15).

[18] Under the NPDES program, EPA can authorize states to implement the federal requirements and issue stormwater permits.

[19] *See* Final NPDES Electronic Reporting Rule, 80 Fed. Reg. 64,076, 64079 ("large and transient number of permittees that are reporting each year for new locations - approximately 200,000 new construction sites each year").

[20] The stormwater management requirements and accompanying reporting and recordkeeping procedures are quite complex. EPA's CGP, which serves as a model for the nation, and accompanying fact sheet total just under 200 pages. U.S. Environmental Protection Agency's National Pollution Discharge Elimination System General Permit regulating Stormwater Discharges from Construction Activities (the "2017 CGP"); 82 Fed. Reg. 6534 (Jan. 19, 2017) – https://www.epa.gov/npdes/stormwater-discharges-construction-activities. The permit imposes many documentation and recordkeeping requirements on the construction site operator, including: (1) permit application form (Notice of Intent or NOI); (2) notice informing the public of permit coverage and on how to contact EPA to obtain the jobsite SWPPP or report a discharge (2) comprehensive

The principal component of the stormwater program for any construction site is the SWPPP. It implements the bulk of the applicable CGP requirements by describing: the site and of each major phase of the planned activity; the pollution prevention practices and activities that will be implemented on the site; the roles and responsibilities of contractors and subcontractors; and the inspection, maintenance and corrective action procedures, schedules and logs. It is also the place where the contractor must document changes and modifications to the construction plans and associated stormwater pollution prevention activities. EPA's CGP requires contractors to keep copies of the SWPPP, inspection records, copies of all reports required by the permit, and records of all data used to complete the NOI to be covered by the permit for a period of at least three years from the date that permit coverage expires or is terminated.

The CGP requires the site operator to include in the project's SWPPP a spill prevention and control plan that includes measures to:

- Stop the source of the spill;
- Contain the spill;
- Clean up the spill, leaks and other releases;
- Dispose of materials contaminated by the spill;
- Identify and train personnel responsible for spill prevention and control; and
- Notify appropriate facility personnel, emergency response agencies, and regulatory agencies of a leak, spill, or other release in excess of a reportable quantity.[21]

EPA's permit instructs operators to store all diesel fuel, oil, hydraulic fluids, other petroleum products in water-tight containers that are kept under storm-resistant cover or surrounded by secondary containment structures (e.g., spill berms, decks, spill containment pallets).

This requirement is not unique to EPA's permit (it does serve as a national model). The CGP's spill prevention and response procedures implement provisions of the federal Effluent Limitations Guidelines and Standards (ELG) for the Construction and Development (C&D) industries that set a "floor" for the minimum stormwater management provisions that must be included in all CGPs nationwide.[22]

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site-specific SWPPP (including documentation of compliance with erosion and sediment control requirements and pollution prevention measures) that must be updated to comply with the permit; (4) site inspection reports every seven to 14 days – including the date, place and time of BMP inspections and the name of inspector(s); (5) the date, time, exact location and a characterization of significant observations, including spills and leaks; (6) records of any non-stormwater discharges; (7) corrective action reports of BMP maintenance/upgrades taken at the site; (8) any documentation and correspondence related to endangered species and historic preservation requirements; (9) weather conditions (e.g., temperature, precipitation); (10) dates when major land disturbing activities (e.g. clearing, grading, and excavating) occur in the area; (11) dates when construction activities are temporarily or permanently ceased in an area; (12) dates when the area is temporarily or permanently stabilize. *See* U.S. Environmental Protection Agency, Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites, EPA-833-R-06-004, 30 (May 2007).

[21] 40 C.F.R. § 110, 40 C.F.R. § 117, or 40 C.F.R. § 302.

[22] EPA's CGP requires operators to minimize the discharge of pollution in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities, in accordance with the C&D ELG requirements at 40 C.F.R. § 450.21(d). EPA's CGP also implements the 40 C.F.R. § 450.21(d)(3) requirement to "minimize the discharge of pollutants from chemical spills and leaks and implement spill and leak prevention and response procedures" and the 40 C.F.R. § 450.21(e)(3) requirement prohibiting the discharge of "fuels, oil, or other pollutants used in vehicle and equipment operation and maintenance."

Failing to develop a SWPPP, keep it up-to-date, or keep it on-site, are permit violations that can result in CWA penalties of up to $52,414 per day per violation.[23]

Spill Plans

The construction site SPCC plan is a complete overlap with the above-identified components of the jobsite SWPPP. The SPCC rule[24] applies in all 50 states and is administered and enforced by federal EPA in every state. It covers a jobsite if (1) the above ground oil storage containers (in tanks of 55 gallons or greater, including asphalt cement tanks) have a total *capacity* of more than 1,320 gallons and (2) a spill could reach navigable waters of the United States or adjoining shorelines. It is important to note that EPA revised the definition of "navigable waters" of the United States, as the term applies to the SPCC rule, to comply with a court decision.[25]

The SPCCC rule requires all regulated jobsites to have a comprehensive SPCC plan detailing how the owner/contractor will store oil and both control and clean up any spills that may occur on the jobsite.[26] Basic requirements call for appropriate secondary containment and/or diversionary structures, security measures, inspections and recordkeeping and employee training. EPA's SPCC rules also require site operators to notify appropriate facility personnel, emergency response agencies, and regulatory agencies of a leak, spill, or other release in excess of a reportable quantity.[27] Once you have an SPCC plan in place, the site operate must conduct site inspections, personnel training and periodically review and renewal of the plan.

Failure to develop an SPCC plan or comply with the related program requirements can result in CWA penalties of up to $45,268 per day per violation.

Double regulation is especially burdensome for construction site operators because jobsites are temporary and ever changing. Unlike a fixed or permanent oil storage facility, a construction contractor must prepare multiple SPCC plans every year as jobsites are modified, projects completed and new projects are started. Per www.reginfo.gov, the ICR for SPCC Plans is going to expire on March 31, 2017.[28]

AGC members report that it can cost from $2,000.00 to $5,000.00 to hire a Professional Engineer to prepare an environmental compliance plan, depending on your geographical area and the complexity required. This does not account for the additional costs incurred to perform and document inspections and update and renew plans. It is clearly feasible for a single plan to provide the detail necessary to satisfy the SWPPP and SPCC programs.

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[23] 82 Fed. Reg. 3633 (Jan. 12, 2017).

[24] 40 C.F.R. § 112.

[25] Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule; Revisions to the Regulatory Definition of "Navigable Waters," 73 Fed. Reg. 7,1941 (*Nov. 26, 2008*) - https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-prevention-and-preparedness-regulation.

[26] Notably, December 2008 amendments to the SPCC rule provided regulatory relief for "low-risk sites" that store smaller quantities of oil, including the ability to develop "self-certified" SPCC plans (in lieu of one certified by a professional engineer) and use EPA's SPCC plan template to comply with the SPCC rule. In addition, EPA exempted hot-mix asphalt (HMA) and HMA containers from SPCC rule applicability, thereby excluding silos of HMA from the total oil storage capacity for any job site. Per AGC's recommendations, this exemption is warranted because an HMA discharge would not "flow" to reach navigable waters or adjoining shorelines.

[27] *See supra* note 17.

