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PAPERWORK INFLATION—THE GROWING BURDEN ON AMERICA

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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CONTENTS

Page

Hearing held on April 11, 2002 1

Statement of:

Graham, John D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Charles O. Rossotti, Commissioner, Internal Revenue Service; and Vic Rezendes, Managing Director, Strategic Issues, U.S. General Accounting Office 11

Shipman, Thomas Hunt, Deputy Under Secretary, Farm and Foreign Agricultural Services, U.S. Department of Agriculture; and Scott Cameron, Deputy Assistant Secretary for Performance and Management, U.S. Department of the Interior 95

Wordsworth, James M., president, J.R.'S Goodtimes, Inc.; and Kenneth A. Buback, vice president, human resources, Sutter Health 140

Letters, statements, etc., submitted for the record by:

Buback, Kenneth A., vice president, human resources, Sutter Health, prepared statement of 159

Cameron, Scott, Deputy Assistant Secretary for Performance and Management, U.S. Department of the Interior:

Form 7–21 Verify 130

Information concerning RRA forms 136

Prepared statement of 109

Graham, John D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget:

Followup questions and responses 79, 93

Prepared statement of 14

Ose, Hon. Doug, a Representative in Congress from the State of California, prepared statement of 4

Rezendes, Vic, Managing Director, Strategic Issues, U.S. General Accounting Office, prepared statement of 58

Rossotti, Charles O., Commissioner, Internal Revenue Service, prepared statement of 37

Shipman, Thomas Hunt, Deputy Under Secretary, Farm and Foreign Agricultural Services, U.S. Department of Agriculture:

Followup question and response..... 128, 138

Prepared statement of 98

Tierney, Hon. John F., a Representative in Congress from the State of Massachusetts, prepared statement of 178

Wordsworth, James M., president, J.R.'S Goodtimes, Inc., prepared statement of 143

PAPERWORK INFLATION—THE GROWING BURDEN ON AMERICA

THURSDAY, APRIL 11, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 2247, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Otter and Duncan.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Allison Freeman, clerk; Melica Johnson, press fellow; Elizabeth Mundinger, minority counsel; Ellen Rayner, minority chief clerk; and Teresa Coufal, minority staff assistant.

Mr. OSE. Good morning.

Every year at tax time, this committee holds a hearing to assess progress since last year and plans for this year to reduce the paperwork burden on the American people. This week, as Americans prepare and file their tax returns, they will again experience, hopefully in a positive vein, firsthand, the kind of burdensome paperwork and red tape that the Government imposes.

In last month's regulatory accounting report, the Office of Management and Budget, OMB from now on, estimated the Federal paperwork burden at nearly 7.7 billion hours. The Internal Revenue Service, the IRS from now on, accounts for 83 percent of the total. Four additional agencies each levy over 140 million hours annually on the public, those agencies being the Department of Health and Human Services, including Medicare and Medicaid, the Department of Labor, Securities and Exchange Commission, the SEC, and the Environmental Protection Agency, the EPA.

OMB estimated that the price tag for all paperwork imposed on the public is $230 billion a year. Much of the information gathered in this paperwork is important, sometimes even crucial, for the Government to function. However, much is duplicative and unnecessarily burdensome.

In 1980, Congress passed the Paperwork Reduction Act and established an Office of Information and Regulatory Affairs [OIRA], within OMB. By law, OIRA's principal responsibility is paperwork reduction. It is responsible for guarding the public's interest in minimizing costly, time consuming, and intrusive paperwork burdens. In 1995, Congress passed amendments to the PRA, the Paperwork Reduction Act, and set government-wide paperwork reduc-

tion goals of 10 or 5 percent per year from fiscal year 1996 to 2001. After annual increases in paperwork instead of decreases, in 1998 Congress required OMB to identify specific expected reductions in fiscal years 1999 and 2000. OMB's resulting report proved unacceptable.

As a consequence, in 2000, Congress required OMB to evaluate major regulatory paperwork and to identify specific expected reductions in regulatory paperwork for fiscal years 2001 and 2002. Again, OMB's resulting report proved unacceptable. In response, in September, the subcommittee asked OMB to again review 15 non-IRS major rules, each imposing over 10 million hours of burden. The Paperwork Reduction Act limits the time period for OMB paperwork approvals. In fact, OMB is required to reexamine each of its paperwork approvals, including regulatory paperwork, at least every 3 years.

I look forward to OMB's status report today. The goal of the three 1995 to 2000 paperwork acts was to reduce red tape each year. However, paperwork burdens have increased and not decreased in each of the last 6 years. Today, the GAO will report that last year saw the largest 1 year increase in paperwork since the 1995 law was enacted. Curiously, in October, OMB reduced from 27 to 15 the number of agencies required to submit information collection budget submissions and to be subject to paperwork budget controls. For example, OMB deleted the Securities and Exchange Commission and the Federal Trade Commission, both of which levy substantial burden. Also, OMB stated, "in the interest of reducing the administrative burden [on the agencies], we have significantly reduced from previous years the amount of information we are requesting." I look forward to an explanation of why OMB is more concerned, apparently, with reducing administrative burden on the agencies rather than reducing paperwork burden on the American people.

Under the Paperwork Reduction Act, OMB is the watchdog for paperwork. However, the evidence points to OMB's continuing failure to focus on paperwork reduction. OMB has not pushed the IRS and other Federal agencies to cut existing paperwork. Traditionally, agencies continue to levy unauthorized paperwork burdens on the American people and continue not to resolve a great number of outstanding violations of law, including some in violation for multiple years. I look forward to the testimony about OMB's specific disclosures in paperwork reduction and its efforts to resolve each outstanding violation of law.

IRS also has a dismal record in paperwork reduction. Today, GAO will report large increases by IRS in paperwork which is not statutorily required, i.e., it is discretionary. IRS Commissioner Rossotti testified before this subcommittee in April 1999, in April 2000, and in 2001, promising more initiatives each year, especially for small business taxpayers. I hope to hear good news from Commissioner Rossotti today on this subject.

In sum, OMB and IRS are not doing an acceptable job in paperwork reduction. There is no excuse not to promptly correct all existing violations of law and to ensure accountability to Congress and the public. It is time for OMB to disclose its specific role in paperwork reduction, that is, what does OMB specifically do. Next year,

we expect OMB and IRS to evidence progress in paperwork reduction.

I want to welcome our witnesses today.

I am happy to recognize the gentleman from Idaho for an opening statement.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
Paperwork Inflation - The Growing Burden on America
April 11, 2002

Every year at tax time, the Subcommittee holds a hearing to assess progress since last year and plans for this year to reduce paperwork burden. This week, as Americans prepare and file their tax returns, they will again experience first hand the kind of burdensome paperwork and red tape which the government imposes.

In last month's regulatory accounting report, the Office of Management and Budget (OMB) estimated the Federal paperwork burden at nearly 7.7 billion hours. The Internal Revenue Service (IRS) accounts for 83 percent of the total. Four additional agencies each levy over 114 million paperwork hours annually on the public: the Department of Health and Human Services (including Medicare and Medicaid paperwork), the Department of Labor, the Securities and Exchange Commission (SEC), and the Environmental Protection Agency. OMB estimated that the price tag for all paperwork imposed on the public is $230 billion a year - a huge amount.

Much of the information that is gathered in this paperwork is important, sometimes even crucial for the government to function. However, much is duplicative and unnecessarily burdensome.

In 1980, Congress passed the Paperwork Reduction Act (PRA) and established an Office of Information and Regulatory Affairs (OIRA) in OMB. By law, OIRA's principal responsibility is paperwork reduction. It is responsible for guarding the public's interest in minimizing costly, time-consuming, and intrusive paperwork burden. In 1995, Congress passed amendments to the PRA and set government-wide paperwork reduction goals of 10 or 5 percent per year from Fiscal Year (FY) 1996 to 2001. After annual increases in paperwork, instead of decreases, in 1998, Congress required OMB to identify specific expected reductions in FYs 1999 and 2000. OMB's resulting report was unacceptable.

As a consequence, in 2000, Congress required OMB to evaluate major regulatory paperwork and identify specific expected reductions in regulatory paperwork in FYs 2001 and 2002. Again, OMB's resulting report was unacceptable. In response, in September, the Subcommittee asked OMB to again review 15 non-IRS major rules, each imposing over 10 million hours of burden. The PRA limits the time period for OMB paperwork approvals. In fact, OMB is required to reexamine each of its paperwork approvals - including regulatory paperwork - at least every three years. I look forward to OMB's status report today.

The goal of the three 1995 to 2000 paperwork acts was to reduce red tape each year. However, paperwork burdens have increased, not decreased, in each of the last six years. Today, the General Accounting Office (GAO) will report that last year saw the largest one-year increase in paperwork since the 1995 law was enacted. Curiously, in October, OMB reduced from 27 to 15 the number of agencies required to submit Information Collection Budget submissions and to be subject to paperwork budget controls. For example, OMB deleted the SEC and the Federal Trade Commission (FTC), both of which levy substantial burden. Also, OMB stated, "In the

interests of reducing the administrative burden [on the agencies], we have significantly reduced from previous years the amount of information we are requesting." I look forward to an explanation of why OMB is more concerned with reducing administrative burden on the agencies rather than reducing paperwork burden on the American people.

Under the PRA, OMB is the watchdog for paperwork. However, the evidence points to OMB's continued failure to focus on paperwork reduction. OMB has not pushed the IRS and other Federal agencies to cut existing paperwork. Additionally, agencies continue to levy unauthorized paperwork burdens on the American people and continue not to resolve a great number of outstanding violations of law (including some in violation for many years). I look forward to OMB's testimony about its specific disclosures in paperwork reduction and its efforts to resolve each outstanding violation of law.

IRS also has a dismal record in paperwork reduction. Today, GAO will report large increases by IRS in paperwork which is not statutorily-required, i.e., which is discretionary. IRS Commissioner Rossotti testified before this Subcommittee in April of 1999, 2000, and 2001, promising more initiatives each year, especially for small business taxpayers. I hope Commissioner Rossotti has better news for us this year than he did last year.

In sum, OMB and the IRS are not doing a credible job in paperwork reduction. There is no excuse for OMB not to promptly correct all extant violations of law. And, to ensure accountability to Congress and the public, it is time for OMB to disclose its specific role in paperwork reduction. Next year, we expect OMB and IRS to evidence real progress in paperwork reduction.

I want to welcome our witnesses today. They include: OMB's OIRA Administrator John Graham; IRS Commissioner Charles O. Rossotti; Vic Rezendes, Managing Director, Strategic Issues, GAO; Thomas Hunt Shipman, Deputy Under Secretary for Farm and Foreign Agricultural Services, Department of Agriculture; Scott Cameron, Deputy Assistant Secretary for Performance and Management, Department of the Interior; James M. Wordsworth, President, J.R.'s Goodtimes, Inc., McLean, Virginia; and Kenneth A. Buback, Vice President Human Resources, Sutter Health, Sacramento, California.

Laws Requiring Paperwork Reduction Reports and OMB Issuances: FYs 1996-02

Law	for FY	Due Date	OMB Issuance	Required Content for OMB
1995 Paperwork Reduction Act (PRA)	1996 1997 1998 1999 2000 2001	annual annual annual annual annual annual	9/97 ICB none 7/98 ICB 4/99 ICB 4/00 ICB 8/01 ICB	"annual Governmentwide goal for the reduction of information collection burdens by at least **10%** during each of **FYs 1996 & 1997** and **5%** during each of **FYs 1998, 1999, 2000, & 2001**"
FY 99 Treasury - Postal Appro-priatons Act	1999 2000	3/31/99 -	4/99 in ICB 4/00 in ICB	"submit a report by 3/31/99 ... that (1) identifies specific paperwork reduction accomplishments expected, constituting annual **5%** reductions in paperwork expected in **FY 1999 & FY 2000**"
FY 01 Treasury - Postal Appro-priatons Act	2001 2002	7/1/01 -	8/01 in ICB ?	"Not later than 7/1/01 ... submit a report ... that (1) evaluates, for each agency, the extent to which implementation of [the PRA] has reduced burden imposed by rules issued by the agency, including the burden imposed by each major rule issued by the agency; (2) ... evaluates the burden imposed by each major rule that imposes more than **10 million** hours of burden, and identifies specific reductions expected to be achieved in each of **FYs 2001 & 2002** in the burden imposed by all rules issued by each agency that issued such a major rule"

Abbreviations
FY = Fiscal Year
ICB = Information Collection Budget
OMB = Office of Management and Budget

Prepared for Congressman Doug Ose

Paperwork Reduction Scorecard

Department/ Agency	Paperwork Burden[1] in millions of hours	Paperwork Score	Comment
Agriculture	87	**F**	**67 violations of law; +6 million hours**
Commerce	10	D	end of decennial Census
Defense	92	D	1% burden decrease
Education	41	D	3% burden decrease
Energy	4	**F**	33% burden increase
HHS	**187**	**F**	1% burden increase; CMMS=61% of HHS
HUD	12	**F**	**113 violations of law**
Interior	8	**F**	**33% burden increase**
Justice	41	D	1% burden increase
Labor	**186**	**F**	no net burden change; OSHA=74% of Labor
State	17	D	less than 1% burden decrease
Transportation	80	**F**	42 million hours violation of law for months
Treasury	**6,416**	**F**	**+214 million hours**; IRS=83% of gov't.
Veterans Affairs	5	**F**	**64 violations of law**
EPA	**131**	**F**	1% burden increase
FAR	24	?	? since deleted by OMB
FCC	40	?	? since deleted by OMB
FDIC	11	?	? since deleted by OMB
FEMA	6	?	? since deleted by OMB
FERC	4	?	? since deleted by OMB
FTC	73	?	? since deleted by OMB
NASA	7	?	? since deleted by OMB
NSF	5	?	? since deleted by OMB
NRC	8	?	? since deleted by OMB
SEC	**114**	?	? since deleted by OMB
SBA	2	?	? since deleted by OMB
SSA	24	?	? since deleted by OMB
Government Total	7,651	**F**	

1. Paperwork burden as of 9/30/01; source: OMB's 3/18/02 report entitled "Draft Report to Congress on the Costs and Benefits of Federal Regulations" (with 1 correction).

Prepared for Congressman Doug Ose

Non-IRS Regulatory Paperwork Over 10 Million Hours
Source: OMB's 8/30/01 Computer Listing

Department/ Agency	Regulatory Paperwork	Paperwork Burden in millions of hours
Labor	OSHA's Process Safety Management (PSM) of highly hazardous chemicals	79
SEC	confirmation of Securities Transactions	56
Transportation	Hours of Service of Drivers regulations	42
Transportation	Inspection, Repair, & Maintenance	35
SEC	recordkeeping by Registered Investment Companies	21
FTC	Truth in Lending regulation	20
HHS	FDA's Investigational New Drug (IND) regulations	17
EPA	standards for the use or disposal of Sewage Sludge	13
Labor	OSHA's Bloodborne Pathogens standard	13
FTC	Fair Packaging & Labeling Act regulation	12
Treasury	recordkeeping & reporting of Currency & Foreign Financial Accounts	12
Labor	OFCCP recordkeeping & reporting requirements	11
HHS	Medicare & Medicaid for Home Health Agencies	10
HHS	FDA's Clinical Laboratory Improvement Amendments (CLIA)	10
Education	Federal Family Education Loan program	10

Prepared for Congressman Doug Ose

Mr. OTTER. Thank you, Mr. Chairman, for your leadership in holding this hearing. I also want to express my continued commitment to this subcommittee for their reducing the paperwork burden generated by the Federal Government and passed on to the public.

Much has been made about the efforts of many Federal agencies to work with the Office of Information and Regulatory Affairs and reporting compliance and the Paperwork Reduction Act. I am sure we are going to hear from the witnesses today about the progress that has been made in reducing this burden. While progress is always positive, many agencies still require many tedious and unnecessary, mostly unimportant, costly actions from a public that they exist to serve.

As we begin this hearing, I think it is also beneficial to reflect on why it is necessary to reduce the Federal Government paperwork burden passed on the American public. On March 12th, this subcommittee examined the cost and benefits of Federal regulations. During that hearing, it was stated that Americans spent approximately $843 billion in the year 2000 to comply with the Federal regulations. Especially in this time of economic recovery, I think it is important that the Federal Government continue to find ways to reduce the financial burden of compliance with Federal regulations. Reducing needless paperwork will certainly aid in this effort.

It is no surprise that many Government agencies are reporting that advances in technology over the past decade have contributed significantly to the increased efficiencies in the reduction of paperwork. However, it is important to remember that constant evaluation of agency regulations and mandates is necessary to determine if the new technology has merely allowed Federal agencies to become more efficient at conducting unnecessary business, rather than encouraging real change in regulatory burdens to reduce paperwork.

Again, Mr. Chairman, I appreciate the attention we are paying to this issue of reducing paperwork and I look forward to hearing the testimony of the witnesses.

I also am reminded in some of the formal remarks that will be made today of certain agencies touting the fact they have made an 80 percent advance. I would ask the folks from the IRS today, if the taxpayers were equally as efficient in paying their taxes, would 80 percent be acceptable to you all? For the EPA, if those folks in the private sector were 60 percent successful in conducting their business in accordance with EPA standards, would the EPA accept that? Yet, they want us to accept those kind of figures, and I think it is time that we expect of them exactly what they expect of the folks under their charge in the public sector.

Once again, Mr. Chairman, thank you for your leadership on this issue and I look forward to hearing from the witnesses.

Mr. OSE. I thank the gentleman and I would recognize my good friend from Tennessee for the purpose of an opening statement. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman, and thank you very much for calling this hearing. This is a very important topic.

First of all, I want to thank Dr. Graham for coming to visit me a few days ago in response to an earlier related hearing that we

held in this subcommittee. This is my 14th year in the Congress. My father was here for 23½ years before me. I have been following these issues for a long, long time. I always hear departments and agencies giving lip service to reducing the paperwork burden, but I was a lawyer and judge before I came to Congress, and it seems as if this paperwork burden just grows and grows and grows. Governor Otter just mentioned an $843 billion estimate on the cost. I have read all kinds of estimates about the cost of filling out the tax returns each year.

I remember several years ago seeing some polling and it said that over 90 percent of the people wanted us to reform the welfare system. We were fairly successful in accomplishing major reforms in that regard but the second highest issue in that same poll said that 85 or more percent of the American people wanted us to greatly simplify the tax code. Yet I am very skeptical that we will be able to do that for many, many reasons. I think there are many in and outside the Congress that really do not want us to simplify it.

What really concerns me is I read a few months ago that the IRS Inspector General, in a study of how 16,000 IRS employees used their government computers, "found they used half their on-line time at work to visit sex sites, gamble, trade stocks and do other non-work related activity," according to the Scripps-Howard News Service. Another Inspector General investigation found that IRS agents gave taxpayers incorrect or insufficient advice on their tax questions a whopping 73 percent of the time.

I don't see how we can sit around and accept things like that. Those reports came not from some IRS enemy but from the Treasury Department's own Inspector General, as reported on the front pages of newspapers around the country by the Scripps-Howard News Service, which is a very respectable news service. To think that IRS employees spent half their time visiting sex sites, gambling, trading stocks, and doing other non-work related activity. And IRS agents give taxpayers incorrect or insufficient advice on their tax questions a whopping 73 percent of the time—I don't know how they arrived at that because, most of the time, what I hear from people in Tennessee is they never can get hold of an IRS agent when they call. They can't get any advice from them, period.

What I am saying is I am not blaming this on anyone in particular, but there is a real problem there when we have a tax code that is so complicated and confusing and convoluted that even the IRS doesn't understand it and either can't or won't give out correct advice. Then the American people have to struggle with paperwork and go out and hire very expensive accountants and lawyers to do things they should be able to do on their own.

Thank you very much for calling this hearing. I have these concerns and I hope the witnesses will refer to some of these things in their testimony.

Mr. OSE. I thank the gentleman.

I want to welcome our first panel. On our first panel we have: the Administrator of the Office of Information and Regulatory Affairs, OMB, Dr. John D. Graham; Charles O. Rossotti, Commissioner, Internal Revenue Service; and Managing Director, Strategic Issues, General Accounting Office, Mr. Vic Rezendes.

Gentlemen, we swear our witnesses at this committee. If you would all rise and raise your right hand.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered affirmatively.

Our typical process is we will go through and have each witness provide testimony. We have received your written testimony and have reviewed it. I know you have many comments to provide and we appreciate that. Dr. Graham, we will go with you first for 5 minutes.

STATEMENTS OF JOHN D. GRAHAM, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET; CHARLES O. ROSSOTTI, COMMISSIONER, INTERNAL REVENUE SERVICE; AND VIC REZENDES, MANAGING DIRECTOR, STRATEGIC ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Mr. GRAHAM. I appreciate the opportunity to be here this morning and I particularly compliment you and the leadership you have been exercising in trying to bring this paperwork issue forward to the American people for not only discussion but progress and resolution.

At OMB today we are releasing our annual report to the Congress on the Paperwork Reduction Act, with an emphasis on documentation of burdens of paperwork. I would like to summarize those findings for you.

One, the paperwork burdens of the Federal Government are substantial. The number 7.765 billion burden hours is the summary number nationwide. About 63 percent of that burden is incurred by businesses; 32 percent by individuals; 5 percent by State, local, and tribal governments. Of this total burden of 7.75 billion hours, about 80 percent is related to the activities of the Treasury Department and the tax code is at the center of much of that burden.

Major finding No. 2, paperwork burdens are increasing, despite the legislated reduction goals in the Paperwork Reduction Act. As you know, the Paperwork Reduction Act established 5 to 10 percent annual reduction goals for most of the years since 1980. However, these goals have been met only once, and they were certainly not achieved in fiscal year 2001 where you will hear there were significant increases again.

Third, paperwork requirements, though burdensome, are often justified by valid programmatic rationales. This is a point you made, Mr. Chairman, in your opening statement. I would like to give three examples of these valid programmatic rationales.

OSHA's process safety rules protect workers from toxic, flammable, and explosive chemicals. EPA's toxic release inventory provides communities useful information and has stimulated corporations to reduce pollution. NHTSA's new car program provides consumers information about the crash performance of different vehicles. Clearly, efforts need to be made to ensure all these paperwork requirements underlying these programs are reasonable, but certainly there are valid rationales in each of those areas for some type of paperwork burden.

Fourth, I want to acknowledge that OMB itself is often a cause of this problem. We have initiated policy initiatives—which we think are in the public interest—that do, in fact, sometimes increase the paperwork burden on the American people. As know you know, roughly 40 million Americans consult government Web sites regularly for information to help them in their daily lives or to help them understand how to communicate with policymakers. However, the quality of this information on Web sites has been questioned, and Congress has required OMB to develop guidelines in this area to improve the quality of information on agency Web sites. In January of this year, we imposed government-wide guidelines on the quality of this information. We think that is a useful thing to do. But I must acknowledge that, in order to comply with that, many agencies are going to have to gather more information from the public in the form of surveys to get higher quality information to meet the burdens of OMB's information quality guidelines.

Fifth point, I would like to emphasize the initiatives I have taken at OIRA since assuming this role in July of last year. In October of last year, I sent a bulletin to each of the executive departments and agencies. Although we asked for less detail on documentation of paperwork burden, we asked for more emphasis on specific programmatic initiatives to reduce paperwork burden. We have received 34 initiatives from these 15 agencies. They are documented in this report, and I look forward to continuing dialog with the subcommittee and the agencies on how much progress we can make with these initiatives.

Second, in November of last year, I sent a memorandum jointly signed with the General Counsel of OMB to each of the general counsels and CIOs of the various agencies emphasizing the importance of full compliance with the Paperwork Reduction Act and requesting specific plans to curtail or resolve violations of the Paperwork Reduction Act.

If I could have my colleague, Jeff Hill, put up the second of our visual aids, I want to make the point that, in fact, we are making continuing progress in reducing the number of paperwork violations that were unresolved at the time this report is presented to the Congress. However, we still have more work to do, and we will continue to do that.

My final point is that we are modernizing OIRA's information management system so that we can better understand what difference we are making in this area of paperwork reduction and also provide the public access to information about how we are working. For example, I asked my staff in my first couple of weeks on the job how many of these paperwork approvals do we actually modify to make them better. They gave me the data system which said that we approve 98 percent, we reject 2 percent. There is no information in the data system on whether we made any modifications to reduce burden. So the new variations of our information system in the short run will provide a public indication of whether modifications were made and also, starting late next year, we will have public access to paperwork review information like we now have public access to regulatory review information.

Thank you very much, Mr. Chairman, and I look forward to your questions and discussion.

[NOTE.—The Office of Management and Budget [OMB] report entitled, "Managing Information Collection and Dissemination, Fiscal Year 2002," may be found in subcommittee files or online at the OMB Web site: http://whitehouse.gov/omb/inforeg/paperwork—policy—report—final.pdf.]

[The prepared statement of Mr. Graham follows:]

STATEMENT OF JOHN D. GRAHAM, PH.D.
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES
AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

April 11, 2002

Good morning, Mr. Chairman, and Members of this Subcommittee. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. Thank you inviting me to testify about the Paperwork Reduction Act (PRA). I am pleased to have this opportunity to discuss how the Federal Government is improving the quality of the information it collects, uses, and disseminates, while also reducing the associated burdens that are imposed on the American public. The Bush Administration, while recognizing the public benefits of information collections, is committed to reducing needless paperwork burdens and agency violations of the PRA. I appreciate this Subcommittee's strong interest in information policy, and I look forward to working with you and other members of this Subcommittee on the challenges we face in advancing the objectives of the PRA.

In my testimony, I will provide an overview of the Federal Government's need for and use of information, briefly describe OMB's efforts to enhance the quality of information disseminated by agencies, and discuss the challenges of achieving and measuring burden

reduction.

I would first, however, like to address a number of issues that you raised in your letter of invitation. Specifically, you asked that I discuss (1) OMB's disclosure of changes made during our review of agency information collection requests, (2) agency efforts to resolve violations of the PRA, (3) agency progress in reviewing 15 non-Internal Revenue Service (IRS) regulations with 10 million burden hours, and (4) specific reductions in reporting and recordkeeping requirements that agencies accomplished last year and expect to accomplish in 2002.

Disclosure Measures for OIRA's Role in Paperwork Reduction

I am pleased to report that OMB is beginning to collect information on whether an agency's information collection changed during PRA reviews. Specifically, OMB's computerized database will begin to indicate whether the collection is "approved without change" from what the agency originally submitted or "approved with change." The first public reports with this information will be available by the end of this month.

As you may know, OIRA is currently working with the Regulatory Information Services Center (RISC) at the General Services Agency (GSA) to create a new information system that will replace OIRA's current, somewhat antiquated, database. GSA has hired Booz-Allen Hamilton to develop this new system, which will expand on the existing system, the RISC/OIRA Consolidated Information System (ROCIS), that RISC uses to produce the Semi-Annual Unified Agenda of Federal Regulatory and Deregulatory Actions. Our goal is have the new, enhanced ROCIS fully operational by November 2003.

ROCIS will be an internet-based system that will accept paperwork and regulatory

submissions from Federal agencies and provide materials to OIRA staff for their review. ROCIS will maintain a record of each OIRA review, including the information submitted by an agency and a record of OIRA's actions. Almost all the public records that are currently located in OIRA's Docket Library in paper form will be accessible to the public in electronic form. Search capabilities in the new system will make it easy for individuals to search these public files for information about paperwork and regulatory issues that might be of interest.

Resolving Agency Violations of the Paperwork Reduction Act

Over the past several years, the Subcommittee has expressed concerns about agency violations of the PRA. We appreciate your interest in this issue and acknowledge the leadership role you have played in addressing this problem. I would like to provide a brief summary of OMB's recent efforts on this front and update you on the progress we are making.

As you know, at last year's hearing on the Paperwork Reduction Act, the General Accounting Office testified that agencies were responsible for 487 PRA violations in FY 2000, which was down from the 710 violations committed in FY 1999 and the 872 violations committed in FY 1998. This represented a 44 percent reduction in violations during this time period.

Last October, to help us prepare the FY 2002 Information Collection Budget (ICB), we sent OMB Bulletin No. 02-02 to 15 agencies (the Cabinet agencies and the Environmental Protection Agency).[1] The OMB Bulletin reminded agencies that OMB is required to report to

[1]The agencies that participated in the development of this year's ICB did not include 12 independent agencies that had contributed to previous ICBs. OMB decided to exclude the independent agencies for several reasons. First, OMB's authority over the independent agencies is limited, so our ability to influence their information collection

Congress violations of the PRA, and requested that they document their compliance with the information collection provisions of the PRA. Agencies were specifically asked to report the title of the information collection, the nature of the violation, and how the violation was discovered and remedied.

Subsequently, then-OMB General Counsel Jay Lefkowitz and I sent a memorandum to agency chief information officers and general counsels that further emphasized the importance of full agency compliance with the PRA. We requested more specific information from CIOs on the steps they were taking to resolve PRA violations that we reported in the FY 2001 ICB. We also asked that they describe the procedures that they have instituted to prevent future violations, including monthly reviews of OMB's computer-generated reports, CIO oversight, and direct CIO participation in their agencies' programmatic functions. Further, we asked that agency general counsels and solicitors assist CIOs whenever possible.

In response to OMB's requests for information on PRA compliance, agencies contributing to this year's ICB reported 406 violations of the Paperwork Reduction Act in FY 2001, only 109 of which remain unresolved as of March 12, 2002 (which was the cut-off date for preparing the lists of violations that appear in the FY 2002 ICB). In the FY 2001 ICB, these agencies reported 161 unresolved violations. Although we are reporting fewer unresolved PRA violations than we did last year, there are still too many, and we are committed to reducing them further in the future.

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policies through OMB oversight is constrained. Second, most of the independent agencies have total burden inventories of under 10 million hours. Finally, and perhaps most importantly, OMB recognizes that it too has limited resources, and it is our judgement that we can improve our PRA oversight by focusing on those agencies that impose the most paperwork burden and over which we have the most direct authority under the PRA to approve or disapprove information collections.

Agency Progress in Reviewing 15 Non-IRS Rules with 10 Million Burden Hours

Mr. Chairman, your letter of invitation raised an issue relating to OMB's report to Congress on regulations that impose paperwork burdens of more than 10 million hours. In this report – which was required by Section 518 of the FY 2001 Consolidated Appropriations Act and was issued as part of the FY 2001 ICB – OMB limited its evaluation to only two Department of Labor (DOL) major rules. Subcommittee staff subsequently identified 15 non-IRS major rules imposing more than 10 million burden hours that you believe OMB should have addressed in its report. As we have discussed in previous correspondence with the Subcommittee, the disagreement over the scope of OMB's report is based on OMB's interpretation of the statutory language in Section 518, specifically the time frame that it covered.

I would like to provide some background on how OMB developed the report, and then suggest how we may move beyond this issue and work cooperatively to identify and address paperwork burdens that are unnecessary. Section 518 required OMB to prepare a report that

> (1) evaluates, for each agency, the extent to which implementation of chapter [44] of title 31, United States Code, as amended by the Paperwork Reduction Act of 1995 (Public Law 104-13), has reduced burden imposed by rules issued by the agency, including the burden imposed by each major rule issued by the agency;
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> (2) includes a determination, based on such evaluation, of the need for additional procedures to ensure achievement of the purposes of that chapter, as set forth in section 3501 of title [44], United States Code, and evaluates the burden imposed by each major rule that imposes more than 10,000,000 hours of burden, and identifies specific reductions expected to be achieved in each of fiscal years 2001 and 2002 in the burden imposed by all rules issued by each agency that issued such a major rule.

In implementing Section 518, OMB understood it as directing OMB to prepare a report that assessed the impact that the 1995 PRA amendments have had on the paperwork burdens that

agencies impose on the public through rules, and in particular through their "major rules." OMB's report therefore discussed how agency implementation of the PRA has reduced burden imposed by regulations, including major rules, as defined by the Congressional Review Act. It also evaluated the burden imposed by major rules that impose more than 10 million hours of burden. OMB found that DOL was the only agency that had issued a major rule that imposes more than 10 million hours of burden. Section 518 further required that, for agencies that issued such a rule, OMB identify the expected reductions in FY 2001 and in FY 2002 in the burden imposed by all of their rules. Accordingly, OMB's report identified DOL's expected reductions in FY 2002 in the burden imposed by all DOL rules. Expected reductions in FY 2001 in the burden imposed by all rules issued by DOL were addressed elsewhere in the FY 2001 ICB.

In interpreting Section 518, OMB found it understandable that Congress would direct OMB to prepare an oversight report on the 1995 PRA amendments, because those amendments had been in effect for five years, which was an appropriate time frame within which to evaluate their impact on agencies' paperwork activities. In this regard, the direction in Section 518 that OMB focus on the paperwork burdens imposed by "major rules" was also understandable, because the time period during which the 1995 PRA amendments have been in effect (i.e., since the fall of 1995) overlaps almost entirely with the period during which the agencies have been issuing "major rules" under the Congressional Review Act, which was enacted and went into effect in the spring of 1996.

Because OMB's report did not address the 15 non-IRS rules you referred to in your letter of invitation, I do not have information on agency progress in reviewing them. I would, however, be willing to explore burden reduction opportunities with respect to these regulations to

extent that there is an analytical basis for doing so. In this regard, I would need some clarification about the 15 rules you have in mind. In your letter to OMB Director Mitch Daniels, dated September 6, 2001, you stated that

> [U]sing OMB's August 30, 2001 data on information collections with a primary purpose of "regulatory or compliance," there appear to be at least the following seven additional covered agencies: the Departments of Education, Health and Human Services (HHS), Transportation, and Treasury, and the Environmental Protection Agency (EPA), Federal Trade Commission (FTC), and Securities and Exchange Commission (SEC). The 15 additional non-IRS "regulatory or compliance" information collections issued by these agencies and DOL include: one Education; HHS's "Investigational New Drug (IND) Regulations" (17 million hours), "Clinical Laboratory Improvement Amendments (CLIA)" (10 million hours), "Bloodborne Pathogens Standard" (13 million hours), and "Process Safety Management of Highly Hazardous Chemicals (PSM)" (79 million hours); Transportation's "Hours of Service of Drivers Regulations" (42 million hours) and "Inspection, Repair, and Maintenance" (35 million hours); one Treasury; EPA's "Standards for the Use or Disposal of Sewage Sludge" (13 million hours); and two information collections each from the FTC and the SEC.

Your letter identified only seven regulations by name, so I am not clear what the other eight regulations are. If, however, you could provide me with a list that identifies all 15 regulations that you would like agencies to review, I would certainly be willing to evaluate those 15 and, where appropriate, follow up with agencies to determine if reductions can be achieved without compromising regulatory benefits. Alternatively, an outside group with analytical expertise, such as the National Academy of Public Administration or the National Academy of Sciences, could be charged with reviewing these rules and making recommendations to improve them. If you would like to discuss such an initiative, I would of course be happy to do so. I know that you are aware of how labor-intensive such reviews can be.

Specific Burden Reductions

As we describe in the FY 2002 ICB, agencies have and are undertaking serious efforts to improve the quality of Federal information collection and to reduce burden when it is possible and makes sense to do so. Below are a number of specific burden reductions that I offer for illustrative purposes. A complete listing of significant burden changes is provided in the FY 2002 ICB.

FY 2001 Reductions

- *Department of Education: Application for Child Care Access Means Parents in School Program.* Previously, reports were made at 12, 18 and 36 month periods as well as the final report. Education decided to eliminate the requirement for the 12 month report in order to reduce redundancy and burden on the institutions. Reports are now made at 18 and 36 months, followed by the final report. Change in burden: -105,000 hours

- *Environmental Protection Agency: Motor Vehicle Emission Standards and Emission credits Provisions under the Tier 2 Rule.* This collection ensures that vehicle designs meet applicable emission standards for their useful lives. EPA reduced the number of durability demonstrations and tests required and increased flexibility in how demonstrations are conducted. Change in burden: -445,918 hours

- *Environmental Protection Agency: Polychlorinated Biphenyls (PCBs) Program; Consolidated Information Collection Request.* The Toxic Substances Control Act directs EPA to regulate the marking, disposal, manufacturing, processing, distribution in commerce, and use of PCBs. EPA collects data to ensure PCBs and PCB wastes are managed in an environmentally safe manner. EPA promulgated PCB regulations to, among other things, (1) provide less burdensome mechanisms for obtaining EPA approval for a variety of activities; (2) clarify and/or modify the regulations where ambiguity may exist; and (3) address outstanding issues associated with the notification and manifesting of PCB wastes and changes in the operation of commercial storage facilities. Change in burden: -1,256,987 hours

- *Department of Interior: Report of Sales and Royalty Remittance (Form MMS-2014).* This form is used for reporting oil and gas royalties, certain rents, and other lease-related transactions to Minerals Revenue Management (MMS). During the reengineering of the MMS core business processes, the MMS developed a new Form MMS-2014 to incorporate revised reporting requirements that reduced the volume of lines reported and processed, and minimized errors and related error correction workloads. Change in

burden: -55,229 hours

FY 2002 Reductions

- *Department of Commerce: Shippers Export Declaration Program.* The SED form and the Automated Export System (AES) electronic equivalent are the means by which the Census Bureau collects and compiles U.S. trade statistics. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. The AES takes only 3 minutes on average to complete, whereas the paper SED form takes over 11 minutes. We are making an extensive effort to encourage shippers and freight forwarders to switch to using the AES. As more and more respondents use the AES, the burden keeps decreasing. Change in burden: -340,761 hours

- *Department of Labor: Report on Employment, Payroll, and Hours.* The Current Employment Statistics program provides current monthly statistics on employment, hours, and earnings by industry. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor. The decrease is due to the introduction of a probability-based sample. Some additional quota sample units needed to produce estimates in smaller metropolitan areas are being retained until research on small area estimation is completed. Change in burden: -88,530 hours

- *Department of Transportation: Submissions of Continuous Discharge Book.* The information is collected from Merchant Mariners. The information is used to determine eligibility for issuance of a Coast Guard credential (i.e. a license, certificate of registry or merchant mariner document). DOT revised a number of forms to reduce the error rate of incomplete/improper submissions. Change in burden: -61,969 hours

- *Department of Justice: State Point of Contact (POC) Final Determination Electronic Submission.* The State POC Final Determination Electronic Submission is a means to obtain final status for transactions initiated by POC States. This information will be used for statistical purposes, for use in the Bureau of Alcohol, Tobacco and Firearms (ATF) inspections of Federal Firearms Licensees (FFLs) records, and to assist in the National Instant Criminal Background Checks System (NICS) appeal process. The POC information will also enhance the performance of the NICS by giving it the same information about the determination on the checks processed by POCs that the system has about the determination on the checks processed by the FBI. DOJ plans to require POCs to submit only 2 percent of denials instead of all denials, resulting in a burden reduction of 72,534 hours

OMB Initiative to Improve Agency Performance and Reduce Burden.

The significant burden reductions that agencies reported in the FY 2002 ICB, some of which I just mentioned, reflect the ongoing efforts by the Government to alleviate paperwork whenever possible. To build on these efforts and make burden reduction an even higher priority, OMB asked agencies to identify at least two initiatives that:

- improve program performance by enhancing the efficiency of information collections;
- significantly reduce the burden per response on the public; or
- lead to a comprehensive review of an entire program, including regulations and procedures.

In response to this directive, agencies have reported a variety of burden reduction initiatives that have the potential to make meaningful improvements for the public. While these initiatives generally fall into two broad categories, incorporating information technology and simplifying information collection activities, the majority involve the use of some type of information technology. This is not unexpected given the evolving nature of information technology capabilities and potential to improve the vast amount of information collection activities by the federal government through harnessing these capabilities.

OMB has listed the agency initiatives in this year's ICB. I would like to mention just a few of them now.

- *Loan Deficiency Payments (LDP) Program Enhancement* - LDPs are payments made to eligible producers who, although eligible to obtain a marketing assistance loan, agree to forgo the loan in return for an LDP. Currently, producers requesting LDPs must: (1) provide a Department of Agriculture (USDA) county-based service center a CCC-633 LDP request, in person or by fax; (2) meet the marketing assistance loan eligibility requirements for the producer and commodity; and (3) agree to accept such payment in lieu of obtaining marketing assistance loans. Through this initiative, USDA is

simplifying program polices and developing a new Internet-based delivery system for processing "eLDP."

- *Electronic Reporting Option for Electric Power Companies* - The Department of Energy's Energy Information Administration (EIA) has developed a new, completely electronic reporting option for 2002 that respondents may use to complete the electric power surveys using EIA's web site. The electric power forms collectively cover the entire range of companies involved in the generation, transmission, distribution, and sales of electricity.

- *Adverse Event Reporting System* - The Department of Health and Human Service's (HHS) medical device reporting system currently provides a capability for some manufacturers to submit files of reports to the Food and Drug Administration on electronic media. An initial pilot test of the electronic submission of alternate summary reports has just begun. The pilot will be expanded to further exercise the pilot system. It is anticipated that electronic reporting will reduce administrative processing costs, including data submission, entry and quality control. The receipt of adverse event information will be more rapid and data entry errors will be reduced or eliminated.

- *Labor-Management Electronic Reporting Initiative* - The Labor-Management Reporting and Disclosure Act (LMRDA) requires the filing of various reports by labor organizations, union officers and employees, employers, labor relations consultants, and surety companies. This Department of Labor electronic reporting initiative will enhance the efficiency of agency information collection by permitting reporting entities to submit these reports electronically. This capability will allow reporting entities to better file reports on time and with improved accuracy.
- *TRI-ME* - This Environmental Protection Agency initiative involves the Office of Environmental Information's Toxics Release Inventory-Made Easy (TRI-ME) software system. The TRI-ME software is an interactive, user-friendly intelligent software that guides facility managers through the entire process of completing their annual reports for their releases and waste management activities for over 600 toxic chemicals. This intelligent software eliminates much of the analysis required to determine if a facility is subject to the TRI reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA).

- *DOD Acquisition Process Review* - This information collection encompasses 24 million hours of burden (about 26% of the Department's total) and involves applications for benefits/contracts, including the acquisition of goods and services under the Defense Federal Acquisition Regulation Supplement. The initiative will review these information collection requirements with the intent of reducing burden by 10 percent.

- *Common Data Definitions* - In order for ED to communicate between and among its external education partners and with its own programs, there needs to be a common

language underpinned by common data definitions. The collections approved under the Paperwork Reduction Act and the data elements comprising them are being analyzed to develop consensus definitions and code sets. Both state and local education agencies will join ED as partners in this project. Ultimately, this effort will eliminate duplicative requests of information and reduce the total volume of data collected while ensuring that ED collects higher quality and more useful data.

- *Mining Forms Consolidation* – DOI's Office of Surface Mining Reclamation and Enforcement (OSM) is planning to improve program performance by enhancing the efficiency of agency information collections across agencies. An effort to combine forms related to coal tonnage and/or accident information at coal mining sites into a single mineral industry report system is being considered by OSM, the Mine Safety and Health Administration (MSHA), and the Energy Information Administration (EIA).

- *RCRA Review* - The EPA's Office of Solid Waste (OSW) recently completed a comprehensive review of the reporting and recordkeeping requirements of the Resource Conservation and Recovery Act (RCRA) program, and plans to propose a rule to streamline or eliminate many of these requirements. This OSW effort will streamline data collection for RCRA's Biennial Report, which is a major information collection mechanism for hazardous waste generation and management.

We have asked agencies to provide OMB with regular status reports on all of their initiatives so that we can monitor their progress and help ensure they achieve meaningful outcomes.

Why the Government Needs Information

As a general matter, the Federal Government must have information to serve the American people. Agencies can only deliver services to individuals if they have information about whether programs are needed, the extent and nature of those needs, and how these needs are changing over time. Without information to support planning, management, and enforcement activities, Government programs may be poorly designed to address public needs or may fail to adapt to the changing needs of the American population. If agencies do not have access to

accurate and complete information, they are less likely to understand the needs and challenges that their programs seek to address. The extraordinary scope and complexity of Government programs requires agencies to obtain a broad range of information on program performance, statistical information, information provided by applicants for Federal benefits, information demonstrating compliance with regulatory requirements, and – with April 15th around the corner – taxpayer information.

To see how collecting critical information from the public advances our understanding of the problems faced by our citizens, consider the various ways in which empirical research on societal and human behavior has contributed to policy and practice in areas ranging from drug abuse to education, health, retirement, and welfare. Similarly, supplementing clinical and biomedical research with empirical investigations of cancer patterns and associated risk behaviors in the population can stimulate prevention and education programs as well as increase our basic knowledge of the causes and effects of this disease. And, while recognizing the paperwork burden that forms and surveys may impose, the collection of agricultural production and marketing data from farmers is key to understanding and addressing issues in the agricultural economy such as genetic engineering and the changing structure of agriculture.

Agency Dissemination of Information

Government also uses information by providing it to citizens as a public service. In the Information Age, the public needs timely, accurate information. Investors need to access public filings from the Securities and Exchange Commission quickly and easily. Residents want to know if they are at risk from exposure to pollutants in their communities. Taxpayers expect

quick responses from the IRS and fast refunds.

To ensure that the public can rely on the information provided by Government, Congress directed OMB in December 2000 to issue Governmentwide guidelines designed to maximize the quality of information disseminated by Federal agencies. Specifically, Congress directed OMB to issue, by September 30, 2001, Governmentwide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies."[2]

OMB's information quality guidelines apply to Federal agencies subject to the Paperwork Reduction Act. Agencies are directed to develop information resources management procedures for reviewing and substantiating (by documentation or other means) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines. Consistent with the underlying principles described above, these guidelines stress the importance of having agencies apply these standards and develop administrative mechanisms in a common-sense and workable manner. Moreover, agencies must apply these standards flexibly, and in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices.

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[2] Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658).

Achieving Burden Reduction

While information plays a critical role in good government, the collection of that information imposes a cost on the public. It takes time and (often) money to organize and provide information to the government. To minimize burden, agencies are expected to collect only the information necessary to perform their missions. They can do so by ensuring that they avoid collecting redundant or irrelevant information and by looking for simpler, easier, and faster ways for citizens to provide essential information.

An evaluation of agency efforts to reduce reporting burdens on the American public would be meaningless without information on reporting burdens and how they change over time. To address this need, the PRA requires Federal agencies to produce "a specific, objectively supported estimate of the burden" for each information collection that they propose to conduct.[3] Agency estimates of burden are also reported to OMB so that an agency-by-agency and Governmentwide accounting of burden can be presented in the annual Information Collection Budget (ICB). The ICB, which is included this year's report, thus helps identify each agency's and the Government's progress toward meeting the burden reduction goals of the PRA.

I should note that President Bush is committed to improving the Government's performance, and he has launched an ambitious management agenda that requires careful evaluation of agency activities. The success of the President's management agenda will depend largely on the quality of the measures we use to evaluate the success and progress of agency programs. These measures must be consistently applied and accurately reflect performance and

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[3] 44 U.S.C. 3506(c)(1)(A)(iv).

may entail additional paperwork burdens on the public.

As you know, throughout the history of the PRA, Congress has used Governmentwide paperwork burden reduction goals as a means to evaluate agency performance. In 1980, 1986, and 1995, Congress established annual 5 percent or 10 percent paperwork burden reduction goals, which together called for a burden reduction of 85 percent between 1981 and 2001. During this time period, OMB's inventory indicates – as a rough estimate – that the total annual burden of Federal information collections increased by over 50 percent.[4]

Although this record may be disappointing to some, I view it in a different light. Most importantly, I would point out that the decision to set targets at 5 and 10 percent was not based on an analysis of the amount of burden reduction that agencies could and should achieve. Rather, Congress set goals that agencies should aspire to meet while also performing their missions. Because the PRA calls on agencies and OMB to reduce reporting burdens only when information is unnecessary or not practically useful, burden reduction can be achieved only to the extent that it does not interfere with agencies' ability to meet their programmatic responsibilities. The aspirational nature of the PRA's burden reduction goals thus reflects the need for agencies to achieve a proper balance between reducing burden and performing their missions.

Moreover, in assessing the efforts by agencies to achieve burden reduction – while also ensuring that Government information is of high quality and useful to the public – we must remember that the demand for public services has increased over time. Since the PRA was first

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[4]The total annual burden of Federal information went from 1.53 billion hours in 1981 to an expected 7.44 billion hours in 2001. In 1988, the Department of the Treasury reviewed all of its burden estimates and adjusted them upward by approximately 3.4 billion hours. We calculated the 50% increase by dividing 7.44 by 1.53 plus 3.4.

enacted in 1980, the size of the U.S. population has increased by over a quarter and U.S. gross domestic product has more than tripled.

In addition to the steady expansion of Government services over time, Federal agencies may also need to respond quickly to emerging challenges that require the public to provide information. For example, in FY 2001, the total paperwork burden imposed by the Department of Justice (DOJ) increased by 8.3 %, the largest increase reported in this year's ICB. This increase was due largely to the creation or modification of information collections by DOJ to implement the Legal Immigration Family Equity Act of 2000 (LIFE Act). Similarly, the IRS had to create two forms and revise 56 others in response to the Victims of Terrorism Tax Relief Act of 2001.

Mr. Chairman, in focusing on the upward trend in the level of Government paperwork, I would not want important PRA success stories to be overlooked. I would therefore like to provide a few examples illustrating how, during recent OIRA reviews of agency information collections requests, we were able to work with agencies to improve program performance.

- *Department of Education: School and Community Prevention Activities: A National Study of the Safe and Drug-Free Schools Program—Phase I.* The Safe and Drug-Free Schools program is the largest and broadest school-based drug and violence prevention program nationally. When the Department of Education originally requested OMB approval last fall of a 5-year evaluation study, it focused almost exclusively on assessing program implementation and quality. This study consisted of national surveys and extensive longitudinal case studies. Yet, the availability of program outcomes was going to be assessed only in a feasibility study to be conducted in year 3. Additional design and investigation would then be required to examine the actual effects of the program on drug-use and school violence outcomes. OMB asked the Department to refocus the study to include program outcomes. Based on our feedback, Education redesigned this investigation study so that a thorough feasibility study would be conducted first. Based on the information from this study, the Department will then examine quality and outcomes in the next phase of the research, thereby providing more rigorous data much earlier and enhancing the practical utility of this information collection.

- *Environmental Protection Agency: Printers' Simplified Total Environmental Partnership (PrintSTEP).* EPA requested OMB approval of an information collection to evaluate an EPA pilot project designed to identify the impact PrintSTEP has on three stakeholders: printers, community residents, and the State agencies administering the program. EPA withdrew its request after OMB's initial review and resubmitted a revised request that incorporated OIRA-recommended design changes. The design changes that improved the practical utility of the data collected include: the use of a control group, inclusion of methodology for calculating quantitative values, and the addition of actions to improve response rates.

- *Department of Health and Human Services - The National Study on Child Protective Services Systems and Reform Efforts.* This study was developed to examine State and local practices in Child Protective Services (CPS) to provide a comprehensive picture of the CPS system. Given the tremendous variation among State and local CPS service delivery systems, HHS hopes that this study will enable it to understand these variations between as well as within States. During the course of OIRA's review, we identified several weaknesses in the study's methodology that would limit the quality of the data obtained, and would impair the ability of the agency to answer their basic research questions. Key limitations included (1) the sample size was too small to produce nationally representative estimates or allow for comparisons between groups of counties; (2) several larger counties were hand-picked for participation, which introduced bias into the sample; and (3) local sites were not selected for visits in a systematic way, but were rather hand-picked, which implied that the agency was endorsing these approaches rather than objectively examining them. HHS agreed to double the sample size, so as to make their national estimates more precise and to facilitate meaningful comparisons between groups of counties. HHS also agreed to use a stratified random sampling methodology and decided not to hand-pick certain counties for survey participation. Due to these and other changes, HHS will be much better informed regarding the CPS system.

OMB is also seeking public input to identify opportunities to address paperwork burdens. In OMB's Draft Report to Congress on the Costs and Benefits of Federal Regulations, which we issued on March 18, 2002, we solicited public comment on a broad range of issues. In particular, we requested public nominations of "specific regulations, guidance documents, and paperwork requirements that impose especially large burdens on small businesses and other small entities without an adequate benefit justification."

Measuring Burden Reduction

Although burden hours alone do not provide a valid PRA performance measure, I do believe that – to the extent they are used in an analytically sound manner – they can provide useful information. First, burden estimation techniques should be applied consistently across the Government to ensure that, to the extent possible, a burden hour reported by one agency represents an amount of burden equal to that of a burden hour reported by any other agency. The methodologies used by agencies to estimate paperwork burden, however, vary significantly throughout the Government. One reason that methodologies differ is that the need for precise burden estimates increases with the size of information collections. Agencies would not be expected to utilize identical techniques to measure, for example, the burdens of a collection with several million respondents and of a collection with several dozen respondents.

Second, for burden measurement to be accurate, it should incorporate recent developments in estimation methodology and data collection, as well as reflect the changes that have occurred in the collection, storage, processing, preparation, and transmission of information. The manner in which taxpayers provide information to IRS, for example, has changed dramatically in recent years, particularly in the use of technology to computerize recordkeeping systems and electronically file tax returns.

Given the scale of its information collection activities, IRS confronts a particularly daunting challenge to measure burden in a meaningful way. I recently met with IRS and Treasury officials to learn about a major, multi-year effort by IRS to develop a quantitative model to more accurately estimate paperwork burden and forecast the burden-reduction consequences of alternative reforms of tax administration and tax policy. I believe that this important initiative

will significantly improve the ability of IRS to measure taxpayer burden, and that what IRS learns will benefit other agencies.

That concludes my prepared testimony. I would be happy to answer any questions you may have.

Mr. OSE. Thank you, Dr. Graham.

Our next witness is Commissioner of the IRS, Mr. Charles Rossotti, for 5 minutes, please.

Mr. ROSSOTTI. Thank you.

I am pleased to come before you again to discuss our efforts to reduce paperwork and regulatory burden on America's taxpayers. Since my last appearance, we have been able to buildup our burden reduction efforts. This chart summarizes the four categories in which we have been working to reduce burden. These include: forms redesign, regulatory reductions and relief of certain regulatory requirements, revision of additional electronic service, and some management initiatives to continue this effort over time.

With respect to the forms, we have reduced Schedule D which is used to record capital gains taxes. We have expanded a very popular initiative, which is a check box on the Form 1040 and other forms to allow taxpayers to designate a family or friend or tax professional to talk directly to the IRS to correct errors. This is very popular and we have expanded it.

For tax year 2002 we have also cut 11 lines out of the form used to compute the notorious alternative minimum tax, probably the least popular part of any of the tax computations. We were able to at least eliminate some lines on that, and we are working to redesign the 941 which is one of the most frequently filed forms by small business.

In the second category, regulatory initiatives, we have made some very significant progress particularly with respect to small business, which the chairman mentioned in his opening remarks. In fact, I want to announce today, that beginning in tax year 2002, we are going to exempt 2.6 million small business corporations from the need to file three schedules, Schedule L and M–1 and M–2. These have to do with the balance sheet of the corporation and reconciliation of financial records with tax records. This is a very significant item, which we believe will save small business taxpayers about 61 million hours per year.

I should note this is also one of the first initiatives sponsored by our new Office of Taxpayer Burden Reduction in our Small Business Self-Employed Division, which I mentioned at last year's hearing. I am very proud of this.

In addition, on the regulatory front for small business, we again substantially reduced over the past year the number of small businesses required to use the accrual method of accounting. They are now allowed to use the cash method. There are about now 2.84 million taxpayers that can take advantage of this relief. We did that in two steps, and the second step late last year. Although it doesn't count in the burden hours, because it is not specifically a form, it is something that was very widely acclaimed by the small business community.

Along the same lines, there are two other items, although not quite as significant. We indefinitely suspended the requirement for taxpayers to file Schedule F of Form 5500, which is a pension related form. About 200,000 forms per year were eliminated by that. We have also significantly simplified the process for submitting determination letter requests for about 1 million pension plans.

The third area I want to mention briefly is use of technology to reduce burden. In September 2001, we launched one of the more significant initiatives for small and large business, which will allow these businesses to use the Electronic Federal Tax Payment System over the Internet to make all Federal payments. That will also allow them to check their payment records directly without having to call the IRS, which is a popular item, as Mr. Duncan mentioned, not having to call and wait on the phone.

Also on the electronic front, in this filing season we have now got to the point where over 99 percent of all the 1040 forms can be filed electronically and many taxpayers are doing this to ease their burden.

I mentioned management initiatives; there are two significant ones. One is establishing the Office of Taxpayer Burden Reduction in our Small Business Operating Division. These are people dedicated year round to finding ways to reduce the burden of small business. As previously described, we saw the fruits of their initial labors.

Finally, we are developing a better model to measure burden.

I do want to note, as Dr. Graham noted in his opening remarks, sometimes it is in the best interest of taxpayers to gather a bit of additional information. On this particular day, I am going from here to the Senate Finance Committee, where they are holding a hearing about billions of dollars of tax revenue being lost because large corporations and wealthy individuals are using layers of partnerships to hide income, sometimes in off-shore tax havens. I think you have heard about that subject in the news recently.

I am glad to say we anticipated some of these problems, because, in 2001, we added some lines to some forms to deal with detection of blatant cheating as a result of partnerships and corporations with foreign operations. That accounts for nearly all the program increases in burden that was noted by GAO in its testimony.

Finally, I want to make a few comments about some of the issues related to the tax code itself. All of the Members cited the tax code in their opening comments. That is really what drives a lot of the paperwork, almost all of the paperwork. In addition to the sheer size of the tax code, the volatility of the tax code is another burden producing cause. Obviously, when the Congress enacts tax legislation, it often reduces taxes and provides tax relief, which is a welcome thing for taxpayers. But there is a bit of tradeoff on the administrative side because as we change many forms, we often have to add lines, and in turn, increase the administrative burden. We also must have time to change our computer programs and the software taxpayers use. Tax law complexity and the frequency of change is something we are faced with. There have been numerous tax bills ever since I have been Commissioner, including over the last 2 years, and whatever other benefits they have, they do pose additional burdens, paperwork, and complexity.