[28] https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-2050-005.

B. Lead Paint Activities; Training & Certification for Renovation and Remodeling Work

The EPA, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Occupational Safety and Health Administration (OSHA) all have rules governing the disturbance of lead paint during renovation, repair and painting (RRP) work. EPA and HUD regulations may overlap where lead paint (as defined by each agency) is presumed to be present during construction work in "target housing" or a "child occupied facility." But whenever EPA's Lead RRP rules[29] apply, there always will be overlap with OSHA's Lead Standard for the Construction Industry.

EPA standards define "lead-based paint" as: any paint or surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter (mg/cm2) or 0.5 percent by weight. By contrast, OSHA Lead Standard for the Construction Industry[30] applies to *all* construction work where an employee may be occupationally exposed to *any detectable amount* of lead (this is not dependent on the size of a job or the concentration of lead). Furthermore, OSHA standards are not limited to lead-based paint as defined by HUD or EPA, or lead-containing paint as defined by or the Consumer Product Safety Commission (CPSC).[31]

Per OSHA's standards, for work where there is <u>any</u> exposure to lead (of any measurable concentration - even below EPA thresholds for "lead based paint"), a company must adhere to the following regulatory provisions:

- 1926.62(d) – Initial Employee Exposure Determinations <u>and</u> Interim Protections[32]
- 1926.62(h) - Housekeeping
- 1926.62(i)(5) - Handwashing Facilities
- 1926.62(l)(1)(i) - Hazcom Program

The OSHA "housekeeping" provisions require employers to capture any lead dust that remains in the workplace during and after renovation activities are performed, calling for a program sufficient to maintain all surfaces as free as practicable" [33] of accumulations of lead dust.[34] Generally, builders also have a written Lead Compliance

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[29] 40 C.F.R. § 745, Subpart E.

[30] 29 C.F.R. § 1926.62.

[31] OSHA's Lead Standard for the Construction Industry consider paint to be "lead containing coatings" if there is any detectable amount of lead in the sample.

[32] The contractor disturbing the lead must conduct an assessment, protect their employees during the assessment, and determine actual employee exposure to respirable dust during renovation and demolition activities. *See* OSHA Letter of Interpretation https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22701.

[33] OSHA clarified what it means by "as free as practicable" in a Letter of Interpretation online at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25617. It states: "The intent of this provision is to ensure that employers regularly clean and conduct housekeeping activities to prevent avoidable lead exposure, such as those potentially caused by re-entrained lead dust." OSHA provides further instruction on complying with the "free as practicable" standard in a Compliance Directive online at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1570.

[34] AGC would like to specifically focus on OSHA's "housekeeping" provisions that place requirements – as well as restrictions – on construction workplace and cleanup practices wherever there is any detectable amount of lead. The requirements at 29 C.F.R. § 1926.62(h) call for the following:

- All surfaces to be maintained as free as practicable of accumulated lead;
- Floors and other surfaces shall wherever possible be cleaned by vacuuming or other methods that minimize the likelihood of lead becoming airborne;
- Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other equally effective methods have been tried and found not to be effective;

Plan for each project where they encounter lead; this is an OSHA requirement for work where exposure to lead may exceed 50 micrograms per cubic meter of air averaged over an eight-hour period.

Commercial builders report that they use all feasible engineering and work practice controls to reduce and maintain employee exposure to levels that are below the OSHA permissible exposure limit. For certain activities for which workers may be exposed to health threats, OSHA requires extensive pre- and post-exposure blood testing and monitoring, comprehensive lead awareness training and a medical surveillance program. Significant recordkeeping is required and the employer must maintain all documentation for at least 30 years.

Turning to EPA's Lead RRP rule; it applies to all firms and individuals performing paid renovation, repair and painting projects that disturb lead-based paint in housing and child-occupied facilities (such as schools and day-care centers) built before 1978. It requires training, firm and individual renovator certification, lead-safe work practices, and various recordkeeping including:

- Reports certifying that lead-based paint is not present.
- Records relating to the distribution of the lead pamphlet.
- Documentation of compliance with the requirements of the LRRP program.

With the publication of an Advance Notice of Proposed Rulemaking in March 2010, EPA announced that it is looking into expanding the application of its current Lead RRP rule to potentially all commercial buildings and pre-1978 public buildings.[35] That would mean a lot more projects and, presumably, a lot more construction firms would need to comply with the requirements or risk fines of up to $ 38,114 per day per violation.[36] Notably, EPA's Semiannual Regulatory Agenda, Fall 2016, has changed the small entity impact designation for this rulemaking to "undetermined" and there is no reference to any Small Business Regulatory Enforcement Fairness Act (SBREFA) panel[37] – despite the fact that a Lead RRP Pre-Panel Outreach Meeting on Dec. 9, 2014, and half a dozen individuals, including myself, were invited to serve as "potential" Small Entity Representatives (SERs) and asked to provide preliminary written comments.

Most recently, EPA launched a national survey of contractors, property managers/lessors, and building occupants to assess whether RRP activities in public and commercial buildings create lead-based paint hazards.[38]

- Where vacuuming methods are selected, the vacuums shall be equipped with HEPA filters and used and emptied in a manner which minimizes the reentry of lead into the workplace; *and*
- Compressed air shall not be used to remove lead from any surface unless the compressed air is used in connection with a ventilation system designed to capture the airborne dust created by the compressed air.

This listing appears in the "Report of the Small Business Advocacy Review Panel on The Lead-based Paint; Certification and Training; Renovation and Remodeling Requirements" (March 3, 2000). However, the Panel found that the OSHA standards "are targeted at the protection of the worker and do not overlap with the requirements being considered for EPA's Renovation and Remodeling proposed rule which seeks to protect occupants." *See* p. 15 – online at https://www.epa.gov/reg-flex/sbar-panel-lead-based-paint-activities-training-and-certification-renovation-and-remodeling. AGC disagrees and has asked EPA to revisit this matter now that the RRP rule is final and fully implemented.

[35] 75 Fed. Reg. 24848 - http://edocket.access.gpo.gov/2010/pdf/2010-10097.pdf.

[36] *See supra* note 23.

[37] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=2070-AJ56.

[38] EPA estimates that the roughly 8,485 survey respondents will incur a total burden of 564 hours for both the screening questions and the full survey. The total cost to respondents of this one-time collection is estimated to be $34,103. The cost to the agency is estimated to be approximately $710,000. EPA expects to have only 402 respondents complete a questionnaire. The Agency has established a public docket for this ICR under Docket ID No. EPA-HQ-OPPT-2013-0715, which is available for online viewing at www.regulations.gov.

The survey is amounting to a nearly one-million-dollar fishing expedition. AGC recognizes that EPA's LRRP is focused on protecting the surrounding public from lead-paint hazards and the agency is actively looking at how far dust will travel during construction. Yet, the fact remains, if OSHA regulations are deemed sufficient to protect the employees who are actually performing the work, EPA has a tough case to prove that any persons NOT associated with the project would be (or could be) detrimentally exposed to lead dust.