Secretary O'Neill has made statements that he views the tax code as a drag on the economy. He cannot understand why it is so hard to define a child in the tax code. I have to admit I have a hard time understanding that myself. Nevertheless, there are many definitions of a child under the tax code and we must have forms to accommodate each one of them.

We, at the IRS, will do our best within the limits of what we can do in the tax code to continue the kind of initiatives, such as the one we are announcing this morning, of which we are very proud, to reduce the burden on taxpayers while still coping with the other side of our problem, which is the tax code itself and its ever changing nature.

[The prepared statement of Mr. Rossotti follows:]

Paperwork Reduction

Statement of
Charles O. Rossotti

COMMISSIONER
INTERNAL REVENUE SERVICE

Before the
Subcommittee on Energy Policy,
Natural Resources,
and Regulatory Affairs

April 11, 2002

Department of the Treasury
Internal Revenue Service

www.irs.gov

PREPARED TESTIMONY
OF
COMMISSIONER OF INTERNAL REVENUE
CHARLES O. ROSSOTTI
BEFORE THE
HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON
ENERGY POLICY, NATURAL RESOURCES
AND REGULATORY AFFAIRS
PAPERWORK AND BURDEN REDUCTION
APRIL 11, 2002

INTRODUCTION

Thank you, Mr. Chairman and distinguished Members of the Subcommittee, I am pleased for the opportunity to discuss the Internal Revenue Service's efforts and initiatives to reduce the paperwork and administrative burdens faced by America's taxpayers.

Since my last appearance before the Subcommittee in April 2001, we have been able to build on our paperwork burden reduction efforts. As I will discuss, some of these initiatives involved reducing lines on forms, such as the Schedule D to report capital gains.

Just as importantly, other initiatives removed entirely for some taxpayers various time-consuming reporting and record-keeping requirements. I am pleased to announce today that for tax years beginning in 2002, we will exempt 2.6 million corporations from filing Schedules L, M1 & M2 at a burden reduction of 61 million hours. Allowing more businesses to use the cash vs. accrual accounting method is another standout example of this approach, and one that has been widely acclaimed by our small business taxpayers.

Taxpayer burden reduction took other forms as well this year as we continued to take advantage of modern technology. Due to our efforts, 99 percent of all individual taxpayers in 2002 could file their returns electronically. And once again, they could request an extension to file over the telephone. In September 2001, we launched EFTPS On-Line that allows businesses large and small to save precious time by making their federal payments on-line. For the first time, Employer Identification Numbers could be requested using a single nationwide toll-free phone number and will soon be available on-line. Taxpayers will realize even greater burden reduction benefits as more of our Business Systems Modernization projects are delivered in the coming years.

Mr. Chairman, we also have another challenge in reducing taxpayer burden. And that problem is a changing and highly complex tax code. Historically, accommodating new tax law provisions, some of which are retroactive, can be a task of overwhelming proportions. Forms, instructions and publications must be redesigned, and often lengthened, to bring them in line with the tax law changes. In an age of computer

preparation and processing of returns, software must often be modified and with little lead-time.

Of course, tax law complexity is more than frequency of change. For most taxpayers, complexity means an impenetrable tax code that defies understanding. Multiple definitions of terms such as a "qualifying child" contribute to endless hours spent trying to fill out forms to be compliant. In the end, many give up.

Treasury Secretary O'Neill and the National Taxpayer Advocate both identified tax complexity as a serious problem with far reaching ramifications. Complexity is not only frustrating and time consuming for taxpayers. It is a drag on the economy, as Secretary O'Neill recently suggested.

Mr. Chairman, although we can and will continue to reduce paperwork burden and simplify our notices, our efforts can be blunted by a complex tax code that is constantly in flux. If we are to truly address the broad spectrum of taxpayer burden in a meaningful way, we must address tax law complexity. If not, we will always be tinkering at the margins of the problem.

PAPERWORK AND REGULATORY BURDEN REDUCTION INITIATIVES

Capital Gains Schedule D

The Form 1040 and Form 1041 Schedule D, which millions of taxpayers use to calculate their capital gains and losses, was redesigned for the 2002 tax-filing season. The goal of the revision, which cut 14 lines from the schedule in the 1040 and 15 lines in the 1041, was to reduce the difficulty that individuals face when filling out their returns. As noted in our press release announcing the change, "Calculating capital gains and losses should not be a capital pain."

More than 21 million Schedule D (1040) filers will benefit from the new version, reducing burden by 5 million hours. We also expect that in 2002, only 800,000 of those filers will have to complete an additional worksheet, which was developed for those taxpayers who would otherwise have to complete the lines deleted from the old Schedule D.

We estimate that 1.4 million estates and trusts will benefit from the similar Schedule D (1041) changes, producing 4.5 million hours in burden reduction.

Check–the-Box Designation Expansion

This year's tax form for individuals also contains a small change that we hope will make a big difference to the millions of Americans who make minor errors filling out their returns.

The new third party designation, located just above the signature line of Form 1040, expands on the success of the paid-preparer checkbox on last year's Form 1040. It allows the taxpayer to designate a friend or a family member as well as a paid preparer, to talk directly with the IRS to correct errors during the processing of the return.

Problems include simple math errors and data omissions, such as an incorrect Social Security Number. The designation also enables the third party to discuss the status of a refund, payment or other notice with IRS representatives.

This new option balances the taxpayer's need for privacy with the reality that for millions of people a friend, family member or tax professional plays a key role in the preparation of their return. The taxpayer retains privacy but has the ability to make it easier to resolve routine problems. The bottom line is this: the change improves customer service and reduces headaches for taxpayers, practitioners and the IRS.

We also added a "checkbox" to many of the business income tax returns, including the 1041, 1065 and 1120 series to allow the designation of the paid preparer. We estimate that 32 percent of these filers will use the checkbox. For the major employment and excise tax returns, which do not have the checkbox, we added a section to allow taxpayers to designate either their paid preparer or an employee.

Almost 37.4 million individual taxpayers marked the checkbox on their 2000 returns. With the new changes we instituted, that number could almost double for the 2001 tax year.

Ironically, we do not receive credit for burden reduction on this initiative because the checkbox adds a line on the form. However, taxpayer burden most certainly decreases because the IRS can contact the designated individual rather than the taxpayer.

Burden also decreases due to fewer people having to fill out the Form 2848 – Power of Attorney and Declaration of Representative (277,000 hours per year), and the Form 8821 – Tax Information Authorization (2,700 hours per year). However, the third party designation does not eliminate the need for a Power of Attorney on issues dealing with examination, under reported income, appeals and collections notices.

Suspending Filing Requirements For Schedule F (Form 5500)

Effective on April 4, 2002, the Internal Revenue Service indefinitely suspended the requirement for taxpayers to file Schedule F (Form 5500) "Fringe Benefit Plan Annual Information Return." This is part of our ongoing commitment to reduce unnecessary taxpayer burden. Our effort will simplify tax administration and eliminate the filing of about 200,000 forms each year.

The suspension of the requirement to file Schedule F is outlined in Notice 2002-24. The filing suspension applies to all plan years, including years prior to 2001. During

the suspension period, the IRS will review reporting requirements and electronic filing options.

Before the announcement, sponsors of certain fringe benefits were required to file the annual information return, Schedule F (Form 5500) for cafeteria plans, educational assistance programs, and adoption assistance programs.

Sponsors of fringe benefit plans who have not filed required Forms 5500, Schedule F, for plan years prior to 2001 should not seek relief under the Department of Labor's Delinquent Filer Voluntary Compliance Program (DFVC). There is also no need to request relief from the IRS for failure to file these forms.

The IRS notice does not affect annual reporting requirements under Title I of ERISA, or relieve administrators of employee benefit plans from any obligation to file a Form 5500 and any required schedules (other than the Schedule F) under that title. For further information on annual reporting requirements applicable to employee benefit plans under Title I of ERISA, see the instructions for the Form 5500 Annual Return/Report and the Department of Labor's regulations.

IRS Notice 2002-24 is available on the IRS Web at www.irs.gov. The announcement will be published in the Internal Revenue Bulletin 2002-16 dated April 22, 2002.

Cash vs. Accrual Accounting Method:
Bringing Burden Reduction to More Taxpayers

Mr. Chairman, when I visit IRS facilities across the country, I also try to meet with local taxpayers, businesspersons and practitioners to hear what is on their minds. Recently, I have been told that allowing more small businesses to use the cash versus accrual method of accounting is perhaps the best thing the IRS has done in years to relieve their burden.

Generally, under the cash method, a business reports income and deducts expenses when the related payments occur. Under an accrual method, a business generally reports income when it has a right to receive payment and deducts expenses when it has a fixed and determinable liability for them.

As I testified last year, the IRS and Treasury Department issued an extremely important revenue procedure in April 2001 that permitted qualifying small business taxpayers with average annual gross receipts of $1 million or less to use the cash method of accounting. Previously, it was unclear whether these businesses were required to use inventories and an accrual method of accounting.

In addition, in 2001, the IRS stopped raising this issue on audits for taxpayers with gross receipts over $1 million and placed a moratorium on pending litigation.

The new procedure had an enormous impact on easing their tax accounting burden. By our calculations, the overwhelming majority of these taxpayers, who otherwise would have been forced to use the accrual method, were allowed to use the much simpler and easier to understand cash method of accounting.

However, we still had a problem. Because of the dollar ceiling, many small businesses could not enjoy the burden reduction from the procedure. To meet this need, the IRS and Treasury Department announced in December 2001 that they would allow certain small businesses with gross receipts of $10 million or less to use the cash method of accounting for their income and expenses.

The IRS released Notice 2001-76 containing details of the proposed rules and asking for comments before they are formally issued. In the meantime, taxpayers may rely on the proposed rules as early as the 2001 tax year. With this addition to the earlier announcements, we estimate that a total of approximately 2.84 million taxpayers can take advantage of this relief.

The proposed rules should benefit service businesses that also sell related products, such as a plumber who also sells plumbing supplies. The new rules generally exclude manufacturers, wholesalers, retailers, miners, certain publishers, and sound recorders unless they are principally a service business or perform certain kinds of custom manufacturing.

The proposed rules do not apply to certain businesses that the tax law requires to use an accrual method. For example, corporations, and partnerships with corporate partners, generally must use an accrual method if their gross receipts are more than $5 million.

Mark Weinberger, Treasury Assistant Secretary for Tax Policy, summed up our joint action: "We believe this guidance provides substantial administrative relief to qualified small business taxpayers by simplifying their bookkeeping requirements and providing certainty about what the rules are. The certainty the guidance provides will resolve the long-running controversy between small business taxpayers and the IRS about the use of the cash method. Resolution of this issue will permit taxpayers to use their resources to expand their businesses and the IRS to devote its resources to pressing compliance issues." This is burden reduction in its purest form.

New IRA Minimum Distribution Rules

Over the past two years, we have completely overhauled the rules governing the required minimum distributions from individual retirement accounts and many other qualified retirement plans, such as 401 (k) plans and 403 (b) annuities. The proposed rules were announced in 2001, but taxpayers can now use them for determining required minimum distributions.

The old IRA rules were complex, confusing and onerous to most taxpayers. It was not surprising that many people were frustrated and made mistakes. So, we made the process easier and simpler for retirees determining how much money they must withdraw from their accounts. There is now a single process that applies to almost everyone.

Ed Slott, publisher of "Ed Slott's IRA Adviser Newsletter is quoted by Associated Press with these words of praise: "The IRS did an incredible job. They pretty much thought of every mistake people could make that would cost them their retirement savings and fixed it. It's an amazing overhaul."

Rather than having to go through tortuous calculations and choices between such complex formulas as fixed term, joint recalculation, or the split method to determine minimum distribution requirements, most taxpayers can now use a simple, uniform table to calculate them.

In addition, we gave taxpayers a lot more flexibility in naming beneficiaries, and therefore creating more planning opportunities for them. Under the old rules, required minimum distributions were dictated by the beneficiary a taxpayer named when he or she started taking distributions. However, the new rules allow taxpayers to change a beneficiary without altering the required minimum distribution.

Burden Relief for Smaller Corporations: Exempting Some From Filing Schedules M-1 & M-2

For tax years beginning in 2002, we will exempt corporations having less than $250,000 of gross receipts and $250,000 in assets (both tests must be met) from completing Schedules L, M-1, & M-2 of Form 1120; Parts III and IV of Form 1120-A; and Schedules L and M-1 of Form 1120S. These changes will establish a more reasonable threshold for these businesses. This will allow them to use recordkeeping based on their checkbook or cash receipts and disbursements journal, for example, instead of a double-entry system until they grow to the point where more internal controls would be needed.

Schedule L (Part III of Form 1120-A) provides beginning and end of the year balance sheets based on the corporation's books. Typically, corporations with less than $250,000 of gross receipts and assets prepare a formal balance sheet only because it is required for income tax purposes. Formally relieving them of this preparation step will not cause undue hardship in an audit situation. However, taxpayers will still be required to maintain records detailing their assets, liabilities, and shareholders' equity accounts.

Schedule M-1 (Part IV of Form 1120-A) provides a reconciliation of income (loss) per accounting records with the income (loss) reflected on the tax return. Since generally accepted accounting principles (GAAP) do not always mirror the tax reporting requirements, Schedule M-1 provides a bridge between book accounting and tax reporting.

Typically, the Schedule M-1 is completed as the first step in preparing the tax return. The preparer will start with the book income (loss) as reflected on the final trial balance. The next step would be an analysis or comparison between the tax treatment of specific items and how they are reflected on the books.

For example, while a capital loss is fully deductible per GAAP, for tax it can only be used to offset capital gains. Therefore, if a net capital loss was deducted for book purposes, it would have to be added back in arriving at taxable income.

While an analysis of Schedule M-1 is recognized as an integral step in the audit process, in the examination of corporate tax returns with less than $250,000 of gross receipts and assets, it generally has limited application. Specifically, most of the corporations falling into this classification reflect limited activity on the M-1. Generally, if there is a net income, the M-1 will show entries on line 1 (Net income [loss] per books), line 2 (Federal income tax per books), and line 10 (Income, line 28, page 1).

The reality at this time is that the greater number of corporations having less than $250,000 in gross receipts and assets do not properly adjust between book accounting and tax reporting. Formally relieving them of this preparation step will not cause undue hardship in an audit situation. However, taxpayers will still be required to maintain records detailing all adjustments made to book income in arriving at taxable income.

We also examined Schedule M-2, which analyzes unappropriated retained earnings. As with the M-1, for corporations with less than $250,000 in gross receipts and assets, the M-2 reflects little more than the beginning balance affected by the current income (loss) and the ending balance.

Again, for the size corporations being discussed, formally relieving the obligation to complete the schedule M-2 will not have a detrimental impact from an examination standpoint. However, as with the M-1, if there are changes to retained earnings other than just the current income (loss), the taxpayer must be required to maintain proper records detailing said changes.

We estimate that these changes will affect approximately 2.6 million corporations and reduce their burden by 61 million hours.

Reducing Burden on Form 6251

Computing the Alternative Minimum Tax is listed by the National Taxpayer Advocate as one of the most serious problems encountered by taxpayers. For tax year 2002, we have reduced complexity and taxpayer burden by eliminating 11 lines on Form 6251 (Alternative Minimum Tax – Individuals). This reduction was accomplished by eliminating unnecessary subtotal lines and consolidating other lines. We estimate that 4.2 million taxpayers will benefit from these changes and reduce burden by over 1 million hours.

Coverdell ESAs

In the past, everyone receiving a distribution from a Coverdell education savings account (ESA) had to file Form 8606 (Nondeductible IRAs) even if all of the distribution was used for education expenses. The IRS will eliminate this requirement for tax year 2002. This will eliminate 5 entry spaces and align the reporting of these distributions to Section 529 plans (qualified tuition plans). Although the burden reduction is not yet meaningful – because only a few taxpayers currently use these lines – it will become significant in future years with the increase in the number of taxpayers receiving the Coverdell ESA distributions.

Project to Redesign Form 941

We are working with a contractor to redesign the widely-used Form 941, (Employer's Quarterly Federal Tax Return) and the accompanying instructions. The purpose is to create a document that will reduce burden for taxpayers, practitioners and payroll agents, reduce processing and other errors, and provide instructions that are easier to read and understand. This is the first major redesign initiative involving a business return.

Notice Redesign

Burden reduction also means communicating with taxpayers in plain English. Last year, as part of our continuing effort to improve our correspondence to taxpayers, and following the IRS Restructuring and Reform Act of 1998's (RRA 98) directions, the IRS began sending out six redesigned notices, including those dealing with math errors, balance due, overpayments and offsets. These notices affect both individual and business taxpayers. The new notices should: reduce the number of times taxpayers need to contact the IRS, be easier to understand, and help resolve inquiries.

We continue to redesign 24 additional notices. We released four of them in January 2002 dealing with the following actions. The volume of each notice is also provided.

- CP32, Replacement Refund Check (vol. 137,754)
- CP32A New Refund Check Issued, Previous Refund Not Cashed Within One Year (vol. 55,938)
- CP 237 Transferred Net Farm Profit from Schedule F to Schedule SE incorrectly (vol. 47,328)
- CP 237A Math Error on Form 940/940EZ Resulting in Overpayment (vol. 10,884)

Seven more notices will be delivered in July 2002. They are:

- CP 10 Math Error, Credit Election Amount Adjusted (vol. 57,489)
- CP 11 Math Error, Balance Due (vol. 1,639,890)

- CP 11A Math Error, EITC Balance Due (vol. 122,285)
- CP 12A Math Error, EITC Overpayment (vol. 236,875)
- CP 13 Math Error Even Balance (vol. 94,517)
- CP 13A Math Error EITC Even Balance (vol. 18,421)
- CP 138 Overpayment Offset to Another Balance Due (vol. 610,651)

The remaining 13 notices in the program will be delivered in January 2003.

Simplification of Determination Letter Procedures

Several announcements were issued in 2001 to provide major revisions to determination application filing procedures that will minimize taxpayer burden. They are:

- Employers adopting a Master & Prototype (M&P) and Volume Submitter plan do not need to submit an application with the IRS if the plan adopted is identical to the specimen plan.
- Employers filing applications are no longer required to complete a Schedule Q and request a ruling for the information provided with this form.
- The Form 5300 series applications were simplified based on comments received from external stakeholders.

This initiative affects the majority of the nearly one million employee plans. Employers adopting a pre-approved plan may rely on the favorable opinion or advisory letter of the M&P or Volume Submitter plan with respect to most qualification requirements.

In addition, those plan sponsors still wishing to file an application for a letter would find the amount of required paperwork reduced considerably if they elect to not complete the Schedule Q.

New and Redesigned Publications

Publication 3920, *Tax Relief for Victims of Terrorist Attacks,* was developed to inform taxpayers of the details of the relief provisions and details of Public Law 107-134, "Victims of Terrorism Tax Relief Act of 2001."

The Act changed many Internal Revenue Code (IRC) sections and added others as well. The publication covers these changes as follows:

- IRC section 692: tax forgiveness, years eligible for forgiveness,
- IRC section 139: September 11th Victim Compensation Fund payments and qualified disaster relief payments
- IRC section 104: death benefits
- IRC section 6050P: canceled debt
- IRC section 101: payments to survivors of public safety officers
- IRC section 7508A: postponed tax deadlines

- IRC section 165: disaster area losses
- IRC section 103, 2010, and 2201: estate taxes
- IRC section 5891: excise tax on structured settlements

The new publication is 20-pages long. Normally, a new publication of this magnitude requires at least six months to develop, review, and release for print. The law is of such complexity that it required the development of four separate worksheets in the Pub 3920 to help taxpayers determine their tax liability and to determine the amount of tax benefit they can receive.

Publication 946, *How to Depreciate Property*, was reorganized and rewritten using InfoMapping techniques to improve the readability of the publication and clearly explain the difficult concepts of depreciation. To reduce the burden for taxpayers completing Form 4562, Depreciation and Amortization, Chapter 3 was reorganized to follow the order of the lines on the form.

InfoMapping techniques were also used to reduce burden for taxpayers using Publication 590, Individual Retirement Arrangements (IRAs). New tables were added to explain the IRA rules and several chapters were rewritten to improve readability

REDUCING TAXPAYER BURDEN THROUGH ELECTRONIC TAX ADMINISTRATION

Taking the Paper Out of Individual Taxpayer Burden in 2002

In order to ease taxpayer burden for individual taxpayers, the IRS created a series of enhancements in its electronic filing and payment programs for the 2002 filing season and the remainder of the year. These initiatives include:

- Adding 29 forms and schedules to allow for even greater taxpayer participation in the IRS *e-file* program. This meant that we opened up *e*-file eligibility to over 99 percent of all taxpayers, potentially adding 38 million new *e*-filers for 2002.

- Continuing the Self-Select Personal Identification Number (PIN) Program that in 2001 enabled approximately nine million taxpayers to file paperless returns without having to submit paper signature *jurats*. The Self-Select PIN is a five-digit PIN that taxpayers can create to sign their returns electronically.

- Continuing the Extension of Time to File by Phone. Anyone who filed a tax return last year can request over the telephone as automatic extension of time (to August 15, 2002) to file his or her tax returns. Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax return, has details on required information and explains how to pay a balance by telephone.

- Continuing the Debt Indicator Program and providing the Debt Indicator on every acknowledgment report. This information will be provided for every electronically-filed return for customer service purposes or for approval of financial products.

- Expanding the electronic payment options available to taxpayers by accepting credit cards for payment of installment agreements and delinquent taxes.

- Adding Maryland, Oregon and West Virginia to the FedState TeleFile program that already includes Indiana, Kentucky, Oklahoma and Georgia.

- Releasing the initial series of Web-based services for practitioners including registration and application capabilities, requesting and receiving taxpayer transcripts on-line, submitting disclosure authorization requests electronically, verifying Taxpayer Identification Numbers, and getting personal assistance to resolve taxpayer problems.

The Administration also proposes in its budget submission "an easy, no-cost option for taxpayers to file their tax return online." Unfortunately, there has been some confusion regarding this proposal. The Administration's proposal to give taxpayers the option to file their tax returns on-line without charge is based on two principles: no one should be forced to pay extra just to file his or her tax return tax, and the IRS should not get into the software business.

In a statement issued on January 30, 2002, Treasury Secretary O'Neill stated, "I don't intend for the IRS to get into the software business, but rather to open a constructive dialogue with those who already have established expertise in this field. In the end, this effort should come up with a better way to save time and money for both taxpayers and the government." The IRS totally concurs with the cooperative approach enunciated by the Secretary and we will follow it to the letter.

Taking the Paper Out of Business Taxpayer Burden in 2002

A variety of electronic services provided by the IRS this year might be even more important for reducing burden for businesses than for individual taxpayers.

Beginning January 2, 2002, the Internal Revenue Service made significant improvements to our Employer Identification Number (EIN) process that directly affects the way taxpayers and practitioners obtain EINs. New changes include a toll-free telephone number, fax numbers and a new Form SS-4 that allows third parties to receive an EIN on a client's behalf. Eventually, this service will be offered on-line.

In addition to their annual income tax returns, businesses also have to file various employment tax returns and information returns. Businesses also make a lot of payments to the federal government, such as withholding and unemployment taxes. In fact, payments are a business' most frequent transaction with the IRS.

These requirements add up to a lot of transactions between businesses and the IRS – 23 million employers' quarterly tax returns; 5.5 million employers annual unemployment tax returns; 5.5 million corporate tax returns and 2 million partnership returns, including the processing of over 11 million K-1s. That is great deal of paper and it does not include the millions of checks that accompany them.

We want to eliminate this mountain of paper and convert these transactions to fast, accurate, paper-free electronic methods. And we are making progress. Businesses can now file electronically both their 940 and 941 employment tax returns. Some businesses may even qualify to file using a telephone.

We have also opened the door for a number of other key forms to be filed electronically, such as the Form 1099 to report "other" income. We are particularly pleased that we can now offer electronic filing of Form 1065, to report partnership income, and the K-1s that come with them. We are also hard at work designing Form 1120, Corporate Tax Return *e*-file program. Its implementation is slated for a year from now.

I mentioned that payments from businesses, especially payroll deposits and quarterly returns are the most common transactions businesses have with the IRS. The Electronic Federal Tax Payment System is truly the first among equals in *e*-government services and success stories. Through EFTPS, both businesses and individuals can make federal tax payments electronically. Since its inception in November '96, businesses have used it to pay more than $5.7 trillion in federal taxes.

On September 6, 2001, we successfully launched IRS' first on-line payment system – EFTPS-OnLine. It provides a convenient and secure method for paying all federal taxes through a secure web site. Let me stress that confidentiality and privacy of taxpayer information are our highest priorities. EFTPs-OnLine users can feel confident that their private information will be protected. We estimate that the timesavings to taxpayers as of March 2002 are 278,000 hours. (This estimate is based on: 35 minutes per transaction multiplied by 476,000 transactions.)

Web-based and More Electronic Services to Come

The Internet offers new and tangible means for easing taxpayer burden and improving service. The IRS web site at www.irs.gov continues to be extremely popular with taxpayers as a time saving device. They can download forms, instructions and publications and get answers to commonly asked tax questions. As of March 14, 2002, the IRS web site was listed as Number 3 in the Lycos Top 50 searches.

In January, the IRS introduced a newly designed web site, aimed at making it easier for taxpayers to find the information they want on the web. Following our overall strategy of making the IRS customer-focused, the home page immediately provides

taxpayers a way to find information simply based on whether you are an individual or business taxpayer, for example.

For example, the Small Business/Self-Employed Community section on our web site is dedicated to the needs of this important group of taxpayers who often confront more complex tax issues than those who have their taxes withheld by an employer.

For both individuals and business taxpayers, this is just the beginning. Later this month, individual taxpayers will be able to check on the status of their refund on our web site. Soon to follow will be secure communications with tax practitioners. And in future years, taxpayers will be able to access their complete account information over the web.

Once again, privacy and security are paramount considerations in all these electronic services. Because of the nature of the critical work we do, we are absolutely committed to the protection of taxpayer privacy and confidentiality. This commitment will be reflected in every aspect of our progress, and will pace that progress towards better *e*-services to America's taxpayers.

MEETING AN IMPORTANT NEED:
THE OFFICE OF TAXPAYER BURDEN REDUCTION

Mr. Chairman, while burden reduction is important for all taxpayers, it is particularly important for those served by our Small Business/Self-Employed (SB/SE) operating division. These taxpayers struggle to meet a dizzying array of filing, reporting and payment requirements. They do their best to understand an extremely complex tax code that is constantly changing while still running and growing their businesses.

To help achieve significant burden reduction for SB/SE taxpayers, we created the Office of Taxpayer Burden Reduction. The OTBR will focus its efforts in four major areas: (1) informing and educating customers about their tax responsibilities; (2) simplifying forms, publications and communications; (3) streamlining internal policies, processes and procedures (including audit plans); and (4) promoting less burdensome rulings, regulations and laws.

The OTBR has put together a number of actions to be accomplished over the next three years. These include the following:

- Identify and coordinate taxpayer burden reduction initiatives throughout SB/SE and require that burden reduction be a critical consideration for all initiatives, programs, processes and products.

- Working with internal and external partners, the OTBR will review income and business tax forms and publications and champion recommendations to simplify them. These will include Forms 941 and 2210 (employment tax returns and underpayment of estimated taxes, respectively).

- Working with internal and external partners, the OTBR will recommend streamlining internal policies, processes and procedures to reduce the burden they impose on SB/SE taxpayers. These efforts will include adapting the Large and Mid-Size Business Industry Issue Resolution Program to address the SB/SE taxpayers.

- Recommend changes in rulings, regulations and law to reduce taxpayer burden. Changes will be identified in coordination with internal and external stakeholders and members of the small business community, such as the Taxpayer Advocate Service. The National Taxpayer Advocate Annual Report to Congress will serve as a potential source of recommended changes.

- Assist in the development of a uniform methodology for measuring taxpayer burden (*see following section*).

Development of a Taxpayer Burden Model

We have engaged PricewaterhouseCoopers (PwC) to define, measure and develop a model that is capable of estimating taxpayer burden. IRS Research and functional staffs have been fully engaged on this project, as have Treasury and OMB representatives.

This effort focuses on the burden associated with the pre-filing and filing activities of complying with the federal tax law, and should prove to be a significant improvement over the methodology previously employed. The American Institute of Certified Public Accountants recently observed that "current methodologies for assessing compliance burdens, such as the time estimates for various forms and schedules are flawed and out-of-date." In the new model, burden is quantified in terms of time and out-of-pocket costs.

PwC gathered data for this burden model using sampling methods and created an extensive profile of typical filing activities. Relationships in the sample were studied and a predictive model was developed, using micro-simulation techniques. The model was designed to be updated when tax law and/or tax forms are changed. The model "computes" the taxpayer burden of such changes. It also has the capability to evaluate "what if" scenarios, giving the IRS the tools to predict the impact of proposed administrative or law changes on taxpayers' burden. The efforts started with W&I taxpayers and have been expanded to include 1040 business returns.

COMPLEXITY

Frequent Changes to the Tax Code

Mr. Chairman, as I discussed at the opening of my testimony, tax complexity comes in many forms. The most obvious are frequent changes to the tax code. Recent

history bears this out. In 1986, the code was rewritten for the first time in about 30 years. In the next 15 years, 84 new tax laws were enacted.

Just one of these laws, the Tax and Trade Relief Extension Act of 1998, contained 25 sections of tax changes. Of these, 11 were effective retroactively and four were effective within 90 days of the end of the calendar year.

Both the IRS and taxpayers are challenged in these situations. The IRS needs to issue clear guidance and forms covering the changes in time for the next filing season. Taxpayers face the uncertainty in late changes introduced around their current and future tax obligations. With short lead times, the IRS and taxpayers have little time to become knowledgeable about the changes. This creates additional opportunities for error as well as heightened frustration and conflict. Indeed, the inability to stay current with these changes has been cited by small business owners and individuals as a primary reason for their use of paid preparers.

The IRS faces its own challenges in making sure its systems, training, and other employee tools are current and reflect the most recent legislation. In addition, the time between when a return is filed and audited may be 1-2 years, taxpayers and IRS employees must also accommodate circumstances where the Code has changed, sometimes significantly, in the intervening time period.

The enactment of provisions with retroactive or short effective lead times is particularly problematic and the effect on complexity is magnified. Both taxpayers and the IRS frequently must act quickly to accommodate these changes. For the IRS, especially challenging are changes that come late in the calendar year when the forms and publications for the next filing season are ready to go or have gone to the printers. Short timeframes frequently do not allow the IRS to consult with taxpayers and other stakeholders in developing new forms. This can result in the forms being more difficult for taxpayers to understand or complete than they would be under normal circumstances.

Simplification Remains a Challenge

Mr. Chairman, in her February 28 testimony before the Subcommittee, the National Taxpayer Advocate made the following observation, which I believe, encapsulates the challenge we face:

> *" Clearly, no one in Congress or in the IRS sat down and said, 'let's try to make the Code so complicated that no one will ever be able to figure out even basic provisions like family status by himself.' Tax complexity creeps up on us – we try to eliminate a perceived abuse (as with the minimum tax in 1969), or carve out relief for one special set of circumstances (as with innocent spouse). We keep adding exceptions, limitations, and rules as other inequities reveal themselves. Certainly, revenue considerations play a role. Sometimes we*

> *actually think we've solved a problem – as with the dependency exemption between divorced or separated parents under IRC section 152(e) in 1984 – only to find that forces outside the federal tax universe – here, state courts' interpretation of their domestic relations jurisdiction – have foiled all our best efforts."*

Indeed, tax law complexity has been cited by the National Taxpayer Advocate as the top problem for both individual and business taxpayers.

Tax complexity has enormous consequences on burden reduction and beyond. In its recent publication, "Guiding Principles for Tax Simplification," the American Institute of Certified Public Accountants (AICPA) gives a telling description of the effects:

> *"In recent years, the complex nature of tax laws has undermined voluntary compliance by eroding public perceptions of tax fairness and imposing inappropriate compliance burdens. Federal and state tax agencies have difficulty providing accurate assistance to taxpayers, designing understandable forms and instructions, and promulgating timely regulatory guidance."*

The AICPA lists a number of tax provisions from a number of bills that pose complexity problems, particularly for individual and business taxpayers. It even gives a "thumbs down" to provisions that violate tax simplification guiding principles such as using consistent concepts and definitions. Other organizations, including the Joint Tax Committee, the National Taxpayer Advocate, and the IRS in its annual complexity report, have performed similar analyses.

As different as the many studies may be, I believe that there would be little disagreement that credit eligibility determinations best exemplify the many problems we face as tax administrators and the frustration the taxpayer experience in trying to be compliant.

A variety of definitions are used to determine a taxpayer's eligibility to claim the dependency exemptions and certain tax credits. Understanding these definitions and how to apply them is necessary for the taxpayer to file a correct return.

In addition to the filing status designation required on individual tax returns, separate but sometimes related, determinations must be made regarding dependents and qualifying individuals for personal tax credits. The definitions associated with filing status and dependents and qualifying individuals are some of the more complex issues faced by over 124 million individual taxpayers.

Frequent changes have heaped more confusion on the problem. The Earned Income Tax Credit, for example, has been changed almost annually since 1986. Changes are even more frequently proposed than enacted. For example, in the 106th Congress

over 339 bills were introduced proposing new tax credits or modifying existing ones. Most of the credits would have required detailed guidance from Treasury and IRS to define precisely the items and activities that were eligible for a particular credit, thereby adding complexity to the tax system.

In fact, the problem is so wound around the complexity axle that The National Taxpayer Advocate concluded: "Our case analysis demonstrates that in some areas – the Earned Income Tax Credit and other 'family status' issues in particular – no amount of IRS process improvement will significantly reduce taxpayers problems. To achieve significant reduction in taxpayer and IRS burden, Congress must enact a uniform definition of a qualifying child that is applicable to all tax provisions that key off of family status."

CONCLUSION

Mr. Chairman, in conclusion, I believe we have made progress this past year in reducing burden for America's taxpayers. We have done this through a multi-track strategy. We are eliminating lines on forms, and are redesigning forms and notices to make them easier for taxpayers to understand. Whenever possible, we are relieving taxpayers of the obligation to fill out forms or to use burdensome methods to meet their various reporting obligations. Our Business Systems Modernization program is now delivering more electronic products and services to taxpayers and practitioners that will allow them to conduct more of their transactions with the IRS across secure lines of communications.

However, it would be misleading to say that these efforts alone will reduce taxpayer burden. Tax law complexity remains the Gordian Knot that must be cut if we are to provide the level of burden reduction that America's taxpayers expect and deserve. Thank you and I would be happy to answer any questions.

BURDEN REDUCTION

Forms Design

* Schedule D
* Check the Box
* Form 6251
* Form 941

Regulatory Reductions

* Cash vs. Accrual
* Determination Letter Procedures
* M-1 & M-2 Exemptions
* Form 5500 Requirements

Management Initiatives

* Office of Taxpayer Burden Reduction
* Taxpayer Burden Model
* EIN Assignment Changes

Electronic Services

* EFTPS On-Line
* E-Filing Improvements
* Internet & Web-Based Technology

Mr. OSE. Thank you, Commissioner.

Our third witness on the first panel is the Managing Director, Strategic Issues, General Accounting Office, Mr. Vic Rezendes.

Mr. REZENDES. Thank you.

In brief, Federal paperwork increased by 290 million burden hours this last fiscal year and, as you mentioned earlier, the largest 1 year increase since 1995 and 3 billion burden hours higher than the target Congress set. As you can see from my first chart, also on page 6 of my testimony, of the majority of the data collected governmentwide, 94 percent is for regulatory compliance, less than 5 percent is for application of benefits, and 1 percent for other purposes.

The second chart, on page 7 of the testimony, shows almost two-thirds of the estimated paperwork burden was primarily directed toward businesses, less than a third on individuals, and 3 percent on State and local governments and tribes. As was the case in previous years, this record increase in paperwork burden was largely attributed to IRS, which accounted for about 83 percent of the total, up from 75 percent 6 years ago. In contrast to previous years, IRS attributed most of the increase to program changes it initiated, not because of the statutory requirements imposed on the agency.

Changes in agency estimates did not tell the whole story and can often be misleading. For example, a 37 million burden hour decrease in the Department of Transportation's bottom line paperwork estimate was entirely driven by about a 40 million-hour program change reduction. However, it was not clear from the data what specific actions precipitated this change, new statutes, agency actions, or reinstated and/or expired collections. OIRA staff told us that the DOT reduction was caused by an expiration and subsequent paperwork violation of the agency's driver log duty status information collection. Therefore, the burden actually imposed on the public by this collection did not really go down.

This year, we had more difficulty than in the past in obtaining and reconciling numbers from OIRA. Also, unlike previous years, OIRA did not collect detailed information on 12 independent agencies about the reasons for the burden changes and did not report any burden information on those agencies in its report being released today. Therefore, we do not believe that document fully satisfies the requirement to keep Congress fully and currently informed of the major activities under the act. OIRA did not identify, as it has done in the past, how much of the program changes reported were caused by new statutes or agency initiated actions. These changes seem to run counter to the Administrator's stated goal of increasing government transparency.

Let me now turn to paperwork violations. During the past 3 years, the number of violations has declined steadily. Because OIRA limited which agencies needed to report this year, we could not provide comparable violation data. However, as you can see from my final chart, also on page 16 of the testimony, the selected Federal agencies providing information to OMB identified 402 violations, only slightly fewer than the previous year, indicating that the overall decline in the number of violations has stopped. Many of these violations were new and resolved by the end of the fiscal year. However, about 40 percent of the violations were listed last

year. Just three agencies—Agriculture, HUD, and VA—account for almost 60 percent of the violations and many have been occurring for years.

For example, at VA, 25 percent of its collections had been in violation for at least 2 years, 15 for 4 years, and several in the 8 to 10 year range. OIRA has taken some steps to encourage agencies to comply and these steps previously appeared to be paying off. However, because the number of violations did not decline this year, we believe OIRA can do more. We estimate these violations constitute a significant opportunity cost. We estimate the cost at $1.6 billion. We also recognize the limitation OIRA faces with an ever increasing workload and limited staff. However, we do not believe the kinds of actions needed to correct this require a large amount of additional resources.

Thank you, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement of Mr. Rezendes follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Energy, Policy, Natural Resources, and Regulatory Affairs, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at
9:30 a.m. EDT
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April 11, 2002

PAPERWORK REDUCTION ACT

Burden Increases and Violations Persist

Statement of Victor S. Rezendes, Managing Director
Strategic Issues Team

GAO-02-598T

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the implementation of the Paperwork Reduction Act of 1995 (PRA). As you requested, I will discuss changes in federal paperwork burden during the past year, with a particular focus on the Internal Revenue Service (IRS). I will also revisit an issue that we have discussed during previous hearings—violations of the PRA in which information collection authorizations from the Office of Management and Budget (OMB) either expired or were otherwise inconsistent with the act's provisions.

In brief, the data indicate that federal paperwork increased by almost 290 million burden hours during fiscal year 2001—the largest 1-year increase since the PRA was amended and recodified in 1995. As was the case in previous years, this record increase is largely attributable to IRS, which increased its paperwork estimate by about 250 million burden hours during the year. Most of the increases that IRS described involved changes that had been made at the initiation of the agency—not because of new statutes.

Federal agencies providing information to OMB identified more than 400 violations of the PRA that occurred during fiscal year 2001. Those same agencies identified only slightly fewer violations than last year, indicating that the overall decline in the number of violations during the past 2 years has stopped. Some of these PRA violations have been going on for years, and they collectively represent substantial opportunity costs. As we have said for the past several years, we believe that OMB can do more to ensure that agencies do not use information collections without proper clearance.

We also believe that OMB can do a better job in reporting information to Congress and the public about major activities under the PRA. Specifically, we believe that OMB should provide burden-hour estimates and information on PRA violations for all of the agencies with significant amounts of paperwork, not just selected agencies. In addition, we believe that OMB can be more transparent in the information that it provides, more clearly delineating the causes of changes in agencies' burden-hour estimates.

Background

Before discussing these issues in detail, it is important to recognize that a large amount of federal paperwork is necessary and serves a useful purpose. Information collection is one way that agencies carry out their missions. For example, IRS needs to collect information from taxpayers

and their employers to know the amount of taxes owed. The Bureau of the Census collects information that was used to reapportion congressional representation and is being used for a myriad of other purposes. The events of September 11 have demonstrated the importance of accurate, timely information. On several occasions, we have recommended that agencies collect certain data to improve operations and evaluate their effectiveness.[1]

However, under the PRA, federal agencies are required to minimize the paperwork burden they impose. The original PRA of 1980 established the Office of Information and Regulatory Affairs (OIRA) within OMB to provide central agency leadership and oversight of governmentwide efforts to reduce unnecessary paperwork and improve the management of information resources. Currently, the act requires OIRA to develop and maintain a governmentwide strategic information resources management (IRM) plan, and in recent years OIRA has designated the Chief Information Officers Council's strategic plan as the principal means of meeting this requirement. In February of this year we issued a report concluding that this document does not constitute an effective and comprehensive strategic vision.[2] Specifically, we said that the goals in the plan were not linked to expected improvements in agency and program performance, and did not address such issues as records management or the collection and control of paperwork. Other documents that OIRA provided also did not, either individually or collectively, meet the PRA's requirement for a governmentwide strategic IRM plan. However, the president's budget for 2003, released in February of this year, contains many (but not all) of the required elements, and therefore represents credible progress toward developing a governmentwide IRM plan.

[1]See, for example, U.S. General Accounting Office, *Veterans' Health Care: VA Needs Better Data on Extent and Causes of Waiting Times*, GAO/HEHS-00-90 (Washington, D.C.: May 31, 2000) and U.S. General Accounting Office, *Public Housing: HUD Needs Better Information on Housing Agencies' Management Performance*, GAO-01-94 (Washington, D.C.: Nov. 9, 2000).

[2]U.S. General Accounting Office, *Information Resources Management: Comprehensive Strategic Plan Needed to Address Mounting Challenges*, GAO-02-292 (Washington, D.C.: Feb. 22, 2002). Our conclusions in this report were similar to those in a report issued several years earlier. See U. S. General Accounting Office, *Regulatory Management: Implementation of Selected OMB Responsibilities Under the Paperwork Reduction Act*, GAO/GGD-98-120 (Washington, D.C.: July 9, 1998).

OIRA also has overall responsibility for determining whether agencies' proposals for collecting information comply with the act.[3] Agencies must receive OIRA approval for each information collection request before it is implemented. Section 3514(a) of the PRA requires OIRA to keep Congress "fully and currently informed" of the major activities under the act, and must submit a report to Congress at least annually on those activities. The report must include, among other things, a list of all PRA violations and a list of any increases in burden. To satisfy this reporting requirement, OIRA develops an Information Collection Budget (ICB) by gathering data from executive branch agencies. In October 2001, the OMB director sent a bulletin to the heads of executive departments and agencies requesting information to be used in preparation for the fiscal year 2002 ICB (reporting on actions during fiscal year 2001). However, that bulletin differed from its predecessors in several respects. For example, the agencies that the director asked to provide information did not include 12 noncabinet-level agencies and organizations that had previously provided ICB information (e.g., the Federal Communications Commission, the Federal Trade Commission, the Social Security Administration, and the Securities and Exchange Commission). The only independent agency asked to provide information to OMB was the Environmental Protection Agency (EPA). Also, the covered agencies were asked to provide less information than before. For example, the agencies were asked to provide detailed information only for "significant" burden reductions and increases, not on each change in burden estimates. The OMB director said in the October 2001 bulletin that the amount of information requested had been significantly reduced "in the interest of reducing burden on the agencies."

OIRA published its ICB for fiscal year 2001 (showing changes in agencies' burden-hour estimates during fiscal year 2000) in August 2001. OIRA officials told us that they did not expect to publish the ICB for fiscal year 2002 until today's hearing. Therefore, we obtained unpublished data from OIRA to identify changes in governmentwide and agency-specific "burden-hour" estimates during fiscal year 2001. However, because the OIRA data does not include burden-hour estimates from any independent agencies other than EPA, we also obtained data from the Regulatory Information

[3]The act requires the director of OMB to delegate the authority to administer all functions under the act to the administrator of OIRA but does not relieve the OMB director of responsibility for the administration of those functions. Approvals are made on behalf of the OMB director. In this testimony, we generally refer to OIRA or the OIRA administrator wherever the act assigns responsibilities to OMB or the director.

Service Center (RISC) for the independent agencies that OIRA did not cover.[4] We then compared both the OIRA and the RISC data to agencies' burden-hour estimates in previous ICBs to determine changes in those estimates over time.

"Burden hours" has been the principal unit of measure of paperwork burden for more than 50 years and has been accepted by agencies and the public because it is a clear, easy-to-understand concept. However, it is important to recognize that these estimates have limitations. Estimating the amount of time it will take for an individual to collect and provide information or how many individuals an information collection will affect is not a simple matter.[5] Therefore, the degree to which agency burden-hour estimates reflect real burden is unclear. Nevertheless, these are the best indicators of paperwork burden available, and we believe they can be useful as long as their limitations are kept in mind.

Governmentwide Paperwork Burden Estimate Has Increased

Federal agencies estimated that their information collections imposed about 7 billion burden hours on the public at the end of fiscal year 1995—just before the PRA of 1995 took effect. The PRA made several changes in federal paperwork reduction requirements. One such change required OIRA to set a goal of at least a 10-percent reduction in the governmentwide burden-hour estimate for each of fiscal years 1996 and 1997, a 5 percent governmentwide burden reduction goal in each of the next 4 fiscal years, and annual agency goals that reduce burden to the "maximum practicable opportunity." Therefore, if federal agencies had been able to meet each of these goals, the 7-billion burden-hour estimate in 1995 would have fallen to about 4.6 billion hours by September 30, 2001.

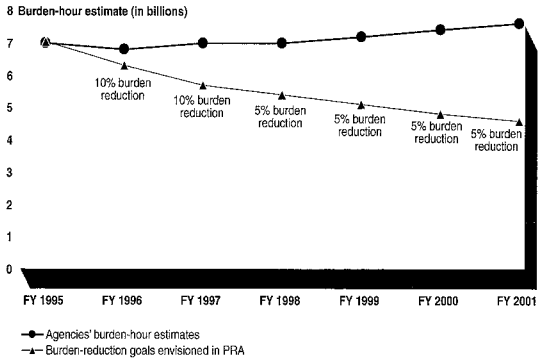
However, as figure 1 shows, this anticipated reduction in paperwork burden did not occur. In fact, the data we obtained from OIRA show that the governmentwide burden-hour estimate *increased* by about 9 percent during this period and stood at more than 7.6 billion hours as of September 30, 2001. During fiscal year 2001 alone, the governmentwide

[4]RISC is part of the General Services Administration but works closely with OMB to provide information to the president, Congress, and the public about federal regulations. RISC maintains a database that includes information on all regulatory actions and all information collection review actions by OIRA.

[5]See U.S. General Accounting Office, *EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims*, GAO/GGD-00-59 (Washington, D.C.: Mar. 16, 2000) for how one agency estimates paperwork burden.

estimate increased by nearly 290 million hours—the largest 1-year increase since the PRA was amended and recodified in 1995.

Figure 1: Governmentwide Burden-Reduction Goals Are Not Being Met

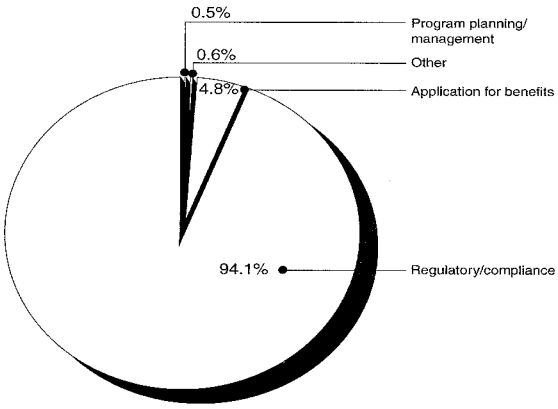


Note: Data are as of the end of each fiscal year. The governmentwide burden-hour estimate as of September 30, 2001, was about 7,651.4 million hours.

Sources: OMB and agencies' ICB submissions.

It is also important to understand how the most recent estimate of federal paperwork is allocated by the purpose of the collections, by type of respondent, and by agency. As figure 2 shows, RISC data indicates that almost 95 percent of the more than 7.6 billion hours of estimated paperwork burden in place governmentwide as of September 30, 2001, was being collected primarily for the purpose of regulatory compliance. Less than 5 percent was being collected as part of applications for benefits, and about 1 percent was collected for other purposes.

Figure 2: As of September 30, 2001, Most Federal Paperwork Was Primarily Collected for Regulatory Compliance

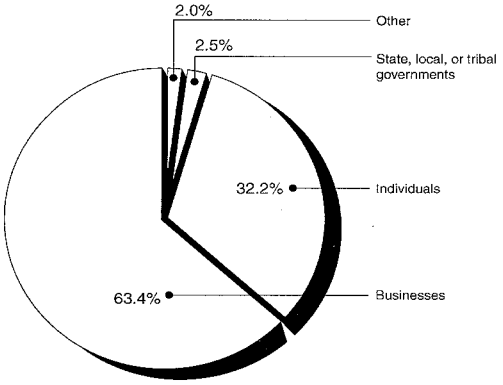


Note: The governmentwide burden-hour estimate as of September 30, 2001, was about 7,651.4 million hours. The "other" category includes program evaluation, general purpose statistics, audit, and research.

Sources: OMB and RISC.

Figure 3 shows that almost two-thirds of the governmentwide burden estimate was primarily directed toward businesses. Slightly less than one-third of the burden was primarily on individuals, and less than 3 percent was on state, local, or tribal governments.

Figure 3: As of September 30, 2001, Most Federal Paperwork Was Primarily Directed at Businesses

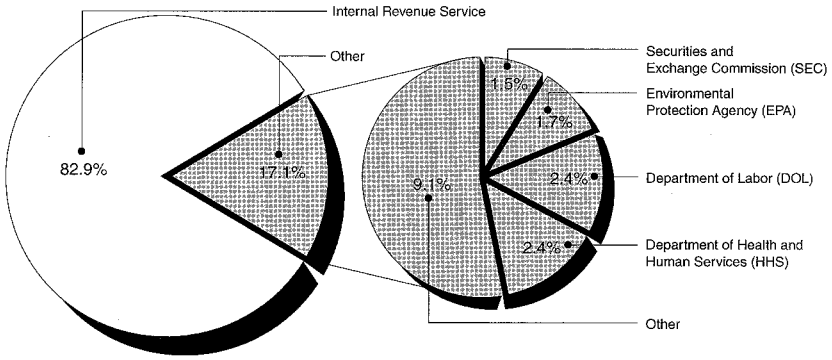


Note: The governmentwide burden-hour estimate as of September 30, 2001, was about 7,651.4 million hours. The "other" category includes farms, nonprofits, and the federal government.

Sources: OMB and RISC.

As figure 4 shows, as of September 30, 2001, IRS accounted for about 83 percent of the governmentwide burden-hour estimate (up from about 75 percent in September 1995). Other agencies with burden-hour estimates of 100 million hours or more as of that date were the departments of Labor (DOL) and Health and Human Services (HHS), EPA, and the Securities and Exchange Commission (SEC). Because IRS constitutes such a significant portion of the governmentwide burden-hour estimate, changes in IRS' estimate can have a significant—and even determinative—effect on the governmentwide estimate.

Figure 4: IRS Accounted for Most of the Federal Paperwork Burden-Hour Estimate as of September 30, 2001



Note: The governmentwide burden-hour estimate as of September 30, 2001, was about 7,651.4 million hours.

Sources: OMB and the Department of the Treasury.

Changes in Individual Agencies' Estimates During Fiscal Year 2001

As table 1 shows, some agencies' paperwork burden estimates decreased sharply during fiscal year 2001, most notably those of the departments of Commerce and Transportation (DOT). However, other agencies (e.g., the department of the Treasury and the SEC) indicated that their paperwork burdens had increased. The reasons behind some of these changes are clear. For example, the sharp decrease in the Department of Commerce's estimate (from more than 38 million hours to about 10 million hours) appears to be almost entirely attributable to the completion of the decennial census. The reasons for other changes are less immediately apparent. As I will discuss later, the sharp decrease in the DOT estimate was caused by the expiration (and subsequent PRA violation) of a single information collection.

Table 1: Changes in Federal Agencies' Burden-Hour Estimates From Fiscal Years 2000 to 2001

Burden hours (in millions)	FY 2000 estimate	Program changes	Adjustments	Total change	FY 2001 estimate
Governmentwide	7,361.7			289.7	7,651.4
Departments					
Agriculture	75.2	5.8	5.9	11.5	86.7
Commerce	38.6	(28.6)	0.5	(28.3)	10.3
Defense	93.6	(0.7)	(0.2)	(1.6)	92.1
Education	42.0	(1.5)	(0.0)	(1.5)	40.5
Energy	2.9	1.0	(0.0)	0.9	3.9
Health and Human Services	173.7	2.2	10.9	12.9	186.6
Housing and Urban Development	12.5	(0.5)	0.0	(0.4)	12.1
Interior	5.6	1.9	(0.2)	1.9	7.6
Justice	36.8	0.3	3.5	3.7	40.5
Labor	181.6	(0.0)	4.7	4.5	186.1
State	29.2	(0.1)	(13.8)	(12.6)	16.6
Transportation	117.7	(42.4)	5.1	(37.3)	80.3
Treasury	6,156.8	214.2	44.8	259.1	6,415.9
Veterans Affairs	6.0	(0.0)	(0.7)	(0.7)	5.3
Agencies					
Environmental Protection Agency	128.8	0.9	1.2	2.0	130.8
Federal Acquisition Regulations	23.3	0.5	–	0.5	23.8
Federal Communication Commission	29.0	11.7	(0.6)	11.1	40.1
Federal Deposit Insurance Corporation	8.3	2.1	0.1	2.3	10.5
Federal Emergency Management Agency	5.2	0.4	0.0	0.4	5.5
Federal Energy Regulatory Commission	4.1	0.3	–	0.3	4.4
Federal Trade Commission	73.8	0.1	(1.3)	(1.2)	72.6
National Aeronautics and Space Administration	7.2	(0.1)	(0.2)	(0.3)	6.9
National Science Foundation	4.8	0.0	(0.0)	0.0	4.8
Nuclear Regulatory Commission	9.5	(0.8)	(0.6)	(1.4)	8.2
Securities and Exchange Commission	71.8	(1.8)	44.3	42.5	114.3
Small Business Administration	2.2	(0.2)	(0.0)	(0.2)	1.9
Social Security Administration	22.2	1.3	0.7	2.0	24.2

Note: OIRA did not provide us with reliable data on the program changes and adjustments governmentwide. Data on the Federal Acquisition Regulations were submitted by the General Services Administration. Data from the 27 departments and agencies may not equal the governmentwide figure because smaller agencies' requirements are also included. Cells with "0.0" values were non-zero values rounded to zero. Cells with "–" entries were zero values. Addition of individual elements may not equal totals due to rounding.

Sources: OMB (cabinet departments and EPA) and RISC (other agencies).

However, changes in agencies' bottom-line burden-hour estimates do not tell the whole story, and can be misleading. It is also important to

understand *how* the agencies accomplished these results. OIRA classifies modifications in agencies' burden-hour estimates as either "program changes" or "adjustments." Program changes are the result of deliberate federal government action (e.g., the addition or deletion of questions on a form), and can occur as a result of new statutory requirements, agency-initiated actions, or through the expiration or reinstatement of OIRA-approved collections. Adjustments are not the result of deliberate federal government action, but rather are caused by factors such as changes in the population responding to a requirement or agency reestimates of the burden associated with a collection of information. For example, if the economy declines and more people complete applications for food stamps, the resultant increase in the Department of Agriculture's (USDA) paperwork estimate is considered an adjustment because it is not the result of deliberate federal action.

In recent ICBs, OIRA has indicated whether fluctuations in agencies' burden-hour estimates were caused by program changes or adjustments. The fiscal year 2001 burden estimates that we obtained from OIRA and RISC in preparation for this hearing also contained those two categories and are presented in table 1. Analysis of those data helps explain what drove the changes in agencies' bottom-line burden-hour estimates. For example, almost all of the marked decline in the Department of State's estimate was due to adjustments. Also, the more than 40 million burden-hour increase in the SEC estimate was primarily driven by adjustments. Therefore, the Department of State cannot claim credit for having proactively reduced the paperwork burden that it imposes on the public, and the SEC may not be responsible for the increase that it reported. In contrast, table 1 shows that the more than 37 million burden-hour decrease in DOT's bottom-line paperwork estimate was entirely driven by a more than 40 million-hour program change reduction. However, the table does not indicate what specific type of action precipitated this or any other program change—new statutes, agency actions, or reinstated/expired collections. Although DOT's ICB submission did not provide further clarification, OIRA staff told us that the reduction was caused by the expiration (and subsequent PRA violation) of the agency's "hours of service" information collection.

Last year, the data that OIRA obtained from the agencies allowed us to separate the program changes in our table into the new statutes, agency actions, and reinstate/expired subcategories. However, as I noted previously, OIRA did not request such detailed data from the agencies for the fiscal year 2002 ICB except for certain "significant" collections.

Therefore, our table this year does not break down the program changes into these subcategories.

For the past 2 years, OIRA indicated in separate columns of the ICB summary table whether the program changes made during each fiscal year were due to agency action or new statutes. OIRA officials told us that the ICB that the agency was releasing today would present both statutory and agency action-based program changes during fiscal year 2001 in *one* column. As a result, they said, Congress and the public could calculate the amount of program change that was attributable to violations or reinstatements by subtracting the amount of the new statutes/agency actions from the total program changes.