The PRA and OMB regulations intend for the creation or collection of information to be carried out within the context of efficient and economical management.[39] Congress should direct EPA to cease action on its survey and issue a "no hazard" determination to conclude further rulemaking action under the Lead RRP rule. Similarly, in accordance with EPA's ongoing review of its current Lead RRP rule (on the books) under Section 610 of the Regulatory Flexibility Act – to assess the impact on small entities and consider, among other things, whether the rule overlaps or duplicates with other federal rules – AGC offered these same comments and urges Congress to oversee EPA's course of action.

C. Right to Cure Paperwork Violations

Reports and data show that a great deal of costly fines being levied against construction firms for alleged environmental violations are paperwork related. For example, EPA stormwater regulators and long-time enforcement personnel have repeatedly identified "inadequate documentation or training" as the leading problems found during a stormwater permit compliance inspection. Failure to prepare, properly fill out, or update a site's permit application (NOI) or SWPPP and keep it on site, and failure to document inspections as well as corrective actions performed on the jobsite are permit violations.[40] A closer look at only California state data on stormwater violations (from 1992-February 2016) found that 84 percent of the violations were strictly paperwork/administrative in nature. Of the 42,485 records from that period, only 885—less than .02 percent—highlighted "unauthorize discharge" in the enforcement description category.

Similarly, EPA's public announcements of its most recent enforcement actions under the Lead RRP program focus on paperwork violations: "Of the total settlements reported during fiscal year 2016, 116 cited alleged RRP rule violations involving repair, renovation or painting projects where lead-based paint is disturbed. Approximately 63 percent of this year's cases alleged failure to obtain EPA certification ..."[41] A review of the FY 2016 enforcement actions related to the Lead RRP rule shows that for most of the 116 violations, EPA routinely cited failure to obtain EPA certification for the firm, failure to assign a certified renovator to the team, and failure to provide EPA's Lead Hazard Information Pamphlet or maintain records.[42]

In face-to-face conversation and educational outreach sessions with EPA's lead SPCC compliance regulator, it has come as no surprise that he also has pointed to paperwork violations as the leading indicators of noncompliance: specifically, no SPCC plan, no PE certification, and no records to show compliance.

Federal environmental statutes carry extremely harsh penalties (as referenced elsewhere in this statement) as well as possible jail time for failure to comply with regulatory or permit requirements. In early 2017, EPA (and

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[39] *See* 44 U.S.C. § 3501.

[40] *See* U.S. Environmental Protection Agency, Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites, EPA-833-R-06-004, 30 (May 2007).

[41] EPA Nov. 3, 2016, Press Release: EPA Enforcement Actions Help Protect Vulnerable Communities from Lead-Based Paint Health Hazards, https://www.epa.gov/newsreleases/epa-enforcement-actions-help-protect-vulnerable-communities-lead-based-paint-health.

[42] https://www.epa.gov/enforcement/fy2016-enforcement-actions-lead-renovation-repair-and-painting-rule-rrp.

other regulatory agencies) increased civil penalties for new enforcement cases, per 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act of 1990, codified at 28 U.S.C. § 2461, which requires agencies to annually raise their statutory civil penalties and make adjustments to account for inflation. Policies must be put forth to recalibrate environmental enforcement initiatives to focus more agency resources on compliance education and industry collaborative efforts. A fine should not be imposed for any paperwork violation if the violation is promptly corrected by the small business owner following notification of the violation.

D. Electronic Reporting Requirements

As stated above, the PRA applies to the collection of information "regardless of form or format."[43] It follows that the PRA applies to the collection of information through web-based interactive technologies. One might argue that PRA calls for a name change, as more-and-more, the government is shifting to require the regulated community to report information electronically, instead of via paper format. The Act may need to be updated to account for advance in technologies and new strategies for considering the burdens associated with the life-cycle of electronic records.[44]

Before information is collected electronically from the public, regulatory agencies need to more thoroughly assess how the information will be used by agencies, whether it will be disseminated by them (and if so what privacy concerns apply), how long it will be stored, and how and when it will be disposed. OMB should be evaluating significant information collections based in part on how the information will be used, disseminated, stored, and disposed of and making approval of information collections contingent upon detailed answers to these questions from the agencies. This would involve OMB updating Circular A- 130 on "Management of Federal Information Resources "and the agencies reissuing their Strategic IRM plans.[45]

As a case in point, let us look at EPA's NPDES Electronic Reporting (e-Reporting) Rule, which requires regulated entities to file certain forms via an electronic reporting system (nationwide implementation by Dec. 2020) rather than using paper forms.[46] Per the rule, all reissued federal- and state-issued CGPs will require contractors to electronically file their NOI, NOT (notice of termination form) as well as any waiver request forms. The new rule requires states to share these data with EPA, along with government-administered inspection and enforcement results. Generally, for the regulated community, they need to (1) identify the recipient for each submission – for example, Georgia, Nebraska, Oregon and Rhode Island recently announced that all NPDES data will go to USEPA as the initial recipient, not the state; (2) use "approved" e-reporting program/tool; (3) register and obtain a user account; (4) obtain a valid electronic signature. As AGC pointed out in its comments on the proposed version of

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[43] *See supra* note 6 and accompanying text.

[44] Some policy experts argue that the large number of statutes on information management has led to a fracturing of responsibilities for these issues (Clinger Cohen Act – established Chief Information Officers; the Government Paperwork Elimination Act made agencies move information collections online and allowed recordkeeping to be online; the E-government Act created a new office in OMB to oversee information technology issues).

[45] Prior OMB guidance may have made agencies too lax in considering how their online dissemination of information impacts the regulated community. In 2010, then OMB Administrator Cass R. Sunstein issued a memo to agencies that relaxes agency obligations to seek White House approval for certain web-based technologies. Cass R. Sunstein, "Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies: Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act," Office of Management and Budget, Executive Office of the President, April 7, 2010 (stating that voluntary social media and other web-based forums – for example, blogs, wikis, or message boards – will not be considered information collections under the PRA).

[46] https://www.federalregister.gov/documents/2015/10/22/2015-24954/national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule.

NPDES e-Reporting Rule, EPA's PRA estimates on the time/cost associated with doing all of this was (and still is, per the final rule) way low.[47]

Although not codified in federal regulation, the preamble to the final rule states: "[s]eparate from this rulemaking, EPA intends to make this more complete set of data available electronically to the public, to promote transparency and accountability by providing communities and citizens with easily accessible information on facility and government performance." Indeed, as EPA shifts its NPDES program from paper to electronic reporting, a lot more construction site-specific data will be readily shared with – and searchable by – the public via EPA's Enforcement and Compliance History Online or ECHO database.

EPA incorporated the NDPES e-Reporting requirements into its 2017 CGP and now requires construction site operators to use its new NeT-CGP online tool to file.[48] AGC has concerns about the public posting of CGP NOIs and more construction inspection and enforcement data via EPA's ECHO website.

With the advent of online posting of company's compliance data, businesses must exercise more caution in providing electronic information to the government, then perhaps when providing it in paper format. Because commercial contractors build critical infrastructure, and increasingly must operate in competitive markets, some of the information the companies provide is highly sensitive – from a security perspective, a commercial one, or both. For example, details about the location, design, and operation of facilities and their importance to the utility networks can provide a roadmap to individuals or groups that might want to interfere with or compromise operation of those facilities. Similarly, information about facility finances, staffing, fuel use, and efficiency can disadvantage the facility in competing with other facilities in competitive markets and in securing economical fuel supply. For this reason, the industry is particularly sensitive to the need for adequate protection of confidential and sensitive information. While electronic collection of information generally reduces burden, it also raises potential issues with information security and business pursuit and procurement.