We believe that this approach has at least two problems. First, combining the statutory and agency-initiated program changes into one column prevents Congress and the public from knowing why the agencies' paperwork estimates changed. Presentation of this information in separate columns—as has been done in previous years—allows the public to know whether Congress or the agencies are responsible for increases or decreases in an agency's paperwork estimate. Second, not providing this information and requiring Congress and the public to calculate the amount of change in burden caused by violations or the reinstatement of violations seems to run counter to the administrator's stated goal of increasing the transparency of OIRA's operations. OIRA has such data, for it listed expirations and reinstatements were separately listed in the raw data provided to us in preparation for this hearing, and OIRA used the data to calculate the amount of the program changes that were due to agency actions or new statutes.

As I mentioned previously, the PRA requires OIRA to keep Congress and congressional committees "fully and currently informed" of the major activities under the act. It specifically says that OIRA's annual report must identify "any increase in the collection of information burden." We do not believe that the information OIRA is releasing today fully satisfies this PRA requirement in that it includes only some of the agencies with estimated burden-hour increases and substantial information collection requirements. In fact, some of the independent agencies that OIRA indicated that it planned to exclude from this year's ICB (e.g., the SEC, the Federal Trade Commission, and the Federal Communication Commission) had higher estimated burden than some of the cabinet departments for which information was provided (e.g., the departments of Energy, Interior, and Veterans Affairs). Also, to facilitate transparency and increase Congress' and the public's understanding of paperwork burden, we believe

that OIRA should separately identify each of the specific types of program changes in the ICB—changes due to agency action, changes due to new statutes, changes due to violations, and changes due to reinstatements.

Reasons for Changes in IRS Burden Estimates

Although changes in non-IRS departments and agencies' burden-hour estimates are notable and important, they pale in comparison to the size of the changes at IRS. The increase in the IRS burden-hour estimate during fiscal year 2001 (about 250 million burden hours) was more than six times as much as the rest of the government combined. Therefore, although all agencies must ensure that their information collections impose the least amount of burden possible, it is clear that the key to controlling federal paperwork governmentwide lies in understanding and controlling the increases at IRS.

As table 1 shows, more than 80 percent of the 259 million burden-hour increase in the Department of the Treasury paperwork estimate during fiscal year 2001was attributed to program changes. IRS accounted for about 250 million (about 97 percent) of the departmental increase. In the Department of the Treasury's ICB submission to OMB describing changes during fiscal year 2001, IRS identified a number of significant program change increases that it said were a function of the underlying statutes. For example, IRS said that it added nearly 28 million burden hours to its estimate because the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 added a section to the Internal Revenue Code, resulting in a new Form 8873.[6]

However, about two-thirds of the program change increases that IRS identified in the ICB submission for fiscal year 2001 involved changes made at the initiation of the agency—not because of new statutes. For example:

- IRS said that 14 lines and 23 Code sections were added to Form 1065 ("U.S. Return of Partnership Income"), and accompanying schedules and instructions at the request of the agency, resulting in an estimated increase of more than 75 million burden hours.
- IRS said that changes made at the agency's request to Form 1120S ("U.S. Income Tax Return for an S Corporation") and accompanying schedules

[6]IRS said the section "provides for an exclusion from gross income for certainty transaction (sic) occurring after September 30, 2000, with respect to foreign trading gross receipts."

and instructions resulted in an estimated increase of more than 22 million burden hours.

- IRS said that changes at the request of the agency to Form 1120 ("U.S. Corporation Income Tax Return") and related schedules and instructions resulted in a more than 7 million-hour increase in the form's estimated burden.

Because IRS attributed most of the increase in its burden-hour estimate during fiscal year 2001 to program changes, and because most of the program changes during that period were made at the agency's initiative, IRS cannot claim (as it has in the past) that statutory changes primarily caused the increase in its burden-hour estimates.

IRS also indicated in the ICB submission that it had taken a number of actions intended to reduce paperwork burden. For example, IRS said it (1) had conducted a series of focus groups consisting of taxpayers who file Schedule D to explore their preferences for presenting and reporting information to compute gains and losses and any tax due, (2) was working with a contractor to redesign Form 941, "Employer's Quarterly Federal Tax Return," and the accompanying instructions, and (3) was continuing its initiative to encourage taxpayers to file the simplest tax return for their tax situation. With regard to small corporations, IRS said it had proposed that corporate filers with assets of less than $250,000 be exempted from certain reporting requirements, which would—if implemented—save 39 million burden hours.

Two Strategies for Controlling Paperwork

In summary, the agencies' information collection estimates for the ICB being released today indicate that federal paperwork continues to increase, and that changes initiated by IRS accounted for most of the record 1-year increase during fiscal year 2001. As we indicated in our February report on information resources management, OIRA and the agencies lack a unifying vision for how those resources will facilitate the government's agenda. Also, the risk is increased that duplicative initiatives will be undertaken, and that opportunities for data sharing will be missed. The PRA requires that OIRA develop such a plan, one element of which must be a proposal for reducing information burdens. Also, because IRS constitutes such a significant portion of the governmentwide burden-hour estimate, another strategy to address increases in federal paperwork could be to focus OIRA's burden-reduction efforts on that agency. Just as increases in IRS's burden estimates have had a determinative effect on the governmentwide estimates, reduction in the IRS estimates can have an equally determinative effect.

Agencies Again Identified Hundreds of Violations

I would now like to turn to the other main topic you asked us to address—PRA violations. The PRA prohibits an agency from conducting or sponsoring a collection of information unless (1) the agency has submitted the proposed collection and other documents to OIRA, (2) OIRA has approved the proposed collection, and (3) the agency displays an OMB control number on the collection. The act also requires agencies to establish a process to ensure that each information collection is in compliance with these clearance requirements. OIRA is required to submit an annual report to Congress that includes a list of all violations. The PRA says no one can be penalized for failing to comply with a collection of information subject to the act if the collection does not display a valid OMB control number. OIRA may not approve a collection of information for more than 3 years, and there are about 7,000 approved collections at any one time.

In the ICB for fiscal year 1999, OIRA identified a total of 872 violations of the PRA during fiscal year 1998. In our testimony before this Committee 3 years ago, we noted that some agencies—USDA, HHS, and the Department of Veterans Affairs (VA)—had each identified more than 100 violations.[7] We also said that OIRA had taken little action to address those violations and suggested a number of ways that OIRA could improve its performance. For example, we said that OIRA could use its database to identify information collections for which authorizations had expired, contact the collecting agency, and determine whether the agency was continuing to collect the information. We also said that OIRA could publicly announce that the agency is out of compliance with the PRA in meetings of the Chief Information Officers Council and the President's Management Council.

During the past 2 years, the number of violations that OMB reported has declined steadily.

- Two years ago we testified that the number of violations had declined from 872 during fiscal year 1998 to 710 during fiscal year 1999.[8]

[7]U.S. General Accounting Office, *Paperwork Reduction Act: Burden Increases and Unauthorized Information Collections*, GAO/T-GGD-99-78 (Washington, D.C.: Apr. 15, 1999).

[8]U.S. General Accounting Office, *Paperwork Reduction Act: Burden Increases at IRS and Other Agencies*, GAO/T-GGD-00-114 (Washington, D.C.: Apr. 12, 2000).

- Last year, we testified that the number of violations had declined even further—from 710 to 487 during fiscal year 2000. [9]

Each year, a few agencies—most consistently USDA and HUD, but occasionally the Department of Justice and VA—have accounted for a disproportionate share of the violations. Each year we concluded that, although OIRA had taken several actions to address PRA violations, the OMB and the agencies responsible for the collections could do more to ensure compliance.

Table 2 shows the number of violations that the covered agencies reported (and that OIRA agreed were violations) during fiscal year 2001. As noted previously, noncabinet-level agencies other than EPA were not required to report this information to OIRA in preparation for this year's ICB, so we could not provide information for those agencies in our table. Therefore, comparison of the total number of violations during fiscal year 2001 to previous years can be done only for those agencies reporting in all relevant time frames.

The cabinet departments and EPA reported 648 PRA violations during fiscal year 1999 and 423 violations during fiscal year 2000. Those agencies identified a total of 402 violations during fiscal year 2001—only slightly fewer than the year before. Therefore, the substantial decline in the number of PRA violations that has occurred in these agencies appears to have stopped. As was the case in previous years, HUD, USDA, and VA reported the most violations during fiscal year 2001—112, 67, and 64, respectively. The number of violations at USDA decreased between fiscal years 2000 and 2001 (from 96 to 67), but the numbers at HUD and VA went up (from 99 to 112, and from 40 to 64, respectively). Overall, the number of violations decreased in 8 of the 15 agencies reporting data in both years, increased in 6 agencies, and stayed the same in 1 agency.

[9]U.S. General Accounting Office, *Paperwork Reduction Act: Burden Estimates Continue to Increase*, GAO-01-648T (Washington, D.C.: Apr. 24, 2001).

Table 2: Reported Violations of the PRA During Fiscal Year 2001

	FY 2001 expired information collections	FY 2001 other violations	Total FY 2001 violations
Department of Agriculture	61	6	67
Department of Commerce	22	0	22
Department of Defense	7	0	7
Department of Education	4	0	4
Department of Energy	6	0	6
Department of Health and Human Services	29	7	36
Department of Housing and Urban Development	112	0	112
Department of the Interior	11	5	16
Department of Justice	16	5	21
Department of Labor	4	4	8
Department of State	11	0	11
Department of Transportation	12	0	12
Department of the Treasury	14	0	14
Department of Veterans Affairs	64	0	64
Environmental Protection Agency	1	1	2
Rest of government	Unknown	Unknown	Unknown
Total	**374**	**28**	**402**

Note: In contrast to previous years, OIRA did not collect information on PRA violations from any noncabinet-level agency other than EPA. Therefore, the total in each column would be greater if the data on violations for those agencies were available.

Source: OMB (expired collections) and agencies' ICB submissions (other violations).

Many of the 402 violations that occurred during fiscal year 2001 were new and had been resolved by the end of the fiscal year. However, about 40 percent of the violations were listed in last year's ICB, and many had been occurring for years. For example, as of the end of fiscal year 2001,

- USDA indicated that 13 of its collections had been in violation for more than 2 years, and 10 had been in violation for at least 3 years,
- HUD indicated that 10 of its collections had been in violation for at least 2 years, and 6 had been in violation for at least 4 years,
- the Department of the Interior indicated that 9 collections had been in violation for at least 2 years, and 4 had been in violation for at least 7 years, and
- VA indicated that 25 of its collections had been in violation for at least 2 years, and 15 had been in violation for at least 4 years.

Violations and Opportunity Costs

In our testimony in previous years, we provided an estimate of the monetary cost associated with certain PRA violations. To estimate that cost, we multiplied the number of burden hours associated with the violations by an OMB estimate of the "opportunity costs" associated with each hour of IRS paperwork. Although the ICBs list the information collections that were in violation during the previous year, and the dates of expiration and any reinstatement, they do not provide information on the number of burden hours associated with each of the violations. Therefore, we obtained data from OIRA on the estimated number of burden hours for 340 of the 402 information collections that were in violation of the PRA during fiscal year 2001.[10]

As in previous years, the data suggest that these PRA violations may constitute significant opportunity costs for those required to provide the related information. We estimate that the 340 violations involved about 58 million burden hours of paperwork, or about $1.6 billion in opportunity costs. A small percentage of the collections accounted for the bulk of those costs. For example, 60 of the collections involved estimated opportunity costs of at least $1 million each, for a total of more than $1.5 billion. Just three of the collections (two from USDA and one from VA) accounted for more than $1 billion in estimated opportunity costs.

Many of the information collections that were in violation of the PRA were being administered for regulatory purposes, so if the respondents knew the collections were not valid they might not have completed the required forms. However, other violations involved collections in which individuals or businesses were applying for benefits such as loans or subsidies. Therefore, it is not clear whether these individuals and businesses would have refused to complete the required forms if they knew that the collections were being conducted in violation of the PRA.

OIRA Can Do More to Address Violations

As I indicated earlier, OIRA has taken some steps to encourage agencies to comply with the PRA, and those steps previously appeared to have been paying off in terms of fewer reported violations overall and within particular agencies. However, particularly because the number of violations did not decline during fiscal year 2001, we believe that OIRA can do more. For example, 2 years ago OIRA added information to its Internet

[10]OIRA said it did not have burden hour estimates for some of the violations because they had never been approved under the PRA.

home page about information collections that expired in the previous month. As a result, potential respondents are able to review the list of recent expirations and inform the collecting agency, OIRA, and Congress of the need for the agency to either obtain reinstatement of OIRA approval or discontinue the collection.

Although notifying the public about unauthorized information collections is a step in the right direction, OIRA's approach places the burden of responsibility to detect unauthorized collections on the public. It is *OIRA*, not the public, which has the statutory responsibility to review and approve agencies' collections of information and identify all PRA violations. Therefore, we believe that OIRA should not simply rely on the public to identify these violations. For example, OIRA desk officers could use the agency's database to identify information collections for which authorizations had expired, contact the collecting agency, and determine whether the agency is continuing to collect the information. The desk officers could also use the database to identify information collection authorizations that are about to expire, and therefore perhaps *prevent* violations of the act. At a minimum, OIRA could post on its Internet home page the *complete* list of collections that it believes are in violation of the PRA—not just those collections that expired during the previous month and that may or may not constitute violations.

OIRA officials and staff previously told us that they have no authority to do much more than publish the list of violations in the ICB and inform the agencies directly that they are out of compliance with the act. We do not agree that OIRA is as powerless as this explanation would suggest. First of all, OIRA could publish the number of violations for all of the agencies covered by the PRA in the ICB. Section 3514(a) of the act specifically requires OIRA to include in its annual report a "list of all violations," not just the cabinet departments plus EPA. Therefore, we do not believe that the information that OIRA is releasing today fully satisfies this requirement. Also, if an agency does not respond to an OIRA notice that one of its information collections is out of compliance with the PRA, the administrator could take any number of actions to encourage compliance, including any or all of the following:

- Publicly announce that the agency is out of compliance with the PRA in meetings of the Chief Information Officers Council.
- Notify the "budget" side of OMB that the agency is collecting information in violation of the PRA and encourage the appropriate resource management office to use its influence to bring the agency into compliance.

- Place a notice in the *Federal Register* notifying the affected public that they need not provide the agency with the information requested in any expired collection.

OIRA could also notify agencies that the PRA requires them to establish a process to ensure that each information collection complies with the act's clearance requirements. Agencies that continue to collect information without OIRA approval or after the approval has expired are clearly not complying with this requirement. Some agencies do not appear to have established sound clearance processes. Just three agencies—USDA, HUD, and VA—accounted for about 60 percent of all reported violations.

We recognize that some, and perhaps many, of the information collections that violate the PRA's requirements represent important agency data gathering efforts. As I indicated previously, information collection is one way that agencies accomplish their missions and protect public health and safety. Nevertheless, we do not believe that the goals of information collection and compliance with the PRA's requirements are inconsistent. In fact, the more clearly agencies can demonstrate the value of those collections, the easier it should be for them to obtain OIRA approval. Also, the vast majority of PRA violations are ultimately reauthorized by OIRA, therefore indicating that this is more of a management problem than a substantive issue of rogue information collections.

We also recognize the limitations that OIRA faces, with an ever-increasing workload and limited resources. However, we do not believe that the kinds of actions we are suggesting would require significant additional resources. Primarily, the actions require a commitment to improve the operation of the current paperwork clearance process. Also, OIRA cannot eliminate PRA violations by itself. Federal agencies committing these violations need to evidence a similar level of resolve.

Mr. Chairman, this completes my prepared statement. I would be pleased to answer any questions.

Mr. OSE. Thank you.

We will go to questions now. Dr. Graham, what specific significant paperwork reduction initiatives, defined as being 100,000 hours or more, with at least 100,000 hour decrease due to agency action have been accomplished since January 20, 2001?

Mr. GRAHAM. I can't respond to the specific question in terms of the 100,000 hour cutoff but there is issued in the report today a summary of the major paperwork reduction initiatives that we requested each of the 15 agencies submit. There are 34 of those initiatives submitted by the 15 agencies. In some cases, those initiatives are quite strong and ambitious and we are encouraged about them. In other cases, there are initiatives that were submitted to us without any actual quantification of burden reduction. So we definitely have some work to do to strengthen the development of initiatives. I would be happy to give you more detail on the numerical cutoff point if you wish to have that, sir.

[The information referred to follows:]

Q1. *Specific Plans to Reduce Paperwork. The Office of Management and Budget's (OMB's) Fiscal Year (FY) 2002 Information Collection Budget (ICB) reveals that only the Commerce Department - due to the end of the decennial Census - had substantial* ***net program decreases*** *from FYs 2000 to 2001. Unfortunately, as the General Accounting Office (GAO) testified, OMB erroneously included the Transportation Department's 42.5 million hours violation of law from 10/1/01 to 3/4/02 for the "Driver's Record of Duty Status" (formerly called the "Hours of Service of Drivers Regulations") as a program decrease instead of as an adjustment since it was in continuous use without any reduction in burden on the public.*

a. What significant paperwork reduction initiatives - ***with at least a 100,000 hours decrease due to an agency action*** *- were accomplished since January 20, 2001, and what significant initiatives are planned in the remainder of 2002 for the following four non-Internal Revenue Service (IRS) agencies which each levy over 114 million paperwork hours of burden on the public?*

- *HHS?*
- *Labor?*
- *EPA?*
- *SEC?*

Answer: Department of Health and Human Services (HHS)

For FY 2001, HHS achieved one significant burden reduction of at least 100,000 hours:

- *Procurement – Solicitations and Contracts.* HHS achieved this burden reduction through increased use of Government-wide Acquisition Contracts, task and delivery order contracts, electronic commerce, and the increased threshold of use of commercial items. HHS estimates that these factors have resulted in a burden reduction of 448,020 hours.

For FY 2002, HHS plans the following burden reductions of 100,000 hours or more:

- *Medicare Secondary Payer (MSP).* The Centers for Medicare & Medicaid Services (CMS) recently revised the MSP requirements for Medicare outpatient services. Previously, CMS required that patients and hospitals update MSP information every outpatient visit and then reduced the frequency to once every 30 days. In its latest PRA submission, CMS has further reduced the frequency of these updates to once every 90 days. CMS estimates that this policy change will result in a burden reduction of at least 146,312 hours.

- *Medicare Provider Cost Report Reimbursement Questionnaire.* CMS plans to eliminate forms in this cost report that are redundant with another CMS reporting requirement, the Provider Enrollment Form (CMS-855). CMS estimates these eliminations will result in a burden reduction of 624,971 hours.

- *Important Message from Medicare.* This standard disclosure will replace two existing inpatient hospital discharge rights notices: the Hospital Issued Notice of Non-coverage (HINN), and the Notice of Discharge & Medicare Appeal Rights (NODMAR). CMS also will reduce burden by providing hospitals more flexibility in how they notify beneficiaries (i.e. posters, reusable laminated clipboards, counter top tent cards, individual handouts, etc.).

Department of Labor (DOL). DOL achieved two burden reductions of at least 100,000 hours:

- *Insurer to General Account Policyholders.* DOL amended regulations to only require that an insurance company disclose certain information annually and other information only upon request. The reduction in burden of 737,702 hours reflected the less burdensome requirements of the final rule.

- *Ergonomic Program Standard.* This collection was discontinued due to Public Law 107-5, signed on 3/20/01, which disapproved OSHA's final Ergonomics Program. This resulted in a program change reduction of 40.6 million hours.

For FY 2002, DOL has planned the following burden reduction initiatives:

- *Electronic Reporting Initiative.* Labor organizations, union officers and employees, labor relations consultants, and surety companies are required to file various reports. This new electronic reporting initiative will enhance the efficiency of this information collection.

- *Mine Act Regulation Streamlining.* Current regulations require coal mine operators to continuously maintain an average concentration of respirable coal mine dust. Most coal miners do their own sampling. DOL plans to publish a final joint dust rule stating that DOL will assume a portion of the sampling responsibilities. This will effectively decrease the public's burden by 40,690 hours and save the public $1.5 million in costs.

Environmental Protection Agency (EPA). EPA achieved one burden reduction of at least 100,000 hours:

- *Consolidated PCB Program Consolidated Information Collection.* As described in detail in Appendix C of the FY 2002 Information Collection Budget, EPA achieved a significant burden reduction by promulgating changes to its PCB regulations to, among other things: provide flexibility in selecting disposal technologies for PCB wastes; expand the list of prescribed, self-implementing decontamination procedures; and provide less burdensome mechanisms for obtaining EPA approval for a variety of activities

In 2002, EPA's Office of Solid Waste (OSW) plans to propose a rule to streamline or eliminate many reporting and recordkeeping requirements of the Resource Conservation and Recovery Act (RCRA) program. This OSW effort will streamline data collection for RCRA's Biennial Report, which is a major information collection mechanism for hazardous waste generation and management.

Securities and Exchange Commission (SEC). Since January 1, 2001, the SEC has not accomplished any 100,000 hour decreases due to agency action. OMB is unaware of any SEC significant burden reduction initiatives planned for the remainder of 2002.

Mr. OSE. It is my understanding from a brief review of the information collection budget, the HHS Department shows no initiatives with over a 100,000 hours program decrease; Labor shows two and we don't know on the SEC because they are not in the report. At the Environmental Protection Agency, we have four, one of which includes an adjustment versus a program decrease. Obviously, I am following it closely. I am also curious about what is planned for the remainder of this year in terms of following these four agencies? Do you have any input on that, any feedback you can give us?

Mr. GRAHAM. Yes, one comment on your reaction with regard to HHS. There are in the text of the report, several examples of what we felt were actually promising burden reduction initiatives coming from HHS, but I think it is fair to say they do not have the quantification you are looking for. In fairness to the agencies, it is often not obvious at the time that burden reduction initiative is proposed how much it will reduce paperwork burden or if, in fact, it will reduce paperwork burden. Nonetheless, we feel there are several promising examples and I would be happy to get you details on the numbers in the report where they are described.

Mr. OSE. That would be helpful.

I do want to offer a compliment. I happen to think that your effort at prompt letters, or OIRA's efforts at prompt letters, in terms of trying to give some before-the-fact guidance to agencies is an exceptional initiative on your part to say, "You need to look at this." I think that kind of management needs to be applauded. I noted on my copy of your testimony that I was particularly pleased by that, and I wanted to say such.

I also wanted to compliment you on the effort you made, a couple of things you fed back to the agencies where you actually took the structure or the methodology by which they were collecting their information and said, "You are not going to get what you need if you pursue this path, you need to change it a little differently and go that way." I wanted to compliment you on that. That is one of the reasons we bring individuals such as yourself to government, so I am grateful for that.

Mr. GRAHAM. Thank you very much, sir.

Mr. OSE. Mr. Otter for 5 minutes.

Mr. OTTER. Mr. Graham, in your testimony you mentioned agencies that contributed to this year's information collection budget and you reported 406 violations of the Paperwork Reduction Act for fiscal year 2001. My copy of that report does not include any information on the IRS, isn't that right?

Mr. GRAHAM. I think we committed a little blunder in the first draft we sent out. I think we sent out a revised version that has the IRS initiatives in it.

Mr. OTTER. Did you send it by postal?

Mr. GRAHAM. I think your criticism is well taken, sir.

Mr. OSE. We discovered this yesterday and we have worked with Dr. Graham's office overnight trying to expedite provision of an updated report that would include the IRS material. I apologize for not getting it to your office on that respect.

Mr. OTTER. Thank you, Mr. Chairman.

Would the 406 include the IRS violations? The 406 number is the violation number?

Mr. GRAHAM. I think it probably does, but I have to double check that.

Mr. OTTER. How many of that 406 would be that violation?

Mr. GRAHAM. With the IRS?

Mr. OTTER. Yes.

Mr. GRAHAM. I don't have that number off the top of my head, but I am happy to get it for you.

Mr. OTTER. Will we have a chart for this information I don't have yet that shows by agency?

Mr. GRAHAM. I certainly can get it for you if it is not in there.

Mr. OTTER. I see.

Mr. Rezendes, one of the things it appears we have a problem with is if an agency doesn't want to respond to the violation, if an agency doesn't want to respond to the report, then we end up with no report from that agency. I counted 12 on this one chart, but they just act like they don't exist. For some people, the FCC wouldn't be a bad idea, or the FTC, or some of these agencies that refuse to respond.

We are motivated in Congress, we are motivated in government many, many times by the agencies that when we do put this 94 percent of the regulatory burden on two-thirds to business, one-third to individuals and 3 percent to State and local governments, when I was Lieutenant Governor of Idaho for 14 years, it wasn't unusual from the various Federal agencies to receive a letter the State Education Department, the State Transportation Department, even the State Legislature was going to be reduced in moneys we normally would receive. Even the Federal Highway Trust Fund, 1 year we were threatened with the loss of $14 million if we didn't respond to certain requests made by Federal agencies. The Federal Highway Trust Fund and from an executive agency, if there was ever a violation of separation of power, legislature either you pass this law or we in the administration are going to withhold this money, but that is another question.

It always seemed to me that in order to get the business, individuals, 283 million Americans to respond to the tax code, there is a penalty if you don't. What is the penalty, what kind of thing happens to these 12 agencies who refused to respond? Is anybody going to go to jail?

Mr. REZENDES. Actually, they were not so much refusals as OIRA relieved them of the burden of responding for this year.

Mr. OTTER. I see. I guess that will be a question for Mr. Graham.

Mr. Graham, why did we relieve them of that responsibility or is that part of the report I haven't received yet?

Mr. GRAHAM. By the way, my staff gave me a little help on the Treasury/IRS violation question and it looks like we have zero unresolved Treasury and IRS violations at the present time.

On your question about the agencies, predominantly the agencies we did not request this information from this year are the so-called independent agencies. This reflects a judgment I made about where we want to put our office's resources and emphasis in paperwork reduction. It turns out that if you look closely at the construction of the Paperwork Reduction Act, while these independent agencies are covered by the act, the ultimate authority in the case of a disagreement between my office and an independent agency is in the

hands of the independent agency. I made a judgment that in terms of ultimately having the ability to accomplish paperwork reduction, I would have a better chance at making progress by focusing my office's resources on the Cabinet-level agencies and EPA where our office, through its underlying authority from the President, has a stronger degree of authority. So it was a priority-setting judgment on the part of my office.

Mr. OTTER. I would only mention in closing, and my time is up, this was not just a Presidential initiative, this was a congressional initiative. The orders were pretty clear, I would think. I am not sure that you have the latitude, sir, to excuse an agency. The idea behind paperwork reduction was to relieve burden and to find the unnecessary stuff and to eliminate it. I think if you are going out to only part of the constituency, and you alone are deciding who reports and who does not, quite frankly I think that is deficient in your interpretation of the Paperwork Reduction Act.

Mr. GRAHAM. Congressman, I think it is a fair criticism. I actually was reading the GAO testimony before the hearing and looking at their interpretation of the statute in terms of its requirements on the reporting. It is something I actually asked my General Counsel Office to look at. If we come to the determination that legally we are required to do that, we will not only do it next year, we will find a way to circle back and pick it up for the previous year.

You asked the question why I did it, I told you why I did it and that was the rationale, sir.

Mr. OSE. The gentleman from Tennessee.

Mr. DUNCAN. Thank you.

I would like to first ask Mr. Rezendes and Dr. Graham, the report that we have from the GAO says this problem now takes up 7.6 billion man hours. Mr. Rezendes, your report says it grew by 9 percent last year. It seems, as I said in my opening statement, that no matter how much lip service we pay, this problem grows and grows and grows. You have estimated that 83 percent of the problem is from the IRS. Does your work at the GAO stop with this report? Do you have somebody trying to come up with recommendations for the IRS to try to help them relieve some of this burden, or work on this problem? Dr. Graham, I noted in one of the reports that you had one person working on this. If this is 83 percent of the problem, do you intend to put more people on this, are you going to make suggestions or recommendations? Where do we go from here is what I am asking.

Governor Otter gave estimates that this cost us $843 billion last year. It looks like there is room for a lot of improvement someplace.

Mr. REZENDES. Actually, we don't have much going on other than just the reporting we are doing here. The real burden and responsibility rests with OIRA and IRS to reevaluate their paperwork, and determine whether there are alternative methods. I know the IRS has some initiatives underway, particularly with electronic easing of the burden, but it is really up to OIRA and IRS.

Mr. GRAHAM. I think it is an excellent question. You framed it in terms of 83 percent of the problem looks like IRS, but how much effort is put into that at OMB? One of the historical answers to that question, and I think an interesting one, is that historically

OMB does not review the interpretative rules that IRS issues in response to the tax code. It is in those interpretative rules that a lot of the detailed paperwork requirements ultimately come out.

At the beginning of this administration, there was a discussion and dialog, frankly above my pay grade, on the question of whether OMB should reassert some role in reviewing those types of regulations. I think it is fair to say the issue was deliberated and it was decided that we would not have OMB reviewing those interpretative rules.

Basically, when you look at the facts, the legislation and the tax code itself is outside my office's control. The interpretative rules are outside our control. I think in the final analysis IRS has the key role to play. I think you heard what I thought was some pretty strong testimony today about efforts at IRS to make progress in this area.

Mr. DUNCAN. Mr. Rossotti, I always feel that anyone and everyone should have the desire to improve and get better. I hope that I am a better Congressman now than I was 5 years ago. I may not be, but I hope that I am, and I hope if I am here 5 years from now that I am doing a better job then than I am now.

There is always a tendency when criticism comes to fight the criticism or attack the critic, rather than trying to do something about the problem. What I am wondering, I am sure when you saw this report in the Scripps-Howard News Service that was on the front pages of many papers around the country about this 49 percent of IRS computer time being used to visit sex sites, gamble and trade stocks, send jokes and so forth; I assume you were shocked by that. I also assume that you probably thought that was wrong. I assume when that other report came out from the Treasury Inspector General that 73 percent of the advice IRS gives is incorrect or insufficient, I assume you thought that was wrong. I assume also when we read in the OMB March 18, 2002 report of 3 weeks ago that gives the IRS an "F" rating on reduction in paperwork, I assume you think that is wrong.

What I am getting at is even though you may assume those reports are wrong, do you not think that indicates there is a problem and that some things need to be done? Did you do anything in response to that business about the computers being misused?

Mr. ROSSOTTI. Absolutely, on all those fronts. Let me talk about all three of them. With respect to the use of the Internet, let me explain what that report was. It didn't deal with 10 percent of IRS computer time, it dealt with a sample of a small subgroup of IRS employees who have access to the Internet, a very small percentage of IRS employees have access to the Internet.

Mr. DUNCAN. Can you understand why somebody in my position would be upset or shocked by those types of reports?

Mr. ROSSOTTI. Yes, sir. As a matter of fact, with respect to that Internet issue, even before that report was issued, we did take a number of steps to monitor its use. We set up a new policy and we also put in new technology to monitor use of the Internet by those relatively few employees that have access to use of it. We then set up a special group to use the technology to monitor what they were doing. All those things have been done. Some were in progress before that report was issued.

With respect to the phone service, there was a hearing 2 days ago in the Ways and Means Committee about the filing season and the service IRS has provided. There was also GAO testimony at that hearing. I would be glad to send you copies of it. I have with me two charts that show the trend in improvement over the last 2 years, which has been very substantial, in the ability of taxpayers to get through to telephone assistance, which is the predominant way people get telephone assistance, as well as in the quality of answers. We are up about 85 percent or so in the quality and accuracy of answers during this fiscal year. There is GAO testimony on the same subject I would be glad to send to you.

I should note that we get about 110 million phone calls a year on a huge array of topics and it peaks very heavily during the filing season. So when we talk about getting through on the phone and getting accurate answers, this is not a simple problem to deal with. It involves technology, resources, training, the tax code, and so forth.

I am pleased to report that, and I will be glad to send you the details of the progress we have made. I know it is not the subject of this hearing. It is not to say that we are yet at a level at which we aim to be. Because if we are 85 percent accurate, we would like to get to 90 or 95 percent accurate. On your point about improvement, the IRS has lots of room for improvement in lots of subjects. I think we have made significant progress in addressing some of those areas.

On the paperwork issue, I am not sure what grade you were referring to, but I think with respect to paperwork reduction, over the past year, as you can see from the testimony, we have taken some significant initiatives, particularly for small business.

Mr. DUNCAN. The report that gives you an "F," the source is the OMB's March 18, 2002 report entitled "Draft Report to Congress on the Costs and Benefits of Federal Regulation." The report I read from Scripps-Howard says that analysis of the computers was an investigation of how more than 16,000 employees used their government computers.

Before my time runs out, let me ask you one last question. I had two CPAs, one was the State president of the CPAs in Tennessee, who came to see me a few days ago. I didn't realize this, but they said the number of people taking the CPA exam was only about 20 percent of what it was 10 years ago, and they are having a real decrease or decline in the number of people who want to be CPAs. They said one reason was the tremendous workload right at tax time. They said in the Nashville and Tennessee region, they used to have an understanding the IRS would not ask for business audits during tax season, that the business tax audits were done from May to December. They said now the head of the IRS, and I don't know whether that means the head of that region or you, has said they didn't care what was in the past, but they are now demanding these audits be done right at the height of tax season. Also, some of the new laws were made retroactive to September 11th on March 9th, and that this workload has greatly increased. Do you know what I am talking about?

Mr. ROSSOTTI. Yes, I do and we are sensitive on the issue of doing audits during tax season. It has been traditional when work-

ing with accountants, who represent taxpayers on audits and are also preparing returns, to be sensitive to that scheduling issue. We have certainly not changed our policy. There could have been someone in a local area that made a statement like that. I will be glad to look into that.

Mr. DUNCAN. Would you check into that and see if there has been a change in the Nashville office?

Mr. ROSSOTTI. I am confident there hasn't been nationally but there could have been locally. I will get back to you.

I do want to respond to your other question. In the last year the tax law was changed very substantially a number of times, which obviously produced benefits for taxpayers. The tax bill that was passed in 2001 was a major tax bill. I don't have the data here with me, but it brought numerous changes to numerous forms for both 2001 and 2002. From an accountant's point of view, one of the things that really makes it difficult is when there are changes. That is because people get used to carrying over their returns; they take last year's return and do it as much as possible this year. Everyone does that. So when you have changes, it creates additional work.

There was also a bill passed on March 9th, just last month, which was retroactive to last year, which again gave a benefit to taxpayers. However, it involved people who might have an automobile they are using for business purposes and gave them some additional benefits for depreciation, but that was March 9th and it applied to last year's return.

Mr. DUNCAN. I hope you will give some consideration to maybe giving some relief to these CPAs or giving them a little more time since that is such a recent thing, March 9th.

Mr. ROSSOTTI. On the issue of the audits, we can control that. The issue of when the dates are imposed, those are by statute.

Mr. DUNCAN. I understand that, but as far as filing some of the returns and so forth if they have a problem because of that.

Mr. ROSSOTTI. Anyone can get an extension automatically until August 15th, and you can do that now with just a phone call. You don't even have to send in a letter. That is something you can pick up the phone and dial, automated. We put that in last year as one of our services.

On the issue of audits, you have a good point. We do accommodate accountants with that and, if someone is not doing that, we will be glad to look into it and get back to you.

Mr. DUNCAN. I went way over my time. I apologize.

Mr. OSE. Thank you, Mr. Duncan.

I do want to clarify on the grades you referenced in your comments, those grades were applied by me. Those are my grades.

Mr. DUNCAN. At the bottom of the sheet.

Mr. OSE. That "F" at the bottom is mine also.

Mr. GRAHAM. Certainly a more credible source than the draft report from OMB.

Mr. OSE. I know a couple of our witnesses have time constraints at 11 a.m., and I want to have one more round.

Mr. Rezendes, in your testimony on page 15, Dr. Graham referenced the first paragraph earlier about the conclusions you reached about OIRA's role, OIRA having the statutory responsibil-

ity to review and approve agency collection of information and to identify all PRA violations. Further on that same page, you have three suggestions that I think are designed to try and make this a more efficient process, the objective being to prevent departments or agencies from effectively stiffing OIRA's request for information or for changes.

In particular, I want to focus on one and that would be the third one, place a notice in the Federal Register notifying the affected public they need not provide the agency with the information requested in any expired collection. If I understand correctly, we have any number of forms that have been previously approved or not approved at all, and those that in some cases had been previously approved, their approvals have lapsed, so there is no statutory authority behind collection of the data on those forms. Am I correct?

Mr. REZENDES. The statutory authority may be there, just the authorization to continue to collecting the information has expired.

Mr. OSE. Because the process has not complied with the statutory requirements?

Mr. REZENDES. Correct.

Mr. OSE. Placing a notice in the Federal Register to that effect, that a citizen does not have to comply with forms authorized under approvals that have lapsed, placing that notice accomplishes what?

Mr. REZENDES. We would endorse this, by the way. The more transparency, the more public awareness of the extent of violations out there, the extent of information they don't have to comply with, the better. Admittedly, not too many average citizens read the Federal Register, but that is obviously one avenue to communicate. Another, I would suggest, would be the OMB Web site, the OIRA Web site. They post the expirations now on their Web site, but they don't report violations. That may be one additional piece that could help the public better understand what they don't need to comply with.

Mr. OSE. This is the part I struggle with. If the authorization lapses, why would the agency ask for the information?

Mr. REZENDES. A good question and I don't have the answer to that. We have looked every year and have testified before this committee on the outstanding violations and the violations have gone down significantly from over 800 a few years ago to about the 400 range now and has sort of plateaued out. What we see is some agencies continuing to collect information, in some cases basically part of an application for benefits, so it is something they feel is interesting, but OIRA feels not necessarily compelling and needed to perform their operations, so I guess they reached a loggerhead here.

The question I think you are really asking is how do you fix this, how do you incentivize or where do you put the pressure for this to happen? One way I think is to have OIRA talk to the budget side of OMB and when the agency comes in for appropriations or asks for additional funds for a program and they have a violation that is collecting information, there could be some leveraging going on here.

Let me be clear on the amount of violations. There are 402 violations that we identified. I think you mentioned in your opening

statement that 60 of those violations account for $1.5 billion opportunity costs. It is even more pronounced than that. Three of those violations, two at Agriculture and one at VA, account for $1 billion in opportunity costs. So if you are looking at risk and cost benefit, you could really focus your resources and the efforts of OIRA and OMB to work with those agencies to stop those collections.

Mr. OSE. Dr. Graham, what about putting a notice in the Federal Register to tell the public, if it has lapsed, you don't have to comply? Put the agencies on notice that the administration is not going to enforce their regulatory information collection if they don't have current numbers?

Mr. GRAHAM. I think it is a constructive suggestion, and seeing the GAO testimony, it reminded me that I had read a more detailed GAO report maybe a year or two earlier that had more discussion of these specific recommendations. I have asked our General Counsel to take a quick peak at whether he sees any problem with going right to the Federal Register with this type of information. I will get back to you when I get an answer from the General Counsel on that subject, but I think it is a constructive idea.

I would like to offer one qualification to the previous remarks just made. In the experience we have correcting paperwork violations, what usually occurs is a resubmittal of an application—usually a valid resubmittal—and a continuation of the application. As a consequence, a lot of the opportunity costs you are hearing in the previous remarks aren't really saved by resolving the violation. Nonetheless, it is critical to resolve the violations. We should notify people when there are information collections out there that do not have an adequate or appropriate OMB control number.

Mr. OSE. Thank you for the answer. I will tell you that you would be a welcome guest at my district when I go talk to my farmers and people who use water from the Bureau about the various requirements on forms whose numbers or approvals have lapsed.

The gentleman from Idaho.

Mr. OTTER. One of the reasons I think that we have got such a long history in our Government is because by and large the citizenry always viewed the Government as trying to make things equal and trying to lift burdens but, of late, and I don't know what of late really is, it has been my experience that when the Government passes a law, they expect the citizenry to obey it. We are going to pass a law, and you are going to obey it, and if you don't obey it, this is going to be the penalty for it.

If you are the CEO of a corporation and you purposely pollute, you misfile your income tax statement, you don't adhere to the OSHA rules, I can go through the list. For 30 years, I was in the private sector and, for 13 of those, I was president of the international division of this pretty good-sized company. We had 87 people on our staff in a company that had $1.7 million in sales. We supplied french fries to McDonalds. We had 87 people filling out government forms, and we knew we had to do that, No. 1, to be a good citizen, and that was what we wanted.

What caused us trouble and pain back home in our districts with our citizenry and our companies, the small businesses, and I am glad to hear your announcement today of 1.2 million small businesses that are going to be relieved of some of that. That is a great

announcement. You would think the press would have jumped up and run out but they didn't. Maybe there isn't enough sex in it, I don't know, but one of the things the citizenry does look at in Government is we are trying to make things equal. When they see the government absolving themselves from the very rules and regulations they force on the citizenry and businesses, that is what causes us pain.

We will go home and say well, we have 402 violations and I have to tell a farmer that altered a water flow through his property without filing a 404 permit to the Army Corps of Engineers on wetlands and the Environmental Protection Agency on solids and to all the other agencies, seven of them, U.S. Fish and Wildlife, the National Marine Fisheries, you know the alphabet soup we have there, that on his 40 acres, if he didn't do that, he can lose that 40 acres, he could go to jail, and he can be fined a lot of money. Then he hears about 402 violations for which there is no penalty and not only that, who cares.

If we got that kind of response when we asked for OSHA information, or Food and Drug Administration information, or Agriculture information, we would think there was a revolution going on. I think if government has anything, it has integrity. The integrity of the government should be, we will live by the same rules that we make the citizens and companies live by and we are not.

Mr. Rezendes, should there be some penalties other than just this little gentleman's thing that says, look, you didn't do too good, you got an "F" last year. Look Labor, you got an "F" with 186 violations, we are going to reduce your request. Do you think that is going to get anything?

Mr. REZENDES. I think agencies respond in terms of their budget and I think there is attention there to the extent you can get their attention by a reduced budget, it does work. On the fines and penalties though, I am less sanguine about the fines, not because I don't think it would work, but more because we are really talking about implementation of a Federal statute in the executive branch between Federal agencies and with OMB, which has the approval and also the ones putting together the agency's budget. It seems to me there is a critical mass and enough leverage there if they really wanted to make this happen, to make it happen without necessarily going through fines and penalties and then bringing in courts in terms of interpreting the fines to add yet another piece because this is all within a very small family, all within the executive branch and should be fixable.

Mr. OTTER. Is that how I should explain it during this election year?

Mr. REZENDES. It is hard to explain, I understand that.

Mr. OTTER. Tell me, because those businesses, and 1,282,000 Idahoans all have to file something somewhere at some time about something are asking me that question. Why do we have to do that?

Let me ask one last question. Mr. Rossotti, how many people at the IRS are working on paperwork reduction?

Mr. ROSSOTTI. We have about 100,000 employees throughout the country.

Mr. OTTER. How many out of that 100,000 who are generating paperwork?

Mr. ROSSOTTI. We have a Forms and Publications Division. A lot of the paperwork as it is calculated is related to forms and publications.

Mr. OTTER. How many people are working on reduction?

Mr. ROSSOTTI. There is a specific office we just set up, the Office of Taxpayer Burden Reduction, which has a senior person we brought in from the outside with experience in this, and we are building a staff. Right now we have a staff of about four individuals, but the Office of Forms and Publications, which has several hundred people who actually produce the forms, are the ones actually working on such things as the Schedule D redesign, and so forth. So they spend their time redesigning the forms. It is hard to split it between how much is burden reduction, and how much is burden increase. They have to respond to the tax law changes, as well as the changes we initiate.

Mr. OSE. Would the gentleman yield for a minute?

Mr. OTTER. The gentleman's time is up but yes.

Mr. OSE. Mr. Rossotti, did I just hear you say you have 100,000 people at the IRS and you have five people working on burden reduction?

Mr. ROSSOTTI. We have five people in this new office we just set up. The whole Forms and Publications Office is only a few hundred people. Most of our people are out in the field, not in Washington designing forms. They are out in the field and all around the country.

Mr. OSE. I just wanted to confirm the five number. I thank the gentleman.

Mr. OTTER. I just want to close by thanking you all for your responses. I also want you to know that I am not insensitive to your problem. The charges you have are important to this country but it is awfully difficult, as we have discussed, to explain to those who are the generators of the requests, the information and the paperwork that all the Federal agencies ask for and to the extent we can have more successes, I see by my calculation we are behind by 35 percent in reduction. We were supposed to have 10 percent in 1996, 1997, and 1998, no, 5 percent but I think I totaled about 35 percent. We were supposed to have a 10 percent reduction in years 1996 and 1997 and 5 percent during 1998, 1999, 2000 and 2001. Maybe my calculation isn't right but I thought that was about 35 percent. It seems to me instead, we have had a substantial increase.

Mr. OSE. Thank you, Mr. Otter.

Dr. Graham, I have one final question. We asked about the non-IRS regulatory paperwork requirements over 10 million hours and there are 15 such regulations. I would like to go through and followup a conversation or letter you and I had having to do with these 15 specific non-IRS rules, each of which imposes over 10 million hours of burden as to the progress in reexamining them, as to the paperwork required. I don't know if you are prepared to do that but we will proceed in any case. First of all, the Department of Labor.

Mr. GRAHAM. I think I might more efficiently address it as a group. Is that possible, Mr. Chairman?

Mr. OSE. Yes, sir.

Mr. GRAHAM. The first point I would make is I want to thank you and your staff for clarifying exactly which of the 15 are the ones you are referring to, because they were taken from the large list of 300 or more. I appreciate getting the request down in the range we could realistically evaluate.

We have looked at them in a preliminary way. We think some, because they are nearing expiration, are going to be reviewed anyway through the normal process, so those we would put in one category. There is a second group that are not nearing expiration but that are of such significant burden. We think where there is possibility for reduction, some conversation with the agencies is appropriate. There is a third group that are so embedded in statute that we are not convinced they are going to be a very fruitful territory for significant work at this time. Some of them, though very substantial, also have a very strong programmatic rationale and hence, we are not convinced they are good candidates.

When we have a more definitive response in terms of which of the 15 are in each of these bins, I will try to get that to you in writing so that you have an exact accounting of where we are headed on those 15.

Mr. OSE. When do you expect to be able to provide that?

Mr. GRAHAM. Hopefully in a couple of weeks.

Mr. OSE. All right. Then I am not going to go through this list.

[The information referred to follows:]

Q5. Progress in Reviewing Regulatory Paperwork. The FY 2001 Treasury and General Government Appropriations Act required an OMB report to Congress which: (a) evaluated the extent to which the PRA reduced burden imposed in agency rules ("regulatory paperwork"), (b) evaluated the burden imposed by each major rule imposing more than 10 million hours of burden, and (c) identified specific expected reductions in regulatory paperwork in FYs 2001 and 2002. OMB's report did not fully respond to the statutory requirements. In response, in September, I asked OMB to reexamine 15 specific non-IRS rules each imposing over 10 million hours of burden.

What is the progress of reexamining the paperwork in each of the following rules?:

- *Labor: Process Safety Management (PSM) of highly hazardous chemicals (79 million hours on August 30, 2001)*
- *SEC: confirmation of Securities Transactions (56 million hours)*
- *Transportation: Hours of Service of Drivers regulations (42 million hours)*
- *Transportation: Inspection, Repair, & Maintenance (35 million hours)*
- *SEC: recordkeeping by Registered Investment Companies (21 million hours)*
- *FTC: Truth in Lending regulation (20 million hours)*
- *HHS: Investigational New Drug (IND) regulations (17 million hours)*
- *EPA: standards for the use or disposal of Sewage Sludge (13 million hours)*
- *Labor: Bloodborne Pathogens standard (13 million hours)*
- *FTC: Fair Packaging & Labeling Act regulation (12 million hours)*
- *Treasury: recordkeeping & reporting of Currency & Foreign Financial Accounts (12 million hours)*
- *Labor: OFCCP recordkeeping & reporting requirements (11 million hours)*
- *HHS: Medicare & Medicaid for Home Health Agencies (10 million hours)*
- *HHS: Clinical Laboratory Improvement Amendments (CLIA) (10 million hours)*
- *Education: Federal Family Education Loan program (10 million hours)*

Answer: OMB has conducted a review of the 15 regulations identified by the Subcommittee as imposing more than 10 million hours of paperwork burden. The results of this review are summarized in Appendix B. For each regulation, information is provided that describes the associated reporting and recordkeeping requirements, the burdens they impose, the status of OMB's approval of the requirements, and a recommendation by OIRA staff to take action outside the normal Paperwork Reduction Act (PRA) review and approval process.

As a general matter, OIRA carefully scrutinizes regulatory monitoring and reporting requirement when they are first issued and when they are subsequently submitted to OMB for renewal of approval under the PRA. OMB's review of collections in regulations focuses on minimizing paperwork burden while ensuring that agencies obtain the information they need to ensure compliance with applicable standards. Even in cases where OMB decides not to pursue an initiative with an agency to address the reporting burdens in a particular rule, the PRA process provides an

opportunity to regularly assess burdens.

OMB's initial review of the 15 regulations identified one candidate for reform (the Department of Transportation's Drivers Record of Duty Status) and three possible candidates for reform – the Department of Labor's OFCCP Recordkeeping and Reporting Requirements, the Department of Labor's Process Safety Management rule, and the Department of Health and Human Services' Use of the OASIS for Home Health Agencies. For the 11 other regulations, OMB does not recommend any action beyond the regular PRA review process.

It should not be surprising that OMB's review found few candidates for reform. Selecting targets based on hour burden alone fails to take into consideration the usefulness, or practical utility, of the information Federal agencies need to achieve important programmatic missions. As indicated in Appendix B, OMB has found that the paperwork burden imposed by 11 of the 15 rules is justified by their practical utility. Many of these 11 regulations address important public needs, such as protecting the country from future terrorist attacks and providing basic consumer protections in the credit and securities markets.

OIRA will make final decisions about whether to work on these 15 rules when OIRA's public comment process on existing rules and information collections ends at the end of the month. The public nominations for reform of regulatory and paperwork requirements will be considered in conjunction with these 15 rules. The President has instructed OIRA to give particular attention to burdensome rules that impact the small business community yet have little or no public benefit.

Mr. OSE. Commissioner Rossotti, you have to be at the Senate at 11 a.m.?

Mr. ROSSOTTI. I am supposed to be, yes, sir.

Mr. OSE. Commissioner, I want to thank you for coming. Dr. Graham and Mr. Rezendes, we have additional questions we would like to provide in writing and would appreciate your responses. We will leave the record open for 10 days for the purpose of receiving testimony and questions from our friends on the Democratic side and those on our side who may wish to submit.

I am grateful for you taking the time to come and your testimony was quite informative. We will see you next time.

I want to welcome our second panel. Joining us today is: Thomas Hunt Shipman, Deputy Under Secretary, Farm and Foreign Agricultural Services, Department of Agriculture; Mr. Scott Cameron, Deputy Assistant Secretary, Performance and Management, Department of the Interior. Gentlemen, as you heard earlier, we swear in all our witnesses, so please rise.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative.

We have received your written testimony. Our normal process is we are going to give you 5 minutes to summarize your testimony. I will add the caveat that another committee on which I serve is having a series of votes on a markup, and we may have to temporarily recess and come back and so forth. As long as you are flexible, we will be making progress.

Mr. Shipman, please proceed for 5 minutes.

STATEMENTS OF THOMAS HUNT SHIPMAN, DEPUTY UNDER SECRETARY, FARM AND FOREIGN AGRICULTURAL SERVICES, U.S. DEPARTMENT OF AGRICULTURE; AND SCOTT CAMERON, DEPUTY ASSISTANT SECRETARY FOR PERFORMANCE AND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. SHIPMAN. I appreciate the opportunity to appear before the subcommittee this morning.

The Department of Agriculture delivers programs which daily affect the lives of millions of Americans, as well as millions of people around the world. They include food safety, food and nutrition programs, programs to create jobs and support the infrastructure of rural America, natural resources and conservation, research and education, and the programs which support America's farmers.

USDA is committed to streamlining program delivery while preserving the fiscal integrity and preventing fraud, waste, and abuse. USDA uses information collected from the public to ascertain what services customers require, determine eligibility for programs and services, monitor compliance with statutory and regulatory requirements, monitor market conditions, develop statistics for the agricultural sector, prepare economic reports, foster research and improvement in agricultural and rural matters, provide risk management tools, identify, cure and prevent plant and animal diseases, provide credit and technical assistance to farmers and rural communities, and evaluate customer satisfaction.

In fiscal year 2001, USDA reported to OMB that citizens spent 86.7 million hours filling out USDA forms and fulfilling recordkeeping requirements. In fiscal year 2002, USDA program changes being implemented will further reduce the actual paperwork burden to the public through further implementation of electronic-based services and program delivery.

USDA has a number of initiatives underway to reduce the paperwork burden on farmers and rural Americans. The agencies that deliver programs through USDA service centers, the Farm Service Agency, the Natural Resources Conservation Service, and the rural development agencies are currently collaboratively working to meet the June 2002 Freedom to E-File Act requirements. This legislation requires USDA to provide Internet access to all forms for the three county-based agencies within 180 days of enactment, which was December 18, 2000. By June 20, 2002, USDA is to expand the Internet-based system to enable producers and other rural citizens to access and file all forms and selected records and to access USDA farm-related information as well.

In addition, the act requires that not later than December 1, 2000, the Federal Crop Insurance Corporation and risk management agencies submit a plan to allow agricultural producers to use the Internet to obtain all forms and other information concerning that program.

I am pleased to report that the December 2000 requirements of the Freedom to E-File Act were met and we are currently on track to meet the June 2002 requirements as well. When Freedom to E-File is fully implemented, the service center agencies, agricultural producer/customers will be able to access and electronically submit most of the forms needed to participate in the respective programs and services. Trips to county offices will be eliminated for those customers who elect to use the electronic services, and these agencies are still submitting requests for changes to the impacted customer collections.

When OMB approves these requests, the burden hour inventory for each service center agency will undoubtedly be reduced as travel time to these offices is eliminated and, more importantly, we will have made a significant step toward transforming its business processes to be more customer focused by offering options for citizens to do business when and where they choose.

For the remainder of 2002 and in subsequent fiscal years, service center agencies plan to enhance the services offered to customers by incrementally replacing the forms-based interface with on-line software applications that incorporate greater functionality. One of the first examples of this level of functionality is the Farm Service Agency's electronic Loan Payment Program or ELDP. This service provides full, on-line transaction capability where producers of selected crops will be pre-approved for loan deficiency payments on a specified quantity and will be able to request their LDPs on-line through a simple, abbreviated process up to the pre-approved quantity.

In other areas of the Department, the Food Stamp Program, administered by the Food and Nutrition Service, requires 20 million hours of paperwork effort annually on the part of States and others who administer or participate in the program. The Food and Nutri-

tion Service's transition to EBT, electronic benefits transfer technology, is targeted for complete implementation in all States by the conclusion of fiscal year 2002. During fiscal year 2001, an additional 250,000 hours of paperwork burden was eliminated as a result of this initiative. Additional benefits will accrue in 2002.

FMS plans to review the information collection requirements associated with the Special Nutrition Program, including school meals, food distribution programs, and the Special Supplemental Nutrition Program for Women, Infants and Children, WIC. The objective of this review is to ensure the type of data, sources, and frequency are appropriate. In addition to examining the data collected, the review will closely scrutinize processes and instruments used to assemble and finalize the data, which will minimize the possibility for errors and facilitate timely reporting to Congress and the public.

Mr. OSE. Mr. Shipman, I notice in your statement you are on page 5 and you have nine pages. You are a minute over. Could you summarize, please?

Mr. SHIPMAN. Yes, sir. Much of the rest of my testimony, I had planned to submit for the record.

Mr. OSE. We will accept that.

[The prepared statement of Mr. Shipman follows:]

U.S. Department of Agriculture
Statement of Hunt Shipman,
Deputy Under Secretary, Farm and Foreign Agricultural Services
Before the Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs

INTRODUCTION:

Mr. Chairman, members of the Subcommittee, thank you for inviting me here today to talk about actions underway at the United States Department of Agriculture (USDA) to reduce the paperwork burden on American citizens, and particularly on farmers. With your permission I will submit my written testimony for the record.

The U.S. Department of Agriculture delivers programs which daily affect the lives of every American, as well as millions of people all over the world. They include food safety and inspection; food and nutrition programs; programs to create jobs and support the infrastructure of rural America; natural resources and conservation; research and education; and, of course, programs to support America's farmers. USDA is committed to streamlining program delivery, while preserving fiscal integrity and preventing fraud, waste and abuse.

The Paperwork Reduction Act of 1995, as amended, directs the Federal government to minimize the paperwork burden for the public from the collection of information and to maximize the utility and public benefit of the information. The Act further directed Federal departments to

reduce the paperwork burden annually by 5% in fiscal year 2001 and continue such reductions to the maximum practicable in 2002.

USDA INFORMATION COLLECTION HIGHLIGHTS

USDA uses information collected from the public to ascertain what services customers require, determine eligibility for programs and services, monitor compliance with statutory and regulatory requirements, monitor market conditions and develop statistics for the agricultural sector, prepare economic projects, foster research and improvements in agriculture and rural matters, provide risk management tools, identify, cure, and prevent plant and animal diseases, provide credit and technical assistance to farmers and rural communities, and evaluate customer satisfaction and program performance.

In FY 2001 USDA reported to the Office of Management and Budget (OMB) that citizens spent 86.7 million hours filling out USDA forms and fulfilling recordkeeping requirements. In FY 2002, USDA program changes being implemented in FY 2002 will further reduce the actual paperwork burden to the public through further implementation of electronic-based services and program delivery.

FARMERS AND RURAL AMERICANS

USDA has a number of initiatives underway to reduce the paperwork burden on farmers

and rural Americans.

The agencies that deliver programs through USDA's Service Centers - the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the three Rural Development agencies - are working collaboratively to meet the June 2002 requirements of the Freedom to E-File Act. The Freedom to E-File Act (P.L. 106-222), signed into law on June 20, 2000, required USDA to provide Internet access to all forms for the three county-based agencies within 180 days of enactment (December 18, 2000). By June 20, 2002, USDA is to expand the Internet-based system to enable producers and other rural citizens to access and file all forms and selected records, and to access USDA farm related information. In addition, the Act required that not later than December 1, 2000, the Federal Crop Insurance Corporation (FCIC) and Risk Management Agency (RMA) submit a plan to allow agricultural producers to use the Internet to obtain all forms and other information concerning the program from approved insurance providers, and file electronically all paperwork required for participation.