AGC submitted two rounds of comments,[49] held face-to-face meetings with EPA staff, organized a member webinar, and will continue to take extensive steps to ensure that the agency understands the construction industry's concerns regarding the misinterpretation or misuse of such information. Databases are easy to setup but expensive to maintain.

VI. CONCLUSION

AGC shares this committee's goals of reducing current paperwork burdens on small businesses, increasing the practical utility of information collected by the Federal Government, ensuring accurate burden estimates, and preventing unintended adverse consequences. Thank you again for this opportunity to testify on behalf of AGC.

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[47] AGC's extensive comments on this rulemaking are online at www.regulations.gov - Docket ID: EPA–HQ–OECA–2009–0274. The ICR document prepared by EPA for this rulemaking has this agency tracking number 2468.01 - https://www.reginfo.gov/public/do/PRASearch.

[48] https://www.epa.gov/npdes/stormwater-discharges-construction-activities.

[49] *Id.*

Statement of Frank Cania

Founder & President

driven HR—A USA Payroll Company

Pittsford, New York

On Behalf of the

Society for Human Resource Management

Submitted to the

U.S. House Small Business Committee

Hearing on

Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?

Wednesday, March 29, 2017

Introduction

Chairman Chabot, Ranking Member Velázquez, thank you for the opportunity to provide my assessment of the Paperwork Reduction Act's (PRA's) effectiveness in reducing the paperwork burden on small businesses, as well as encourage all federal agencies to "beta" test all new form requirements. I am Frank Cania, founder and president of driven HR, a Pittsford, New York-based human resource (HR) consulting firm. I have more than 30 years of combined experience in human resource administration, management, employment law, and teaching. In addition, I am proud to have carried on my family's rich history of small-business ownership dating back more than three generations.

My human resource consulting firm, driven HR, provides a variety of human resource-related services to small businesses, primarily in New York state. The services we offer relevant to this hearing include human resource risk assessments (e.g., HR audits); United States Citizenship and Immigration Services (USCIS) Form I-9 (I-9) preparation, reviews, and compliance; Occupational Safety and Health Administration (OSHA) compliance and reporting; Equal Employment Opportunity EEO-1 Report preparation; Internal Revenue Service (IRS) Form 1095-B (Health Coverage) and Form 1095-C (Employer-Provided Health Insurance Offer and Coverage) preparation; Family and Medical Leave Act (FMLA) leave eligibility determination, compliance, and tracking; Americans with Disabilities Act (ADA) compliance; as well as a number of other compliance-related activities. I appear before you today on behalf of the Society for Human Resource Management (SHRM), where I have been an active member for 20 years and currently serve on SHRM's Advocacy Team and Labor Relations Special Expertise Panel.

SHRM is the world's largest HR professional society. For nearly seven decades, the Society has been the leading provider of resources to, and dedicated to serving the needs of, HR professionals, in support of our goal of continuously advancing both the HR professional and the human resource profession. Currently, SHRM represents 285,000 members who are affiliated with more than 575 chapters in the United States, along with subsidiary offices in China, India, and United Arab Emirates.

In the interest of time and mindful that there are hundreds of forms under the PRA we can discuss, my testimony will address the challenges associated with IRS forms 1095-B and 1095-C preparation, USCIS Form I-9 preparation, conflicting and overlapping federal and state regulations, and the benefits of gaining stakeholder involvement through comments to proposed regulations, roundtables and other types of engagement.

Ambiguity Involving Tax Form 1095

The Affordable Care Act (ACA) includes both an individual mandate and the employer mandate for health care coverage. The employer mandate requires employers with 50 or more full-time, and/or full-time equivalent employees, to offer health care coverage to their full-time employees working more than 30 hours a week—as

it is defined in the Act—or face a fine. To avoid IRS finds, employers must provide their employees with either Form 1095-B or 1095-C, depending on the number of employees an employer has and whether employers offer self-funded health coverage. Form 1095-B is provided by self-insured employers with fewer than 50 employees. Form 1095-C is provided by applicable large employers (ALEs) with 50 or more employees.

One of the challenges for ALEs in the completion of Form 1095-C is the requirement that 95 percent of full-time employees, and full-time equivalents working an average of 130 hours or more per month, be offered qualifying health coverage. More times than not, small businesses fail to understand that the percentage is not arrived at through an annual average. The requirement is for 95 percent of these employees to be covered each month. One client did not understand that he was required to report "employee offer of health coverage" on a month-to-month basis. He also failed to properly identify and code the months prior to an employee's date of hire and the months following an employee's date of termination. In order to avoid federal government penalties for incorrect forms, we worked with the client to correct and reissue the forms.

In another example, a client who relied on its payroll service provider to produce its 1095-C forms had converted to a self-funded health insurance plan at the beginning of the year. The client did not understand that it was required to include not only employee coverage but also employee dependent coverage on the 1095-C form. In the first year of the self-funded plan, the employer supplied the payroll service provider with the updated insurance rates, as well as employee enrollments and waivers. However, the employer failed to provide the required information regarding employee dependents. As a result, the 1095-C forms initially produced by the payroll service provider did not contain any of the required dependent coverage information. This mistake was only uncovered when some of the 30 affected employees questioned the employer about why their dependents were not listed on their 1095-C forms.

Although on its face the issuance of corrected forms does not sound burdensome, the costs add up quickly. The clients referenced above each paid an initial set-up of $250, a service fee of $600 annually for the secure maintenance of their employee information, and $5 per 1095-C produced. Not including administrative costs, an ALE with 50 employees using this service will pay a minimum of $1,100 to produce the annual returns for all 50 employees. While these costs may seem insignificant to some, small employers often have small operating margins, making $1,100 a significant expense for many small businesses.

One point many small-business employers find especially maddening is that, although they are required to issue 1095 forms to their employees, the employees are not required to attach a copy of the 1095 to their individual tax return, whether they are filing paper returns or electronically. For example, an employee working for one company with health care coverage for the entire year can simply check a box on his or her income tax return indicating that he or she maintained coverage all year. Similarly, if an employee

changed jobs during the year, but maintained coverage both under their former and new employers without a gap, he or she can also check a box on the income tax return indicating that he or she maintained coverage all year. This prompts the questions of if these forms are really necessary and what new information do the forms provide that the employee and IRS do not already have? It appears that the 1095 form does little more than increase both the paperwork burden and potential liability of small businesses, without any resulting benefit.

Challenges Associated with the USCIS Form I-9

Employers are required to properly complete and maintain a USCIS Form I-9 for every worker they employ. SHRM represents many of the people who complete the employment verification process at workplaces across all industries and sizes. Employers, including SHRM members, need the best possible tools to verify that their employees are authorized to work in the United States.