The December 2000 requirements of the Freedom to E-File Act were met successfully. In addition, much progress has been made on developing the management and technical infrastructures needed to meet the June 2002 requirements of the Act. Additional work continues to provide customers and employees with the information and training needed to successfully access and use the services that will soon be deployed.

When Freedom to E-File is fully implemented, the Service Center Agencies' agricultural

producer customers will be able to access and electronically submit most of the forms needed to participate in the respective programs and services. Trips to Service Center offices will be eliminated for those customers who elect to use the electronic services. For the remainder of the forms for which electronic submission is not appropriate, the Service Center Agencies intend to minimize trips to their offices to complete and sign documents by using mail and facsimile services to the extent it is practical. The Service Center Agencies are still submitting requests for changes to the impacted information collections. When OMB approves these requests, the burden hour inventory for each Service Center Agency will undoubtedly be reduced as travel time to these field offices is eliminated. More importantly, USDA will have made a significant step toward transforming its business processes to be more customer-focused by offering options for citizens to do business when and where they choose.

During the remainder of FY 2002 and in subsequent fiscal years, the Service Center Agencies plan to enhance the services offered to customers by incrementally replacing the forms-based interface with on-line software applications that incorporate greater functionality, such as, instant error detection, reuse of customer information that was provided through previous transactions, and integration of agency back end systems. One of the first examples of this level of functionality is the Farm Service Agency's Electronic Loan Deficiency Payment Program (eLDP). This service provides a full, on-line transaction capability where producers of selected crops will be pre-approved for loan deficiency payments (LDPs) on a specified quantity and will be able to request LDPs on-line through a simple, abbreviated process up to the pre-approved quantity.

ADDITIONAL PAPERWORK REDUCTION ACCOMPLISHMENTS

The Food Stamp Program, administered by the Food and Nutrition Service (FNS), requires 20 million hours of paperwork effort annually on the part of states and others who administer or participate in the program. The Food and Nutrition Service's (FNS) transition to electronic benefits transfer (EBT) technology is targeted for complete implementation in all states by the conclusion of FY 2002. During FY 2001, an additional 250,000 hours of paperwork burden was eliminated as a result of this initiative. Additional reductions will be realized throughout FY 2002 as the EBT implementation project progresses.

In FY 2002, FNS plans to review the information collection requirements associated with the Special Nutrition Programs – including the school meals programs, the food distribution programs, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). FNS plans to examine all of the data elements that it currently collects from the State and tribal agencies that operate the Special Nutrition Programs, and the local organizations that deliver benefits. The objectives of this review are to ensure that the type of data, the sources targeted for collection and the frequency are appropriate. In addition to examining the data collected, the review will closely scrutinize the collection instruments and processes used to assemble and finalize program data, and identify and implement changes that will minimize the possibility for errors at entry, facilitate timely reporting to Congress and the public, and support an effective transition to data collection in an eGovernment environment.

eGOVERNMENT PROGRAM

USDA's eGovernment Program is implementing a department-wide electronic government strategy, which calls for greater integration and collaboration across USDA and across government in developing and delivering services to citizens and businesses. USDA mission areas and agencies have been actively engaged in an intense enterprise-wide eGovernment planning initiative. Investments in information technology (IT) across the Department will be leveraged to reduce redundancy and provide information and services on a customer-centric rather than organizational basis. Our investment strategy for achieving electronic government will be integrated with our enterprise, telecommunications, and security architectures.

Integrated into USDA's eGovernment Program are activities aimed at complying with the Government Paperwork Elimination Act (GPEA). In October 2001, USDA submitted its annual GPEA report to OMB showing its intent to comply with the October 2003 implementation deadline. This report and the associated web-based submissions outlined USDA's schedule for offering, when practicable, an option for the maintenance, submission or disclosure of information by electronic means for transactions covered by the Paperwork Reduction Act (PRA). As program areas make progress toward implementing electronic capabilities for doing business, the ultimate burden on customers will be reduced.

COORDINATION WITH EXTERNAL ORGANIZATIONS

The average citizen interacts with many aspects of the Federal government in pursuing activities related to their personal and professional lives. On occasion, the customer experiences what appears to be duplicative data collections from two or more separate agencies. Such a situation was identified between the Bureau of Reclamation (BOR) in the Department of Interior and the Farm Service Agency (FSA) within USDA.

BOR, in order to administer the Reclamation Reform Act of 1982, requires irrigation districts to collect data from landholders to determine if the landholder is eligible to receive BOR irrigation water, on what acres such water may be delivered, and the rate that must be paid for the deliveries. FSA collects information on farm ownership and acreage in delivering a variety of commodity loan, disaster, and land conservation programs.

It has been observed that information collected by these two agencies appears duplicative. Representatives from FSA and the Office of the Chief Information Officer have engaged in several conversations with individuals from BOR and OMB to investigate whether specific information collections conducted by the two organizations are duplicative in nature. The conclusion of all parties is that while the customers of each agency may overlap, the information collected by each is not duplicative.

USDA is committed to working collaboratively, internally and across the Federal

government, to reduce redundant data collections, promote greater sharing of information collected, and leverage information technology to improve the efficiency and effectiveness of program delivery. The Department will continue, as it has for many years, sharing acreage data with the Department of Interior for use in verifying information collected through BOR programs. Furthermore, USDA and BOR will continue conversations aimed at exploring programmatic changes, such as one-stop shopping, and/or enabling technologies, such as geospatial information tools, that will result in a more citizen-centered of service delivery model.

COMPLIANCE WITH THE PAPERWORK REDUCTION ACT

In the Information Collection Budget of the United States Government: Fiscal Year 2001, OMB reported a total of 33 violations of the Paperwork Reduction Act for USDA. Twenty-six of these violations were due to lapses in OMB approval. The remaining 7 were collections initiated without OMB approval or modified without OMB approval.

To date, 26 of the violations have been resolved. Of the 26 violations, 12 were lapsed approvals that have been reinstated, 4 were unapproved collections that have since been approved, and 10 information collection activities have been discontinued or retired. An additional 2 violations are pending reinstatement with approval requests currently under review by OMB. Five of the 33 violations remain unresolved. USDA's OCIO continues to work with its agencies to resolve the remaining violations and prevent future violations.

CONCLUSION

USDA has made progress in reducing paperwork. The Department will continue to work toward full compliance under the Paperwork Reduction Act and toward achieving the goals set by the Paperwork Reduction Act and OMB. Additionally, USDA is committed to partnering with organizations across the Federal government to support a more citizen-centered way of doing business. With your assistance we will continue to move forward in delivering better customer service with minimal paperwork burden.

Mr. OSE. Mr. Cameron, you are recognized for 5 minutes.

Mr. CAMERON. I would like to thank you for the opportunity to testify before the committee today. We appreciate your leadership and the interest on the part of the committee in general, but also your special interest on behalf of your constituents and paperwork issues as they relate to the Interior Department.

At this time, the Department is virtually in full compliance with the Paperwork Reduction Act. I say "virtually" because if the hearing were being held tomorrow, hopefully, I would be able to say 100 percent. We got our last package over to OMB yesterday afternoon. Not surprisingly, it is a Bureau of Reclamation form. Thanks to your leadership, there are a lot fewer violations now than there were a year or two ago.

Having said that, we agree with what you, Mr. Duncan, and others said earlier; 100 percent compliance all the time is our goal. Happily, the Interior Department ranks relatively low among executive branch agencies in the level of paperwork burden. According to the 2001 Information Collection Budget, Interior ranks 22nd out of 27 agencies. We essentially are responsible for one-tenth of 1 percent of the paperwork burden on American society. Our goal, Mr. Otter, is to get that to zero. I am not sure we will be able to get there, but we definitely are looking for ways all the time to get that number down.

I am happy to say, generally speaking, the level of burden imposed on the public by the Department has been declining until very recently. It rose in 2000 and 2001. The increase in hours in 2000 was primarily due to the implementation of new regulations to bring the Department into compliance with lapsed collections related to Indian affairs. As I am sure you know, for a number of years, decades actually, the Interior Department has had problems in terms of trust management with Indian tribes. In fact, Secretary Babbitt was held in contempt of court, I think along with Secretary Rubin, a number of years ago in this context. The U.S. District Court has been watching us very closely and giving us liberal amounts of advice on what we need to do to improve the information so that we can better fulfill our trust responsibilities and our fiduciary responsibilities to our tribes.

Doing a better job has essentially meant collecting more information, probably information we should have been collecting in the 1950's but weren't for reasons that are lost in the dimness of time, I am afraid. Roughly a third of the existing paperwork burden at Interior is Indian affairs related.

We are taking a number of steps across the board outside the Indian area, and including the Indian area, to improve our performance. We are attempting to do one stop shopping for permitting with the Department of Agriculture's Forest Service. Our BLM and the Forest Service have a program called Service First where we are co-locating offices, trying to use the same form for grazing permitees, for instance, so you don't have to travel 50 miles to go from the Forest Service Office to a BLM office and you can use the same form. We are expanding that across the West.

We are participating in administration-wide e-government projects, the Quick Silver projects that are being led by OMB through their Associate Director, Mark Forman, its new IT Associ-

ate Director. A number of these 25 or so projects should result in a significant paperwork burden reductions for all your constituents across the board.

My testimony goes on at some length about a number of these. A couple of highlights would be one-stop business compliance, where people could get information on laws and regulations easily. We have computer wizards on-line, computer expert systems that would ask them questions, provide answers. Another area would be on-line rulemaking management so the regulated community or people interested in commenting on regulations have easier access to what is going on out there in the regulatory arena rather than having to pay for a subscription to the Federal Register or wade through a GPO Web site.

In terms of the Agriculture Department outside the Forest Service context, since 1983 we have periodically consulted with USDA to determine if the information it collects could be used in administering the acreage limitations provisions of the Reclamation Reform Act of 1982. These discussions are ongoing, virtually continuous. We have had numerous interactions over the last 12 months. In fact, I have accompanying me today an individual from the Bureau of Reclamation, Jim Handlon, who may be able to provide some more detail when we get into the questions and answers.

While both USDA and Reclamation collect detailed data from farmers, data collected by Ag and Reclamation are such that the information Reclamation needs isn't sufficient for Agriculture and information Agriculture collects is not sufficient for Interior. While we may be talking to many of the same people, we tend to be asking them different questions.

Mr. OSE. Mr. Cameron, Mr. Shipman was advised that he was already a minute over. You are a minute over. Do you want to summarize?

Mr. CAMERON. Yes, sir. Reclamation has 220,000 customers. Nationwide, 19,000, less than 10 percent, have to file forms, and one-third of them can file a one-page form.

Mr. OSE. Thank you for that summary.

[The prepared statement of Mr. Cameron follows:]

STATEMENT OF
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DEPUTY ASSISTANT SECRETARY
FOR PERFORMANCE AND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES
AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

April 11, 2002

Mr. Chairman and Members of the Subcommittee, I thank you for inviting me here today to talk about actions underway at the Department of the Interior (Department) to reduce the paperwork burden on the American public and to improve the quality of information that is collected on behalf of the public. With your permission, I will submit my testimony for the record.

In its efforts to protect and provide access to the Nation's natural and cultural heritage, the Department collects information in performing its broad mission. For example:

- The Department manages over 21 percent of the Nation's lands. Some of the activities on those lands involve permits — from camping to logging, from hiking in the backcountry to putting in a major road;

- The Department regulates resource extraction operations. To protect the environment and human safety, a range of information is required from operators. The Department also collects revenue from all resources extracted from federal lands and performs research to better inform the public on natural resource issues — both of which involve collecting information;

- Finally, the Department fulfills its trust responsibility to Indian tribes through a variety of assistance programs and through the Self-Determination and Self-Governance programs, all of which involve an exchange of information.

In addition, the Department collects information that helps it improve its service to the public. For example, Departmental bureaus conduct surveys of visitors to the National Parks and other facilities. These surveys, which are voluntary on the part of visitors, provide valuable data about visitor needs and satisfaction levels. This information allows the Department to target

management efforts to areas and programs that are important to the public.

These information collection activities are administered by eight Departmental bureaus: the Bureau of Land Management (BLM), the Minerals Management Service (MMS), the Office of Surface Mining Reclamation and Enforcement (OSM), the U.S. Geological Survey (USGS), the Bureau of Reclamation (BOR), the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS), and the Bureau of Indian Affairs (BIA).

Internal Management of Information Collection

Before a Departmental bureau collects information from the public, it must obtain approval from the Office of Management and Budget (OMB). OMB regulations at 5 CFR §1320.9 require that each agency certify that the information collection submitted to OMB for approval meets the following requirements:

- it is necessary for the proper performance of agency functions, avoids unnecessary duplication, reduces burden on small entities, and uses plain, coherent, and unambiguous terminology;

- its implementation will be consistent and compatible with current reporting and record keeping practices and it indicates the retention period for record keeping requirements;

- it informs respondents of the information called for under 5 CFR 1320.8(b)(3), including:

  - why the information is being collected;
  - to what use the information will be put;
  - the burden estimate;
  - the nature of the response (is it voluntary, required for a benefit, or mandatory);
  - the nature and extent of confidentiality; and
  - the need to display a valid OMB control number;

- it was developed by an office that has planned and allocated resources for the efficient and effective management of the information to be collected;

- it uses effective and efficient statistical survey methodology; and

- it makes appropriate use of information technology.

Each of the eight Departmental bureaus has a designated information collection clearance officer responsible for ensuring that the bureau's rulemakings and administrative actions comply with the Paperwork Reduction Act of 1995 (PRA). This includes the preparation of, and the

completeness and correctness of, requests to OMB for approval of information collections. However, such "PRA submissions" must be signed off by the Department's Senior Official, the Chief Information Officer, or his designee before they may be sent to OMB. This provides for quality control review at the Department level.

The Assistant Director for Economics, Office of Policy Analysis (PPA), has been delegated most of the information collection oversight responsibilities of the Department's Senior Official. A senior PPA staffer reviews all proposed Departmental information collections before their submission to OMB for approval. PPA provides guidance and training to the bureaus on the information collection clearance process. PPA also coordinates preparation of the annual reports to OMB on the Department's information collection activities. PPA has been working with the bureaus to assure they are in full compliance with the PRA.

In addition, the Department's Office of Regulatory Affairs (ORA) tracks and reviews all regulatory activities undertaken by Departmental offices or bureaus. One of ORA's tasks is to review each proposed rule to ensure its compliance with the PRA.

Compliance with the PRA

At this time, the Department is in virtually full compliance with the PRA. To the best of our knowledge, we have only one collection out of compliance. Perfect compliance is our goal which we pursue diligently; however, as in any administrative structure with changing staff and programs, perfection is rarely achieved. The Department's movement toward full compliance, as documented in the Information Collection Budgets submitted to the Congress annually by OMB, has been notable. All Department collections identified as "in violation" in the FY 2001 Information Collection Budget have since been submitted to OMB and approved.

Level of Burden

The level of burden imposed on the public by the Department is very small as a portion of the hours imposed by the executive branch, as shown in the following data from table 1.2 in the FY 2001 Information Collection Budget:

FY 2000 Total Hours (millions of hours)

Departments and Agencies:

Treasury	6,156.8
Labor	181.6
Health and Human Services	173.7
EPA	128.8
Transportation	117.7
Defense	93.6
Agriculture	75.2
FTC	73.8

SEC	71.8
Education	42.0
Justice	36.8
State	29.2
FCC	29.0
FAR	23.3
SSA	22.3
Housing and Urban Development	12.5
NRC	9.5
FDIC	8.3
Commerce	8.0
NASA	7.2
Veterans Affairs	6.0
Interior	**5.6**
FEMA	5.1
NSF	4.8
FERC	3.7
Energy	2.9
SBA	2.2

The level of burden imposed on the public by the Department was declining annually until FY 1999, then it rose in FY 2000 and FY 2001.

Burden Hours

FY 1997	5,190,000
FY 1998	4,570,000
FY 1999	4,360,000
FY 2000	5,640,000
FY 2001	7,560,000
estim. FY 2002	7,660,000

The increase in hours in FY 2000 was primarily due to implementation of new regulations to bring into compliance lapsed collections related to Indian affairs. The large increase in burden hours recorded in FY 2001 was largely the result of major revisions to the regulations governing handling of individual Indian money (IIM) accounts, to implement the provisions of the American Indian Trust Fund Management Reform Act of 1994. In one new collection alone (OMB Control #1076-0154), about 1.6 million hours of burden were added to provide additional fiduciary protection to Indian allottees and tribes. In total, about 36 percent of our burden hours are in the Indian Affairs area.

Burden Reduction Initiatives

Further reduction of the Department's information collection burden has proven challenging in the face of its major environmental protection and fiduciary responsibilities and the fact that Congress regularly expands our geographic and legal responsibilities. The Department's burden reduction efforts have moved largely towards computerization of document submissions as mandated by the Government Paperwork Elimination Act (GPEA).

The Department has identified a number of areas in which current business processes can be reorganized or redesigned, often taking advantage of web-enabled information technology, to reduce the amount of paperwork required of businesses or citizens to do business with the Department. The following initiatives are examples of our effort to reduce the difficulty and expense of conducting business within the Department:

•The Department completed assessment of 259 OMB-approved information collections and identified those that are eligible for conversion to electronic processing by October 21, 2003. We are now determining how many of remaining 167 candidates are eligible for conversion to electronic processing;

•In order to implement the Administration's guidance on using the Central Contractor Registration (CAR), the Department will issue and implement new policies. These policies will ensure that all contracting personnel will, by October 1, 2002, (a) use the CAR as the single validated source of data on vendors doing business with the Department; (b) encourage local and small business partners to register with the CAR; and (c) no longer accept the paper-based registration forms (SF-129s) as a source of vendor information;

•The Department will create a new Permit.gov web portal. This would be an interagency portal that would provide user-friendly public access to federal land permitting information. As part of this initiative the agencies will also reengineer their business processes. Initial multi-bureau planning meetings were held in Nov/Dec 2001. A Departmental team is working with the Small Business Administration to incorporate this project into the Business Compliance One-Stop (Quicksilver) initiative;

•The Department's National Business Center (NBC) is creating an e-commerce web portal that is designed as a single point of entry to financial and commercial services offered by the Department and NBC. NBC has developed a prototype for a secure Departmental Portal; the site has been tested using six applications: Advanced Procurement Plan, EC21 Invoicing, IDEAS-EC, Travel Manager, Trip Manager, and Vendor Search. The Department is now making the site deployable for Department users, handling issues that came up during the prototype phase. Additional phases include town meetings to get review comments before releasing it to a wider audience;

•The MMS will design and implement a distributed enterprise architecture to deliver web-based, paperless transactions, and provide data standards to better manage data, reduce future costs, and deliver products to stakeholders. MMS is exploring developmental options for this initiative with their industry partners. A draft implementation plan is under review. Pre-start-up activities commenced November 1, 2001;

•The OSM will develop a web based version of the Abandoned Mine Land Inventory System (AMLIS), which will allow States, Indian tribes, and OSM to electronically update and maintain data regarding abandoned mine lands reclamation programs and progress. The AMLIS web-based system is now in beta testing with selected States and OSM offices. Once the testing is completed and any necessary modifications made, the system will be implemented later this year. The web-based version will be easier to access electronically and more readily available to the public; and

•The NPS is developing a web-based electronic reporting system to collect data related to partnership and donation information. NPS is identifying effective ways to request, compile, and display this data, coordinating, when possible, with existing mechanisms for collecting information.

Service First Initiative

Departmental bureaus are seeking to further reduce paperwork through sharing, or in some cases combining, required paperwork. The Service First initiative promotes partnerships for seamless resource management between the BLM and the U.S. Department of Agriculture's Forest Service, in part by co-locating offices and providing for "One-Stop shopping." We are encouraged by some success with joint permitting — *i.e.*, each agency uses the same permit. This makes the agency distinction transparent to the public. For example, the Oregon Coast Passport Program along the northern Oregon coast, provides for One Recreation Pass that is honored by participating agencies at various levels of government, including the BLM, NPS, the Forest Service, and Oregon State and county parks. Users pay a single fee for a single permit that is usable at 16 participating sites.

Recreation users can now obtain recreation use permits via the Internet for boating on and camping along rivers that pass through the jurisdiction of several agencies. With this one on-line permit, recreation users can have access to greater lengths of the river without needing separate permits obtained from each resource management agency. For example, recreation users on the Lower Deschutes River can obtain a joint permit honored by the BLM, the Forest Service, and the State of Oregon. The permit is obtainable via the Internet 24 hours a day, seven days a week, and is printed on the customer's own printer for convenience.

Quicksilver Projects

The Administration-wide E-Government Task Force, referred to as project Quicksilver, was chartered to identify the strategic actions needed to overcome key barriers to e-government and to identify approximately 20 high pay-off multi-agency e-government initiatives that could be implemented within 18 to 24 months. The goals of each of the Quicksilver projects are to use information technology strategically to simplify business processes, and to unify information flows across the government. Quicksilver projects will reduce the expense and difficulty of doing business with the government, including the amount of paperwork required on the part of businesses and citizens. Key Quicksilver projects that may reduce paperwork include:

•**One Stop Business Compliance:** This initiative will provide information on laws and regulations to help users understand information and offer wizards and tutorials to help users to determine if rules apply to them and how to proceed. Permits are completed, submitted, and approved online. The goals of this program are to (1) enable a single point of access to all laws and regulations affecting business in an easy to understand format; (2) provide online tools and digital guides offering businesses compliance information and solutions; and to (3) facilitate online transactions for submitting the required applications for permits and licenses;

•**E-Grants:** This initiative will create an electronic grants portal for grant recipients and the grant-making agencies that will streamline, simplify and provide an electronic option for grants management across the government. This effort will include the 26 federal grant-making agencies' work to implement the Federal Financial Assistance Management Improvement Act of 1999, P.L. 106-107. A single grant portal will simplify the application process and increase awareness resulting in a reduction of time spent preparing and searching for grants;

•**Recreation One-Stop:** This initiative will build upon "Recreation.gov" and will provide a one-stop, searchable database of recreation areas nationwide, featuring on-line mapping and integrated transactions, including online campground reservations and the purchase of recreational passes, maps, and products. The value of the site will rise through better information and the ability to conduct transactions over the web. The Department is the managing partner for this project;

•**Eligibility Assistance Online:** This initiative envisions that, through a common Internet portal, citizens (with a focus on high need demographic groups) will have access to information on eligibility for all government programs and services through a prescreening device. The site will also provide direct, integrated access to agency-specific sites and transactions;

•**Online Access for Loans:** This initiative allows citizens and businesses to both find the loan programs that meet their needs and apply for the loan itself. Citizens will have direct and faster access to apply for a loan, create or modify an online repayment schedule, or examine their loan account transaction history. Citizens will have faster, easier access to loan information and transactions;

•**EZ Tax Filing:** This initiative would make it easier for businesses and the public to file taxes in a web-enabled environment. Citizens will no longer have to pay for basic automated tax preparation. Refund checks are delivered sooner, online security is increased, and customer service is increased;

•**Online Rulemaking Management:** This initiative would provide access to the rulemaking process for citizens anytime and anywhere. An existing "e-docket" system would be expanded and enhanced to serve as a government-wide system for agency dockets. Other agency systems would use the system by creating "storefronts," consistent with statutory requirements for each agency under the Administrative Procedures Act. A single portal for businesses and citizens to access the rule-making process would create a more collaborative and transparent atmosphere in which to make policy and public safety decisions. It will also improve the quality of policy decision making by increasing citizen and business participation in the rulemaking process. Public participation is estimated to increase by 600%; and

•**Simplified and Unified Tax and Wage Reporting:** This initiative's goals include decreasing the number of tax-related forms that an employer must file, providing timely and accurate tax information to employers, increasing the availability of electronic tax filing, and modeling simplified federal and state tax employment laws. This initiative would reduce the burden of compliance with tax laws for businesses. Upon implementation, this initiative offers cost savings of up to $182 per year per small business; small businesses could thus save up to $6.4 billion in the aggregate over six years. Benefits to large and mid-sized companies will be greater as they tend to spend considerably more time and effort on tax preparation.

Although movement toward e-Government will reduce the Department's information collection burdens, measured burden totals may continue to rise primarily due to aggressive bureau efforts to identify and bring into compliance with the PRA previously ongoing, but unacknowledged, information collections.

Work with the Agriculture Department

Since 1983, the Bureau of Reclamation (BOR) has periodically consulted with the Department of Agriculture (USDA) to determine if the information USDA collects could be used in administering the acreage limitation provisions of the Reclamation Reform Act of 1982

(RRA). Over the last 12 months an examination has again been carried out by BOR and USDA staff. This has included a detailed review of BOR information requirements and the types of information USDA collects. As with earlier efforts, staff from both BOR and USDA have concluded that the two programs are so different that USDA data are not sufficient to substitute for the information BOR collects concerning acreage limitation. While both USDA and BOR collect detailed data, the data collected by BOR are not sufficient for USDA's purposes, and USDA does not collect data with the type of detail required by BOR in order to administer and enforce the acreage limitation provisions. Examples include:

•BOR focuses on landowners and lessees, and USDA gathers information from "farm operators" which includes landowners, lessees, farm managers, and other farm operators. The acreage limitation provisions are not applicable to many of the "farm operators" from whom USDA collects information and there is no way to make a distinction in the USDA data;

•BOR must collect information on irrigable and irrigation lands by water district. While USDA gathers data on all land that a farmer has registered in its programs, it does not collect information by water district, nor does it require farmers to indicate their water districts;

•BOR requires detailed legal descriptions in order to determine if land is eligible to receive BOR irrigation water and the price to be charged for such deliveries. USDA has no need for detailed legal descriptions, and does not generally collect this information;

•BOR must gather information with a specific type of detail to determine whether certain groups of landholders have met program criteria to receive special applications of the acreage limitation provisions. USDA has no need for this information and does not collect it.

In addition, proposals to allow farmers to submit RRA forms at USDA offices do not appear feasible for the simple fact that not even BOR currently collects those forms. Rather, those forms are collected by districts that have contracted with BOR for a supply of BOR irrigation water, because it is those districts that actually control the delivery of irrigation water to landholders and need that information. To change this arrangement would require a fundamental change in the relationship BOR has with its districts, yet would not actually reduce the paperwork burden on landholders because the RRA forms would still have to be completed. In fact, if a landholder is not participating in USDA programs, it may increase the burden on that landholder by having to visit yet another office.

Nevertheless, it is the differences in the programs that resulted in BOR's effort to gain access to certain USDA data. BOR believes that such data may be used to verify information

landholders provide on RRA forms under certain circumstances. In March 1993, BOR and USDA entered into a Memorandum of Understanding to facilitate such access.

As BOR gained experience in administering and enforcing the acreage limitation provisions, it was determined that the RRA forms submittal threshold could be increased for landholders who are individuals or small entities and are subject to the discretionary provisions. As of January 1, 1997, the RRA forms submittal threshold for these landholders (known as qualified recipients) was increased to 80 acres, or 240 acres, depending on their district's RRA forms submittal category. By establishing RRA forms submittal thresholds, **less than 10 percent of all landholders** must submit RRA forms.

BOR has also taken actions to reduce the paperwork burden on those few landholders who do have to submit RRA forms. Included in these actions are:

•Creating forms tailored for different types of landholders, rather than having only one lengthy form that all landholders must use. For example, since certain information must be submitted by religious or charitable organizations, a special form has been created for those organizations to complete. That way other types of entities do not have to consider the information requirements that are not applicable to them (See attachment 1 for a complete listing of RRA forms);

•In general, landholders who do not have any change to the acres they directly or indirectly own or directly or indirectly lease may complete a one page "Verification of Landholdings" (Form 7-21VERIFY) for their annual submittal. In addition, if the only change to a farming arrangement is a change in a farm operator or the extension or renewal of an annual lease, the verification form can be still used. We have estimated it takes 12 minutes to complete this form, but for most who are eligible to use it, it should take even less time since they only have to note the previously submitted forms they are verifying, print their name, and sign it;

•For those individual landholders who are required to submit RRA forms annually but have relatively simple holdings (e.g., all of the land is in one district, their landholdings do not exceed the applicable acreage limitation entitlements, none of the land is held through entities, etc.), they may submit "EZ" forms. It is estimated that these forms take only 75 percent of the time to complete as the "long" forms (45 minutes versus 1 hour);

•BOR has instituted a substitute forms approval process. To date, eight districts, companies, and law firms have developed approved substitute RRA forms or approved computer generated printouts to be attached to RRA forms. In general, the substitute forms are computer generated. One of these companies has developed and is marketing software that completes certain RRA forms; and

•The RRA forms are color coded to ease landholder and district use.

BOR has also taken steps to minimize the forms requirements for farm operators. As of January 1, 2001, farm operators were provided an RRA forms submittal exemption on 960 acres or less, when land is entirely held by trusts and legal entities. Land held by individuals is not considered in determining if a farm operator must submit a form. In addition, action has been taken to exempt and group certain farm related services, so the information collection will be focused on only those farm operating arrangements that BOR needs to audit.