Employers who act in good faith to properly verify their workforce should not be subject to unwarranted liability, yet the current Form I-9 restricts an employer's ability to provide commonsense guidance to employees while still acting in good faith. The I-9 instructions clearly state, "Employers CANNOT specify which document(s) the employee may present to establish employment authorization and identity." Based on my many years of experience, and through discussions with several attorneys specializing in employment and immigration matters, this statement is broadly interpreted to mean not only that employers CANNOT require employees to provide certain documents, but that employers CANNOT even suggest or explain which documents are most commonly presented. As part of their onboarding process, however, many small employers provide new hires with a checklist of items and documents necessary on the first day of work. Very often, these checklists suggest that the employee bring documents such as a passport, or a driver's license and Social Security card or birth certificate—all acceptable documents for completing the Form I-9. Although most employees appreciate this information, the I-9 instructions prohibit an employer from providing this information, and doing so could lead to penalties for the employer. Even in instances where an employee asks which document(s) he or she should provide, or which are most commonly provided, the employer is best advised to reiterate that the employee should review the "Lists of Acceptable Documents" and provide one document from List A (documents that establish both identity and employment authorization) OR one document from List B (documents that establish identity) and one document from List C (documents that authorize employment).

The I-9 verification process becomes exponentially more complicated if the employee is not a citizen, national, or lawful permanent resident of the U.S. According to the instructions, if the employee selects the "alien authorized to work" status, he or she is required to provide an alien registration number/USCIS number OR Form I-94 admission number OR foreign passport number and country of origin, as well as the date his or her work authorization

expires, unless it doesn't expire. The instructions go on to explain, "Refugees, asylees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau, and other aliens whose employment authorization does not have an expiration date should enter N/A in the Expiration Date field. In some cases, such as if you have Temporary Protected Status, your employment authorization may have been automatically extended; in these cases, you should enter the expiration date of the automatic extension in this space." Despite the potential confusion this section of the I-9 creates, employers are not allowed to verify any of the information by asking to see the documents. The instructions inform the employee that, "Your employer may not ask you to present the document from which you supplied this information."

To further complicate matters where the employee is an alien authorized to work in the U.S., the employer is required to track the expiration date(s) of the employee's work authorization—both the date the employee entered in Section 1, as well as the expiration date of the document provided by the employee from either List A or List C of the "List of Acceptable Documents" as further proof of work authorization in Section 2. The employer is also urged to remind the employee of the approaching expiration date and his or her need to provide additional documentation for reverification of his or her work authorization, at least 90 days prior to the expiration date. However, according to the USCIS, "The employment authorization expiration date provided by your employee in Section 1 may not match the document expiration date recorded by you under List or List C in Section 2. The earlier date should be used to determine when reverification is necessary."[1] This requirement presents a dangerous trap. An employer tracking the wrong date may be accused of failing to complete a timely reverification, which is all but certain to be construed as knowingly continuing the employment of an alien who lacks authorization to work. Such a finding often leads to costly fines that I will describe shortly.

Small businesses with diverse geographic footprints can also face significant difficulties when attempting to properly complete I-9 forms and, more specifically, when attempting to verify the authenticity of the documents provided by the employee during the completion of Section 2. Here the instructions clearly state, "the employer or authorized representative must physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the 'Lists of Acceptable Documents' to complete the Documents fields in Section 2." There is often a difficult balance between following this requirement and risking potential errors for companies that have multiple shifts, multiple locations, remote employees, etc., since several different employer representatives must be trained to examine those documents.

Take for example, compliance challenges faced by one of my clients who owns a chain of 24/7 business locations. My client has attempted several methods to comply, including training multiple employees at each location on how to complete Section 2 and re-

[1] U.S. Citizenship and Immigration Services. (2016, February 25). Completing section 3, reverification and rehires. Retrieved from *https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-section-3-reverifcation-and-hires*

quiring a trained manager to be present whenever a new employee starts work. Employees trained to correctly complete Section 2 were paid a bonus for each form submitted with no errors. Yet most were submitted with information missing or some other error. Requiring managers to travel to the various locations to complete the I-9 forms in the required timeframe took them away from other important responsibilities and ultimately was cost-prohibitive.

Another client has a workforce primarily composed of remote, home-based employees in several states. With no business need to bring any of these employees to the main office at any point, the only reasonable solution is to attempt to identify someone located near the employee's home who is willing to act as an authorized representative—preferably someone with at least a basic understanding of how to properly complete Section 2.

I have personally spent more than 25 hours over a 15-month period contacting HR consultants, attorneys, and other professionals in various locations on the client's behalf. Most of the people I've contacted have refused to even entertain the idea of serving as an authorized representative, with many completely unaware of the "physical presence" requirement and questioning why I would go to such trouble for one form.

As small businesses contend with these compliance challenges, they need to be mindful of the detrimental impact that honest mistakes may have on their bottom line. Although most small-business employers make a good-faith effort to properly complete the I-9 form, and few are unlawfully employing undocumented immigrants, they still face potentially catastrophic fines when paperwork errors are made. For instance, it is easy for newly hired employees and their employers to be confused by, or misinterpret, the information on the Form I-9 and/or its accompanying 15 pages of instructions, plus the 69-page M-274 guidance handbook that is intended to, among other things, provide detailed instructions and examples for both the common and more complex situations and documents an employer may encounter when completing the I-9 form, verifying an individual's identity and employment eligibility, and reverifying employment eligibility.

In my experience, the average error rate on I-9 forms by small-business employers exceeds 75 percent. That means three out of every four I-9 forms my company has reviewed contain at least one error. Depending on the circumstances, and based on the most recent fine schedule for Technical/Substantive errors, the penalty for even a single mistake on the Form I-9 ranges from $216 to $2,126 per form. Penalties are normally assessed based on the percentage of I-9s with Technical/Substantive errors, including the failure to prepare an I-9 for an employee. For example, consider an employer presenting 100 I-9 forms for audit. With a relatively low error rate of 9 percent, the minimum fine likely to be assessed adds up to $1,944 (9 x $216); with an error rate of 50 percent, penalties may total $106,300 (50 x $2,126); and an error rate of 75 percent would result in fines of $159,450 (75 x $2,126) or more. It's also important to note that employers making a good-faith effort to correct errors on their I-9 forms—but failing to follow the prescribed method for

doing so—face additional fines. Similarly, employers who don't follow the prescribed retention schedule, "either 3 years after the date of hire (i.e., first day of work for pay) or 1 year after the date employment ended, whichever is later," also face additional fines. It is counter-productive that a business making a good-faith effort to complete a two-page form should face such catastrophic repercussions.

Small businesses that contract with the federal government, and those in states that require the use of E-Verify, face another level of complexity regarding the I-9. The federal government uses E-Verify to enhance enforcement of federal immigration law and makes its use mandatory for federal contractors through the required Federal Acquisition Regulation (FAR) E-Verify clause. E-Verify allows employers to electronically verify the employment eligibility of their newly hired employees. Small businesses sometimes mistakenly view E-Verify as a safe harbor against worksite enforcement. The fact is, employers using the E-Verify system have the same requirements for properly completing, maintaining, and retaining paper I-9 forms for all employees as do nonusers. Employers who erroneously believe they have satisfied the I-9's requirements once an employees eligibility to work has been confirmed by E-Verify may face significant liability.

The current Paperwork Reduction Act estimate for completing the Form I-9, as reported on the last page of instructions, is 35 minutes to complete the form manually or 26 minutes when using a computer to aid in the completion of the form, despite that using the computer lengthens the forms' instructions and data collection fields. The 35-minute estimate is unchanged from the previous version. The 26-minute estimate is new and based on the use of an electronically fillable form that USCIS provided for the first time. Nonetheless, the instructions for both types of the I-9 form are 15 pages long (compared to the six pages of instructions for the previous version). By more than doubling the instructions, it is logical to conclude that it will take both the employee and employer more than twice as long to read and understand the instructions and complete the form manually. Therefore, at a minimum, the estimate for completing the I-9 form should be increased proportionately due to any increased length of the form or its instructions.

The Burden Continues for Small Business

Although I've limited my testimony today to the IRS Forms 1095-B and 1095-C, and USCIS Form I-9, there are countless other federal and state paperwork requirements that burden small businesses. In my home state of New York, when most small business employers hire a new employee, the necessary forms necessary for completion include, but are not limited to the I-9, the New Health Insurance Marketplace Coverage Options and Your Health Coverage (ACA Model Notice), IRS Form W-4, Employee Withholding Allowance Certificate (federal income tax), New York State Department of Taxation IT-2104 Employee's Withholding Allowance Certificate (NY income tax), and New York State Notice and Acknowledgement of Pay Rate and Payday Under Section 195.1 of the New York State Labor Law (LS-54, LS-55, LS-56, LS-57, LS-58, or LS-

59 depending on the type of employee). These are in addition to the various health insurance and other benefits applications and/or waiver forms that must be completed at the time of hire.

Other paperwork requirements include Occupational Safety and Health Administration (OSHA) Forms 300, 300A, and 301 regarding workplace illnesses and injuries; and Family and Medical Leave Act (FMLA) forms WH-380E, WH-380F, WH-381, WH-382, WH-384, WH-385, and WH-385V, and additional forms that will be required in implementing the recently announced New York Paid Family Leave law, which covers all New York employers regardless of size.

From the perspective of a small business, there seem to be a new federal or state form or paperwork requirements each month, often with corresponding fines and penalties for paperwork violations, even honest mistakes. While the growing paperwork requirements of employers is difficult for virtually all businesses to manage, the burden falls especially hard on small businesses. Large employers often have staffs of accountants, attorneys, and other trained professionals dedicated to complying with government paperwork and reporting requirements. Small businesses, on the other hand, particularly those of 15 or less employees simply cannot afford to do that. Thus, the burden falls on either the owner or, if they have one, the HR manager to spend hours outside of the normal workday to do paperwork. And when it comes to HR, that's in addition to their normal duties of finding and hiring new employees, administering benefits and payroll, general employee relations and discipline, and being responsive to the needs of their organization's management, as well as employees. These are the people that need your help reducing the paperwork burdens we're here to discuss today.

User Input Prior to Implementation

In today's economy, employers of all sizes utilize field, or "beta," testing for new software, technology, and products and services before making them available to the public. This is most often done to ensure a successful user interface. As a small-business employer and consultant, I see the obstacles that employers, especially small employers, face when attempting to comply with government regulations. Federal agencies creating the forms and processes I've discussed today, as well as literally thousands more, often overlook the user experience as they seek to set standards and processes for data collection. In my experience, seeing only one side of any issue rarely, if ever, results in the most effective or efficient solutions. For example, when someone on my team creates a new form and/or process for a client, he or she never does so in a vacuum. Once we've completed our internal work, we ask the client to test and comment on what we've developed. Without exception, this extra step has increased our ability to better meet the reporting and data-gathering needs of our clients.

Often the federal agency comments process is not enough—employers need an opportunity to test the forms and data collection tools in the real world. For this reason, the federal government

should look to partner with organizations like SHRM to field test paperwork requirements before they are imposed on the employer community. I'm sure I can speak on behalf of SHRM, and many of its 285,000 members, when I say that HR professionals have the expertise to understand not only the time it will take to complete a certain form but also to identify whether a new or revised form is redundant and show where common mistakes are likely to occur. Making the effort to field test new paperwork requirements would increase clarity and compliance while reducing the potential for unnecessary employer liability. Those are things SHRM and the HR community as a whole would fully support.

Conclusion

Mr. Chairman, small-business employers often fall into the "they don't know what they don't know" category. There are no required classes for small businesses on all the forms and requirements of the federal and state governments. Many of my driven HR clients started and continue operating today because someone had an entrepreneurial spirit and an idea. Further, although none are experts in, or sometimes even familiar with the full panoply of employment laws and regulations, they have always made a good-faith effort to be in compliance. As I sit here today, I can think of several clients who were only one regulatory agency audit away from significant hardship or ruin before we started working with them. I say that not to pat myself on the back, but to show that, for far too many small businesses, and far too many well-intentioned and hard-working small-business owners, government forms and data collection may unnecessarily pose their biggest threat to continued success and prosperity.

SHRM and its members will continue to work with the federal government to provide outreach and educational efforts to the employer community on these important issues. Thank you for your time. I appreciate the opportunity to share my perspective with you today and would be happy to answer any questions.

Testimony of Sally Katzen

Professor of Practice and Distinguished Scholar in Residence, NYU School of Law and Senior Advisor, Podesta Group

before the House Committee on Small Business

on March 29, 2017

on "Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced"

Good morning, Chairman Chabot, Ranking Member Velazquez and Members of the Committee. Thank you for inviting me to testify today on "Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?" As you know, I served as the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) from 1993-1998 and was therefore very involved in the discussions that led to the 1995 Reauthorization of the Act. I also was responsible for implementing the Act (before and after the 1995 revisions) during my tenure as Administrator and as the Deputy Director of Management of OMB from 2000 to January 2001.

This Committee has played an important role in protecting and promoting the interests of America's small businesses, which are one of the important drivers of our nation's economy. For decades now, the small business community has listed the burden of federal regulations, including specifically paperwork, as one of its most pressing concerns. This concern is deeply felt (as you are hearing again today) and understandable, if for no other reason than small businesses have fewer (sometimes appreciably fewer) resources and institutional capacity than larger companies to acquire, understand, complete and process the paperwork required by the Federal government (as well as that required by State and local governments).

The disparate impact of paperwork requirements on small businesses was foremost in our minds during the 1995 reauthorization of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, *et seq.;* indeed, the first subject identified in the purposes of the Act was to "minimize the paperwork burden for ... small businesses ...". (PRA § 3501(1)). The work we did then was later reinforced by amendments to the PRA, advanced by this Committee, which were enacted into law as the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3520, *et seq.*

It is therefore most appropriate to ask, as you do in this hearing's title: "Are burdens being reduced?" Regrettably, the answer to this straightforward question is not as simple as it may seem and the reasons for that are more complicated than they might initially appear.

When you look at the gross numbers, there is, in fact, a huge paperwork burden, which as continued to increase, rather than decrease, over the years. The amount of time (and other resources) spent filling out forms or responding to information collection re-

quests (ICRs) by the federal government is now roughly 9.8 billion hours annually. (*See* Office of Management and Budget, *Information Collection Budge for 2016,* available at *http://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/icb/icb_2016.pdf*) But over 70% of the total is attributable to one agency—the Internal Revenue Service. That figure is a function both of the large number of people who file a Form 1040 (or the streamlined version 1040EZ), as they should, and also the complexity of the Internal Revenue Code; that complexity, in turn, is a product of decisions by the Congress—not the agency—that there should be a myriad of deductions, allowances, exceptions, credits, etc. Taxpayers could, I suppose, just put down the amount by which they wish to reduce their own taxes, but some calculations, documentation, or other basis for the claims is generally thought to be appropriate to justify the offsets. Most businesses that choose to take advantage of the provisions for accelerated depreciation, oil and gas depletion allowances, foreign tax credits, or real estate losses, to name a few examples, would not do so unless the tax benefits they derive from filling out those forms and supplying the required documentation were greater (often appreciably greater) than the cost of making such claims.

More importantly, references to total burden hours (and their increases (or decreases were that to occur)) obscure the fact that there are different types of "paperwork" with very different effects and consequences for small businesses. Filling out a tax return means having to pay taxes (or getting a refund). But another type of paperwork is the so-called "third-party disclosures," such as signs that say "Hard Hat Required" or "Caution: Dangerous/Toxic Substances Present," or labels on foods providing nutritional information or those on medicines providing content, dosage, and counter-indicator information. While a small business is often unable to hire the army of accountants and lawyers retained by a larger corporation to prepare its taxes, it is not self evident that it should be exempt from complying with straight-forward requirements for posting, or otherwise providing, health or safety warnings for their employees or customers.

Another type of paperwork that should be considered on its own merits, rather than being swept up in the gross numbers, is paperwork designed to establish eligibility for, or compliance with statutory provisions establishing, various benefit programs. Consider, for example, applications for small business loans, student loans, veterans' benefits, social security or disability payments, farm subsidies, or permits for designated uses of our national parks. Obviously these forms should be as streamlined and simplified as possible, so that the burden on the applicant (including a small business) is reduced to a minimum. At the same time, however, there is a legitimate interest in ensuring that the program authorized by Congress (and using Federal funds) is run consistently with the underlying statutory requirements. The shorthand for this is "accountability," which both sides of the aisle agree is essential for good government. Paperwork in this context serves to help ensure that only those eligible for a loan, grant, payment, or permit are approved and that the agencies have sufficient information to com-

petently evaluate whether or not their programs are achieving their objectives.

That leads to yet another distinct category of paperwork—namely, requests for information that enables the government to make informed and rational decisions in the first place. Data based decision-making is clearly preferable to conjecture or speculation, and in many instances the requisite data are dispersed among individuals, businesses, and/or state and local governments. Regulatory agencies should be making decisions based on the best scientific, technical or economic information available; otherwise the rules they impose on regulated entities (including small businesses) may be less efficient or effective ways of achieving their regulatory goals. Another set of information collections that guide Federal government decision-making involves the various statistical agencies, such as the Census Bureau at the Department of Commerce, the Bureau of Labor Statistics at the Department of Labor, the Bureau of Economic Analysis at the Department of Commerce, the Energy Information Administration at the Department of Energy, the Bureau of Transportation Statistics at the Department of Transportation, and the National Agriculture Statistical Service at the Department of Agriculture, to name some of the more well known statistical agencies. Much of the data they collect is not only used and useful for government decision-making, but is also (once stripped of personal identifiers) often disseminated to the public, where it is used by those in the business community (including small businesses) or in the academy in considering or analyzing such subjects as marketing strategies or investment decisions.

One other thought that is relevant when considering paperwork burden reduction is that, in some circumstances, providing information may actually be less burdensome than the alternative. This is classic First Amendment theory of the "least restrictive alternative," which is, I believe, an appropriate framework in this context as well. Consider, for example, the warning labels on cigarette packages. It is not better (in terms of burden and intrusiveness) to require information than to restrict the sale or ban the product altogether? Another example is that EPA has found that the reporting of emissions of certain toxic chemicals has the effect of reducing the commercial use of those products; when the reports are released, some (not all) companies choose to reduce their use of the covered products, either because they want to be responsible corporate citizens or because of pressure from neighbors affected by the releases. Whatever the reasons, the effect has been a substantial decrease in the use of some of these products, even though they were not subject to traditional regulation.

I have gone into detail about some of the origins and objectives of different types of paperwork because, understandably, the small business community often does not make these distinctions. The Final Report of the Small Business Paperwork Relief Task Force, called for in the 2002 amendments to the PRA, recognized, albeit briefly, the force and effect of some of these distinctions. SMALL BUS. ADMIN. FINAL REPORT OF THE SMALL BUSINESS PAPERWORK RELIEF TASKFORCE (2003)(hereinafter "SBPRTF REPORT"). For example, the Report notes "several barriers to burden reduction":

• Information Needs. "Federal agencies have specific statutory and programmatic responsibilities and require information to fulfill those responsibilities. Paperwork can only be reduced in ways that will not negatively impact the effectiveness of the laws and regulations for which the agency is accountable"

• Expanded Responsibilities. The need for information increases as new Federal programs are created, existing programs are expanded, additional health, safety or environmental protection laws are enacted, and the tax law becomes more complex." SBPRTF REPORT, at 17.

This statement not only reflects an appreciation for the various components of the total paperwork burden, but it also explicitly recognizes the role that Congress (as a whole) plays in adding to the burden and the limited ability of agencies (or of the PRA) to simply cut their paperwork requirements.

That said, there are ways to try to minimize the burden of paperwork on small businesses. The Report provides several recommendations, some of which have been undertaken or are in process that would be salutary. It is interesting that the Task Force does not unequivocally endorse (though it certainly does not dismiss) one of the ways agencies have tried over the last decade to reduce their paperwork burden—namely, by converting paperwork (as in pencil and paper) to electronic reporting. This effort is consistent not only with the PRA, but is also pursuant to the Government Paperwork Elimination Act of 1998. 44 U.S.C.A. § 3504, *et seq*. IT is worth noting, therefore, the portion of the SBPRTF Report that explains, in part, the reluctance of small businesses to move into the electronic environment, noting that

> "the expenses associated with automation are often beyond their reach. Small businesses often do not have the training to quickly grasp new software applications, nor the staff to assign to the task." SBPRTF REPORT, at 32.

To be sure, this finding was made in 2003, and we have all come a long way since then; even many of my generation who did not immediately embrace the advances in technology when they first came on the scene are now proficient users of electronic devices. For this reason, I believe that continued emphasis on electronic reporting is important in trying to constrain, if not reduce, paperwork burdens for small businesses.

Another portion of the Report worth noting is its analysis of the potential for reducing burden through synchronizing or consolidating reporting requirements across agencies and even across federal, state, and local governments. Here too, the possibilities, which I have often championed, are tempered by other factors, including the following:

> [S]ynchronizing reporting frequency ... seems to have the least potential for burden reduction because not all information that businesses are required to report is submitted to the Federal government on a regular basis ... [but rather] only at the time of an event, such as admission of a patient to a nursing home, or a chemical spill.

> Seemingly duplicative information collections may not be appropriate for consolidation due to the nature or utility of the data collected. For example, definitions across similar data collections may not be harmonized due to differences across industries or underlying statutes. Consolidation ... may lead to confusion rather than simplification.
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> Further, for many reporting requirements, the reporting frequency [content and timing] is mandated in statute ... [and thus] would require legislative ... action. SBPRTF REPORT, at 18.

The Report is also on point in recognizing another potential problem with consolidating information from private individuals or firms in a single database or even isolated instances of sharing of information among agencies. *See, e.g.,* SBPRTF REPORT, at 19. If this were proposed, it is almost certain that the relief from submitting information repetitively would be replaced by concerns about confidentiality and/or privacy. These are highly charged issues that we have made little progress in resolving; fears of hacking and identity theft are even more pronounced now in some quarters than the fear of "Big Brother."

One final point from the Report that I think is critically important is the extent to which burden reduction requires sustained funding. *See, e.g.,* SBPRTF REPORT, at 26. That was true in 2003 and is even more critical now, after many years of straight lined or decreased funding for many of the agencies in the Executive Branch. An agency simply cannot wish away paperwork burden; it takes staff time and resources, both of which are in very short supply in most agencies, which have been told for a number of years now to do more for less. If we are serious about doing something about the paperwork burden, the agencies must be provided adequate resources to accomplish the task.

Lastly, although I may be biased because of my previous position at OIRA, I firmly believe that even if the paperwork burden is not being reduced, we should recognize that the PRA (and OIRA's implementation of the PRA) have been an important tool in restraining the Federal government's appetite for data. While there has been no empirical study of the effect of the PRA—there being no counterfactual baseline to compare it with—I submit that it has had a salutary effect. By its terms, the PRA requires agencies to provide notice to the public and an opportunity for them to comment on the ICR when it is in draft form. (PRA, § 3206(c)(2)) Those being asked for information or those expecting to use the information can and should suggest ways of simplifying, streamlining, or otherwise reducing the burden of the proposed form. The agency is required to consider the comments submitted (PRA, § 3206(d)(2)(A)), and only after the agency has either accepted or rejected the comments (in the case of rejection, the agency has to explain why (PRA, § 3206(d)(2)(B))), is the ICR sent to OIRA, which again provides public notice (PRA, § 3206(b)) and undertakes its own independent (and dispassionate) review of the ICR.

I am aware of anecdotal information from my tenure at OIRA (that has continued to this day) to the effect that some program of-

fices in various agencies do not propose new ICRs, unless they are statutorily mandated, because those who favor gathering the information believe that the process is so time consuming and labor intensive, and the difficulty of negotiating with OIRA is so exhausting, that it is not worth their effort. For these reasons, I am confident that the PRA is working to lessen the paperwork burden on all segments of the American public—individuals, small businesses, state, and local governmental offices, non-government organizations, etc.

I recognize that paperwork is burdensome and that the burden poses a greater challenge to smaller firms than to large and even mid-sized companies. There are steps that can be taken to make a difference at the margin, but there is no magic bullet that would dramatically change the numbers. For this reason, I believe it is important and valuable to emphasize burden reduction, but I would urge you to do so in a thoughtful way that takes account of the many complications and complexities that exits.

Thank you again for inviting me to testify, and I would be happy to try to answer any questions you may have.

Statement of the National Automobile Dealers Association
before the House Small Business Committee
for a hearing entitled
"Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?"
March 29, 2016

Chairman Chabot and Ranking Member Velazquez, thank you for the opportunity to submit written comments on behalf of the National Automobile Dealers Association (NADA) for the hearing record. NADA is a national trade association that represents more than 16,000 franchised new car and commercial truck dealerships engaged in the retail sale and lease of new and used motor vehicles, and in automotive service, repairs and parts sales. In 2016, America's franchised dealers collectively employed more than 1.1 million people and sold or leased some 17.84 million new and 14.65

used light-, medium-, and heavy-duty vehicles. NADA members operate in every congressional district in the country, yet 40 percent sell fewer than 300 new vehicles per year and the majority are small businesses as defined by the Small Business Administration (SBA).

NADA welcomes the opportunity to comment on the committee's evaluation of the Paperwork Reduction Act (PRA). The purposes of the PRA are several, including to:

> minimize the paperwork burdens for individuals, small businesses....Federal contractors....and other persons resulting from the collection of information by or for the Federal Government; and
>
> ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the federal Government.[1]

The PRA is designed to ensure that the Federal government does not saddle small businesses with unnecessary or inappropriate data collection or paperwork mandates. NADA wishes to highlight for the Committee several instances where the PRA's important constraints on government data collection were ignored, resulting in significant paperwork burdens on small business without little or no required benefit for the public.

In 2014, the Occupational Health and Safety Administration (OSHA) announced a new injury and illness recordkeeping rule that had the effect of imposing unnecessary and burdensome compliance obligations on previously-exempt small businesses.[2] Specifically, the new rule dramatically increased the number of industries and employers required to keep OSHA's recordkeeping forms, despite declining injury and illness rates across all private industry sectors and without any evidence suggesting that expanding the recordkeeping mandate would have a beneficial impact OSHA's laudable goal to increase worker health and safety. In fact, OSHA's own PRA analysis for the rule concluded that, despite the year over year declines in workplace injuries and illnesses, the number of establishments covered by the recordkeeping regulation would increase by 60,210 establishments, and the total hours all businesses would spend on this paperwork would rise from 2,967,236 per year, to 3,359,913 in the first year and 3,140,065 in subsequent years.[3]

Prior to the new rule, light-duty vehicle dealerships enjoyed a partial exemption from OSHA's injury and illness recordkeeping mandates due to their low (and continuously improving) injury and illness rates. The rule had the effect of imposing new and significant recordkeeping costs and burdens on light-duty dealerships without any increase4d workplace health and safety benefits. In fact, light-duty dealership injury and illness rates have declined at the same rate since the rule took effect as before. Since most light-duty car dealerships are small businesses, the rule has caused

[1] 44 U.S.C. §§ 3501, et seq.
[2] 79 Fed. Reg. 56130, et seq. (September 18, 2014).
[3] 79 Fed. Reg. 56183, et seq. (September 29, 2016).

them to continue to shoulder a disproportionate share of the regulatory costs and burdens.[4] As the Committee knows, small businesses consistently rank government paperwork burdens as one of their major concerns [5].

Last year, the Equal Employment Opportunity Commission (EEOC) announced a complete overhaul of its EEO-1 reporting form, resulting in a significantly more complex and burdensome mandate. Whereas the old EEO-1 form contained 121 data points, the new form consists of 3,360 data points. The most significant and burdensome change to the EEO-1 form is that it now seeks to collect summary pay data and aggregate hours-worked information that employers were never required to report in the past. Since all employers with 100 or more employees are covered by the annual EEO-1 mandate, it will impact most small business dealerships.[6]

Ironically, changes to the EEO-1 form were made through a PRA information collection process rather than through notice and comment rulemaking. The new EEO-1 mandate arguably violates two key PRA goals by imposing complex and costly paperwork and reporting burdens on small business with little or no utility public benefits in return.

Mr. Chairman, America's franchised dealers commend the Committee for holding an oversight hearing on the Paperwork Reduction Act, a law critical to the vitality of small businesses.

[4] See, Crain and Crain, The Impact of Regulatory Costs on Small Firms, SBA Office of Advocacy, (2010).

[5] NFIB, Small Business Problems and Priorities, (2008).

[6] Light-duty dealerships have a 200-employee SBA small business size standard and commercial truck dealerships have an SBA standard of 250 employees.