BOR is also a member of the "Bridging-the-Headgate" Partnership, a six-party alliance made up of BOR and its traditional State and local partners, the Western States Water Council (WSWC) and the National Water Resources Association (NWRA) representing the water supply side of the western agricultural "headgate" — and the USDA's Natural Resources Conservation Service (NRCS) and its long-time non-federal partners, the National Association of State Conservation Agencies (NASCA) and the National Association of Conservation Districts (NACD) — three organizations that have traditionally worked very closely together to support conservation and resource stewardship among private landowners, farmers, and water users on-farm. The overall intent of the partnership is to encourage innovative networking, at the local and national levels between irrigation districts and conservation districts, to promote and facilitate collaborative problem solving on western water issues. The Department is considering tasking the "Bridging-the-Headgate" staff (BOR and NRCS) to seek opportunities (outside of the RRA) to reduce the amount of paperwork the federal government requires. An example of where they can start looking is the information that NRCS and BOR collect on the crop census.

Conclusion

The Department is working on a variety of fronts — on our own, in cooperation with individual agency partners, and governmentwide — to try to produce better value for our citizens, at least in part by reducing paperwork burdens unneeded for sound management. Mr. Chairman, this concludes my statement and I would be pleased to respond to any questions you may have.

Attachment 1

List of Reclamation Reform Act of 1982 (RRA) Forms

Following is a list of the landholder forms and a brief discussion of the purpose of each form:

Form 7-2180EZ. "EZ Certification of Individual's Landholdings." This form allows certain individuals with uncomplicated landholdings to complete a simplified form. To be eligible to complete Form 7-2180EZ, the landholder's entire landholding must be located in only one district, the acreage must not exceed 960 acres, the entire landholding must be held directly (i.e., no legal entities may be involved), the landholder is not claimed as a dependent within the meaning of the Internal Revenue Code, either the landholder or the landholder's spouse, if married, is a U. S. citizen or a resident alien, and the landholder must be subject to the discretionary provisions.

Form 7-2180. "Certification of Individual's Landholdings." This form is to be used by individuals and single families who are subject to the discretionary provisions to certify their landholdings. This form is also to be used by part owners and beneficiaries of entities and trusts to indicate their interest in the holdings of those entities or trusts.

Form 7-2181. "Certification of Entity's Landholdings." This form is to be used by all types of multiple ownerships that are subject to the discretionary provisions, including, but not limited to, tenancies-in-common, partnerships, and corporations, to certify their landholdings. However, it is not to be used by trusts.

Form 7-2184. "Certification of Religious or Charitable Organization's Landholdings." This form is to be used by religious or charitable organizations to certify their landholdings in districts that are subject to the discretionary provisions. A separate form is needed for these organizations because the acreage limitation provisions of Federal reclamation law applicable to land held by religious and charitable organizations differ from those covering other types of landholders.

Form 7-2190EZ. "EZ Report of Individual's Landholdings." This form allows certain individuals with uncomplicated landholdings to complete a simplified form. To be eligible to complete Form 7-2190EZ, the landholder's entire landholding must be located in only one district, the acreage must not exceed 160 acres (320 acres for a married couple), the entire landholding must be held directly (i.e., no legal entities may be involved), the landholder is not claimed as a dependent within the meaning of the Internal Revenue Code, and the landholder must be subject to the prior law provisions.

Form 7-2190. "Report of Individual's Landholdings." This form is to be used by individuals and single families who are subject to prior law provisions to report their landholdings. This form is also to be used by part owners and beneficiaries of entities and trusts to indicate their interest in the holdings of those entities or trusts.

Form 7-2191. "Report of Entity's Landholdings." This form is to be used by all types of multiple ownerships that are subject to the prior law provisions, including, but not limited to, tenancies-in-common, partnerships, and corporations, to report their landholdings. However, it is not to be used by trusts.

Form 7-2194. "Report of Religious or Charitable Organization's Landholdings." This form is to be used by religious or charitable organizations to report their landholdings in districts that are subject to the prior law provisions. A separate form is needed for these organizations because the acreage limitation provisions of Federal reclamation law applicable to land held by religious and charitable organizations differ from those covering other types of landholders.

Form 7-21PE. "Declaration of Public Entity's Landholdings." This form is to be used by public entities to declare their holdings in districts subject to discretionary provisions or prior law provisions. A separate form is needed because the acreage limitation provisions of Federal reclamation law applicable to land held by public entities differ from those applicable to other types of landholders.

Form 7-21TRUST. "Declaration of Trust's or Estate's Landholdings." This form is to be completed by all trusts. In general, trusts are exempted from application of the acreage limitation provisions of Federal reclamation law; however, land held in trust must be attributed to a landholder(s) and the amount of land eligible to receive water when held by a trust can be limited by the entitlements of the parties to whom the land held in trust is attributed. Therefore, a separate form is needed for trusts because it is necessary to gather information regarding the trust, the land held in trust, and the parties to whom the land is attributed.

Form 7-21VERIFY. "Verification of Landholdings." This form is to be completed annually by landholders who are required to submit RRA forms but have no change in their landholdings from the previous year. Annual verification is necessary to satisfy the RRA requirement for annually providing information on landholdings to ensure that Reclamation and district(s) information on individual landholdings remains accurate and up to date. Landholders may also use this form to report renewals or extensions of leases with terms of 1 year or less, provided no other aspects of the leases have changed, or to report a change in a farm operator.

Form 7-21FARMOP. "Declaration of Farm Operator Information." This form is to be completed by farm operators who provide services to more than 960 nonexempt acres westwide, that are held by a single trust or legal entity or any combination of trusts and legal entities. In addition, this form is to be completed by part owners of legal entities that are farm operators if that farm operator is providing services to land the part owner formerly owned as "excess" and sold at a price approved by Reclamation.

Form 7-21XS. "Designation of Excess Land." This form allows discretionary or prior law provision landowners whose total ownerships exceed their ownership entitlements to designate land which is to be considered excess.

Form 7-21XSINAQ. "Information Sheet for Involuntarily Acquired Eligible Land Designated As Excess Land." This form may be completed by landholders who involuntarily acquire eligible land then designate that land as excess. Landholders are instructed that they may use a separate sheet of paper instead of this form.

Form 7-21FC. "Selection of Full-Cost Land." This form allows discretionary or prior law provision landholders whose total landholdings exceed their nonfull-cost entitlements to select land which is subject to full-cost pricing.

Form 7-21CONT-I. "Continuation Sheet for Indirectly Held Landholdings." This continuation sheet may be used by those who require additional space for listing land the landholder indirectly holds through other entities. This continuation sheet may be used with Forms 7-2180, 7-2181, 7-2184, 7-2190, 7-2191, 7-2194, and 7-21TRUST. Landholders are instructed that they may use their own similar continuation sheet instead of this form.

Form 7-21CONT-L. "Continuation Sheet for Directly Leased Landholdings." This continuation sheet may be used by those who require additional space for listing land the landholder directly leases from another party. This continuation sheet may be used for Forms 7-2180EZ, 7-2180, 7-2181, 7-2184, 7-2190EZ, 7-2190, 7-2191, 7-2194, 7-21PE, and 7-21TRUST. Landholders are instructed that they may use their own similar continuation sheet instead of this form.

Form 7-21CONT-O. "Continuation Sheet for Directly Owned Landholdings." This continuation sheet may be used by those who require additional space for listing land the landholder directly owns. This continuation sheet may be used with Forms 7-2180EZ, 7-2180, 7-2181, 7-2184, 7-2190EZ, 7-2190, 7-2191, 7-2194, 7-21PE, and 7-21TRUST. Landholders are instructed that they may use their own similar continuation sheet instead of this form.

Form 7-21INFO. "General Information About the RRA Forms." This document provides general information including definitions of terms used in the RRA forms. There is no actual form related to this form number.

Following is a list of district summary forms, their corresponding tabulation sheets, and a brief discussion of the purpose of each form:

Form 7-21SUMM-C. Used by districts to summarize landholdings and landholders subject to discretionary provisions. Districts that are subject to discretionary provisions also summarize the landholdings of all trusts and all public entities in their districts. The summarization is derived from tabulation sheets which are explained below.

Form 7-21SUMM-R. Used by districts to summarize landholdings and landholders that are subject to prior law. Districts that are subject to prior law also summarize the landholdings of all trusts and all public entities in their districts. The summarization is derived from tabulation sheets which are explained below.

Reclamation requires that districts use and submit the following tabulation sheets, except where noted, to facilitate completion of the summary forms and to aid in fulfilling specific requests for information. This has eliminated numerous requests to districts for detailed information.

Tabulation A. Tabulates information from certification or reporting forms submitted by individuals and entities.

Tabulation B. Tabulates information from forms submitted by trusts and estates.

Tabulation C. Tabulates information from forms submitted by public entities.

Tabulation D. Tabulates information from certification and reporting forms submitted by religious or charitable organizations.

Tabulation E. Tabulates errors or infractions detected in the review and compilation of landholder forms (e.g., forms nonsubmittal by landholders whose westwide landholdings exceed the forms submittal threshold, erroneous or incomplete landholder information where failure to complete RRA forms properly will jeopardize the landholders' eligibility to receive Reclamation irrigation water, etc.).

Tabulation F. This is an optional form, provided only for district convenience, to detail and tabulate information concerning part owners who indirectly hold land. While indirect landholding information is not addressed on any other tabulation sheet and is consequently not transferred to Form 7-21SUMM-C or Form 7-21SUMM-R, summarized part owner information can be used by both districts and Reclamation.

Tabulation G. Tabulates information from forms submitted by farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities.

Mr. OSE. I have to go take a vote in a committee. Mr. Otter can take the chair from that position. I will be right back.

Mr. OTTER [assuming Chair]. Thank you.

Mr. Cameron, I also serve on the Resources and Conservation Committee and Interior falls under that as well as the BIA, and I want to use your quote, "a number of problems in handling the BIA trust." That is like saying King Kong is just another monkey. I don't know what that is going to do to the paperwork burden at Interior, but I suspect with the reproduction you already have to have in terms of the lawsuit we have against the Department of the Interior right now, that is going to expand it considerably.

Let me ask you both, in terms of the Department of Agriculture, I receive a form for my ranch from the Department of Agriculture, which wants to know about my production for good reasons. Where are we headed in terms of the Nation's food supply in terms of quantity and quality. I certainly understand that.

Then I also have a form I have to fill out to the IRS in order to qualify for farm status. Then I have another form that I have to fill out for the State Income Tax Department for the same two purposes. Then I have a form I have to fill out for the county in order to qualify my property for the farm exemption or the farm reduction.

Have you worked with States, with other agencies, with the IRS, and perhaps I should have asked Mr. Rossotti that question when he was here? Would it be possible to get your heads together and figure out one form that I fill out for the IRS that would also apply to the Department of Agriculture in terms of the statistics and the information you need in order to work on the demographics, Mr. Shipman?

Mr. SHIPMAN. I think you raise a good point. Unfortunately, I think you would find the level of detail the IRS requires in determining farm status doesn't go to the level of detail that we would utilize in determining payment eligibility for specific crops and things like that. It is very possible that we can work with the IRS and other Federal agencies as we develop more centralized electronic recordkeeping systems so that we can share that information with them. They can take what they need from the information we collect. I think that is a good suggestion, something we will be happy to look into.

Mr. OTTER. Mr. Shipman, my tax form I fill out for the IRS, the taxes on income and deductions, I also file that with the State saying almost the same information and practically the same form. It is almost a duplicate. That is because the IRS and the State have gotten together or the State said we will accept this information from the IRS figuring your 8 percent you will owe income tax to the State. I file the same thing to the State Department of Agriculture. Why isn't that form good enough for you folks or why won't you work with the Idaho State Department of Agriculture or in the 50 States and their Departments of Agriculture in figuring out one form that satisfies your needs and theirs as well?

Mr. SHIPMAN. Again, your suggestion is well taken. As we develop these electronic systems where we can share that information easily with all 50 States which may have 50 different sets of requirements, whereas we have one, we can work to provide that in-

formation collectively to each of the individual States and meet the information needs they have. It is a good suggestion and one that we will be happy to take forth and look into more.

Mr. OTTER. Mr. Cameron, practically the same question, but let me get more specific to your department. For the BLM and the Department of the Interior, I fill out the requirement in order to establish an AUM allotment. That AUM allotment I also have to fill out for the Department of Agriculture. I fill that out for you and I would just as soon have one form between the two of you and add a half a page rather than fill out 7 pages for both of you. Do you understand where I am coming from on this?

Mr. CAMERON. Absolutely and I completely agree with you. As I mentioned, in the Service First Program that is operational in 17 locations around the West between BLM and the Forest Service, we are trying to do just that. As a practical matter, there is no reason there couldn't be one form. We are trying to expand Service First nationwide with the BLM and the Forest Service. It is one of those situations where it works best if a local manager sees an opportunity to co-locate and starts cooperating; but at the senior level in Washington, we are sold on it, we are pushing it, we are promoting it. I know the new BLM Director, Kathleen Clarke, is very interested in pursuing it. So we are definitely moving in the direction you would like to see us go.

I am sure you would like to see us go faster and so would we. There is one area worth mentioning where we are working rather closely with local governments or local entities already. It relates to our paperwork reduction or paperwork generation effort in the Reclamation area. It is actually our irrigation districts that are not Federal entities but are local, semi-governmental entities that use a lot of that information in terms of knowing how to deliver water to whom. They may be BOR forms but they end up being mailed to the local irrigation district and have extensive use by the irrigation district.

In terms of the broader picture, we have so much room for improvement inside the Federal Government itself that I think we are trying to emphasize cleaning up our own act before we start systematically trying to reduce duplication between Federal agencies and State agencies.

Philosophically, you are right on target. I know one of the themes Mark Forman of OMB is pushing all the time in terms of information we collect from our taxpayers is to simplify and unify, collect it once, use it many times. There are some technology issues, some security issues in terms of agencies being able to grab each other's data, that sort of thing. Those I am sure will be worked through over time; but the vision is collect it once, use it a bunch of times, simplify, unify.

Mr. OTTER. Thank you. My time is up.

I would say, Mr. Cameron, that I have been the benefactor of those cooperative efforts. You have a great office now in Boise. I am not looking for another parking place 50 miles away by trying to deal with two separate agencies. We would hope you would give the U.S. Department of Agriculture in the State of Idaho an opportunity to become your very close neighbor as well, because when

one person goes to town, those are the three agencies he is going to go to town to see.

Mr. CAMERON. By the end of the day, I will have brought to Kathleen Clarke's attention your interest in having Service First in Idaho if it isn't there already and we will let you know the status of that.

Mr. OTTER. Thank you.

Mr. OSE [resuming Chair]. Gentlemen, I have to say as it relates to your two departments, I am not satisfied with your performance. No doubt you can see that chart over there. I have given Ag and Interior an "F" on their performance under paperwork reduction. Let me cite an example.

Say Mr. Otter on his AUM paper form has absolutely no change from last year, there is no box on your forms that says, "no change from last year," signed Butch Otter, send it out. As far as I can tell on the Bureau of Reclamation forms and USDA forms, there is no such box on any of those forms that says "no change from last year." You have to fill out the whole form again. If there is no change, why not just put a box there that the farmer or water user can just check and say "no change from last year" and send the form back? Do you know how much time that would save? Why isn't there a box like that? Mr. Shipman.

Mr. SHIPMAN. Congressman, I can't speak specifically to why improvements haven't been made except to note that, in many cases, the information we are collecting is on a year by year production basis and it is very unlikely that producers are going to produce the exact same quantity of products they grew on a year by year basis. In some cases, I think your suggestion is a good one, but I would call to your attention that in other cases, it may not be appropriate.

Mr. OSE. Let us look at Iowa, which I have a passing familiarity with. They either grow corn or soy beans, grow corn 1 year, soy beans the next. One crop uses a certain mix of ground nutrient, the other crop puts it back, back and forth, back and forth. What is so complicated? If you are talking about yield in terms of updating your base acreage or what have you, that is one question, but to fill out the whole form year after year, name, date of birth, address, who do you buy your equipment from, how many acres you have. What is the point?

Mr. SHIPMAN. Your suggestion is a good one and as you are well aware, the conferees on the 2002 Farm Bill are meeting as we speak. We anticipate having a tremendous change in the way we do much of our business. We are going to be going backward.

Mr. OSE. I do have that question here.

Mr. SHIPMAN. In terms of the information we are going to be required to collect, potentially, as a part of this legislation.

Mr. OSE. Is that information requirement embedded in the House bill or the Senate bill? Do they both require great amounts of additional information?

Mr. SHIPMAN. No, sir. The mandatory acreage reporting requirements are included in the House bill.

Mr. OSE. How about the conservation stuff, because you are going to have a whole raft of new information collection on that?

Mr. SHIPMAN. Yes, sir. Much of that will depend on whether or not we have a new conservation program contemplated by the Senate and whether the conferees decide to approve that or to put it in as a pilot program or how they decide to dispose of that.

Mr. OSE. You have an "F" now at Ag. If what you say comes to past, we will go backward from an "F" and give you a "Z"?

Mr. SHIPMAN. My reference to going backward was actually in terms of the information we will be collecting, in terms of hours of burden, potentially we will be going up. At the same time, we have had improvements this year. I noted in my testimony a 250,000 hour reduction from the Food and Nutrition Service. The Farm Service Agency has the ELDP program underway and we have an overall initiative in the Food and Nutrition Service to review the paperwork burden on participants in their nutrition program.

We have had improvements this year and we have the potential for greater improvement next year. Until we have the final Farm Bill disposition, I am not sure I can give you an accurate prediction of what the end total will be on that.

Mr. OSE. I do want to point out on page 8 of your written testimony you have a comment about OMB having reported a total of 33 violations of the Paperwork Reduction Act for USDA and the OMB number is 96, not 33. If you would like our source, we would be happy to provide that.

[The information referred to follows:]

Question 2: OMB cited 96 violations of the PRA for USDA during FY 2000. Yet, USDA's written testimony states that there were 33 violations. What explanation is there for the discrepancy?

Response: The *Information Collection Budget (ICB) for FY 2001* did document 96 violations of the Paperwork Reduction Act (PRA) across 3 tables. Sixty-three (66 %) of the total number of violations were included in table B.1 which described violations of the PRA during fiscal year (FY) 2000 that had already been resolved. USDA chose to discuss in its testimony the 33 violations (highlighted in tables B.2 and B.3) that remained outstanding at the time the FY 2001 ICB was published. In summary, USDA did complete FY 2000 with 96 violations (63 + 33) of the PRA.

Mr. OSE. Mr. Cameron, the same question. Why doesn't the Bureau of Reclamation have a box that says "no change from last year?"

Mr. CAMERON. That is a very good question, and I think the answer is we ought to. Clearly even with that sort of single checkoff, you still need name, address, phone number, identifying information like that. About a third of our 19,000 customers who actually file forms with us, less than 10 percent of the universe of our customers, use that one-page form right now. It is possible we could change it from a one-page form to a half page form with the box check.

Mr. OSE. It seems to me all you have to do is put a line in there. It is kind of like a checkoff; check this off, no change from last year, and it is gone. You still have the same form, one page, just a line, check.

Mr. CAMERON. I don't have a copy of our one-page verification form with me right now, but will be happy to provide it to you for the record, but in glancing at it yesterday, it didn't appear to have too many lines on it. I think the estimate is it takes 15 minutes to fill out one of those forms. If it can be made 5 minutes or 3 minutes, I am with you 100 percent. Let us look for ways to make that happen.

What we are hoping to do at Reclamation is right now you actually have to physically go to a BOR office or get a form mailed to you. We are hoping within the next year or so to be able to have folks download a PDF file so at least you don't have to drive a half hour to get a form or wait a week for it to show up in the mail. The next step after that would be to fill it out on-line. We are hoping eventually to be able to download last year's form, put in that "x" and send it right back.

[The information referred to follows:]

FORM 7-21VERIFY 2003 Instructions

(7-02)

INSTRUCTIONS FOR VERIFICATION OF LANDHOLDINGS (For Certification and Reporting Requirements of the Reclamation Reform Act of 1982)

Bureau of Reclamation
Do not use this form after December 31, 2003

OMB Control No.: 1006-0005

Paperwork Reduction Act

This information is being collected to establish landholder compliance with Federal reclamation law. Response to this request is mandatory in accordance with Public Law 97-293 and 43 CFR 426.18. Public reporting burden for this form is estimated to average 12 minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Direct comments regarding the burden estimated or any other aspect of these forms to Manager, Reclamation Law and Revenues Management Office, Code D-5200, U.S. Bureau of Reclamation, PO Box 25007, Denver CO 80225, and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

GENERAL INFORMATION

"General Information About RRA Forms" (Form 7-21INFO) provides basic instructions on using Reclamation Reform Act of 1982 (RRA) forms. Ask your district office for this form each year to keep current. Refer to the definitions at the end of Form 7-21INFO whenever the meaning of a term is not clear to you. Please note, some terms such as "irrigable land," "irrigation land," and "irrigation water" have special definitions when used in these forms which differ from their common meaning. Other terms and corresponding definitions that are specific to the RRA forms are:

- "**Land**" or "**acres**" means irrigable or irrigation land.
- "**You**" or "**your**" means all types of landholders -- individuals, entities, religious or charitable organizations, public entities, trusts, estates, etc.
- "**We**," "**us**," "**our**," or "**Reclamation**" means the Bureau of Reclamation.

Visit www.usbr.gov/rra for more information.

WHO MAY USE THIS FORM

You may use the "Verification of Landholdings" (Form 7-21VERIFY) if the landholdings identified on your most recently submitted standard form(s) have not changed and the information on the standard form(s) remains correct. You may use this form to verify your most recently submitted "Designation of Excess Land" (Form 7-21XS) or "Selection of Full-Cost Land" (Form 7-21FC) as long as your landholdings have not changed and the information on the form(s) remains correct. You may use this form to verify a standard form(s) with a new Form 7-21FC as long as that is the only information that is changing. However, if a new Form 7-21XS is required, you may **not** use Form 7-21VERIFY to verify any RRA forms.

Trusts or estates must submit a "Declaration of Trust's or Estate's Landholdings" (Form 7-21TRUST) if it attributes some of its land subject to the acreage limitation provisions to a class of beneficiaries. The submittal of Form 7-21VERIFY is not acceptable for such trusts or estates.

You may use Form 7-21VERIFY to identify a change in operator if this is the only change since the most recently submitted standard form. However, farm operators may not use Form 7-21VERIFY to meet any applicable RRA forms submittal requirement.

Form 7-21VERIFY may also be used to identify extensions and renewals of your **annual** leases, as long as the original and new terms are each for 12 months or less **and** the renewal or extension is the **only** change being made. Please see item 5 below (on page 2) for further guidance regarding annual leases. Form 7-21VERIFY cannot be used to identify changes in any non-annual leases.

You do not need to submit either a standard form or a Form 7-21VERIFY if you hold land **only** indirectly (as a part owner, beneficiary, trustee, or grantor), your landholdings have not changed since the submittal of your last standard form(s), and the information on your form(s) remains correct. (Note: The direct landholder(s) must submit RRA forms each year.)

WHERE TO SUBMIT FORMS

Submit this form to each district in which the land is held (directly or indirectly owned or leased). You must submit the original form to one district and may submit copies to the others if you hold land in more than one district.

IF LANDHOLDINGS CHANGE

If your landholdings change during the water year, you must notify all districts in which you hold land within 30 calendar days after the change and submit new **standard forms** within 60 calendar days after the change. These 30- and 60-day grace periods do not apply to a new landholder. A new landholder must submit the appropriate standard forms **prior** to the delivery of Reclamation irrigation water to your land.

For more information on landholding changes, see Fact Sheet 11, which is available at your district office.

GENERAL INSTRUCTIONS

Type or print in ink all answers. You must initial and date any crossouts and corrections. You may attach continuation sheets to list information. Please contact your district office or the appropriate Reclamation office if you have any questions.

ITEM BY ITEM INSTRUCTIONS

Identification of Previously Submitted Form(s)

1. Check the box(es) corresponding to the RRA form(s) that this form verifies, and enter the date the form(s) was signed.

2. On the line provided, enter the landholder's name exactly as it appears on the standard form(s) this form verifies. Religious and charitable organizations must provide its taxpayer identification number if the organization is verifying a standard form dated prior to 1996.

Landholder Information

3. (a) Enter your street address or rural route number, city, state, and ZIP code. Your attorney's address, relative's address, "c/o" address, etc., is not acceptable in place of a street address. Post office box numbers may be used only if no other address exists.

   (b) Enter your mailing address if it is different from your street address.

4. (a) Enter the telephone number where questions can be directed.

   (b) Enter the contact person's name at that telephone number.

Annual Lease Renewal or Annual Lease Extension

5. Complete this section **only** if you are renewing or extending the length of an existing **annual** lease. For RRA purposes, annual leases are only those that:

   - Have an effective term of 12 months or less,
   - Have either a clause requiring written affirmative action be taken annually or a clause providing for annual withdrawal opportunity from the lease, and
   - The renewal or extension is for a term of 12 months or less.

   You **must** submit a new standard RRA form(s) rather than a verification form if you have changes to leases (including any renewals or extensions of leases) that do not meet all three of these criteria.

   (a) Name of the other party to the lease. Enter the lessee's name if you are the lessor. Enter the lessor's name if you are the lessee.

   (b) Effective date of the lease. Enter the effective date as specified in that document if a new lease document has been created. Enter the date the new lease document was signed if no effective date is specified in the new lease document. Enter the effective date as specified in the original lease document if the original lease document is being extended or renewed. Enter the date the original lease document was signed if no effective date is specified in the original lease document.

   (c) Length of the lease renewal or lease extension (in months). This should be 12 months or less. You must submit a new standard form(s) rather than a verification form if the lease has been renewed or extended for a period of time in excess of 12 months.

   (d) Name of district in which the leased land is located.

   (e) Provide an accurate legal description or an assessor's parcel number for each parcel of leased land. Be sure to break down land parcels as far as necessary to ensure accurate identification.

Change in Operator

6. Complete this section only if you are identifying a change in operator under a farm operating arrangement. (Form 7-21VERIFY cannot be used to identify changes in lessees.)

   (a) Name of the previous operator farming the land under the farm operating arrangement.

   (b) Name of the new operator farming the land under the farm operating arrangement.

   (c) Name of district in which the land being farmed under the farm operating arrangement is located.

   (d) Provide an accurate legal description or an assessor's parcel number for each parcel of land being farmed by the new operator. Be sure to break down land parcels as far as necessary to ensure accurate identification.

Signatures

7. Read the attestation statements carefully and sign and date the form in ink. Both you and your spouse, if married, must sign this form. This requirement applies even if the land is not jointly held. All partners, joint tenants, or co-tenants must sign the form if the landholder is a partnership, joint tenancy, or tenancy-in-common. However, a written signature authorization may be used to permit one spouse to sign for the couple or to permit one natural person to sign for the entity and a copy must be submitted to each district the landholder submits RRA forms. All trustees, administrators, or executors must sign this form unless the trust or a power-of-attorney authorizes one individual to sign for the trust or estate. The district office must keep any such signature authorizations on file.

OMB CONTROL NO.: 1006-0005

FORM 7-21VERIFY 2003

(7-02)

BUREAU OF RECLAMATION

VERIFICATION OF LANDHOLDINGS

For Certification and Reporting Requirements of the Reclamation Reform Act of 1982

District Name: FOR DISTRICT USE ONLY

DATE RECEIVED:

Do not use this form after December 31, 2003. It is important that you read the separate instructions that accompany this form before completing it. If you did not receive these instructions, please contact your district office. Type or print in ink. Date and initial crossouts and corrections. Visit www.usbr.gov/rra for more information.

1. This form verifies the information on the following previously submitted RRA form(s):

☐ 7-2180, Dated: ___/___/___ ☐ 7-2180EZ, Dated: ___/___/___ ☐ 7-2181, Dated: ___/___/___ ☐ 7-2184, Dated: ___/___/___

☐ 7-2190, Dated: ___/___/___ ☐ 7-2190EZ, Dated: ___/___/___ ☐ 7-2191, Dated: ___/___/___ ☐ 7-2194, Dated: ___/___/___

☐ 7-21PE, Dated: ___/___/___ ☐ 7-21TRUST, Dated: ___/___/___ ☐ 7-21XS, Dated: ___/___/___ ☐ 7-21FC, Dated: ___/___/___

2. _____ (Enter the name of the landholder exactly as it appears on the standard form which this form verifies. Religious and charitable organizations must include a taxpayer identification number if the standard form this form is verifying is dated prior to 1996.)

(WE) ATTEST THAT THE INFORMATION I(WE) PREVIOUSLY SUBMITTED CONCERNING THE LANDHOLDINGS OF THE LANDHOLDER NAMED ABOVE, ON THE FORM(S) SPECIFIED ABOVE AND ANY ASSOCIATED RRA FORMS, REMAINS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY(OUR) KNOWLEDGE. ALSO, I(WE) ATTEST THAT I(WE) HAVE CORRECTLY IDENTIFIED ALL OPERATORS AND LESSEES (OTHER THAN THE LANDHOLDER NAMED ABOVE) OF ALL LAND OWNED AND LEASED BY THE LANDHOLDER NAMED ABOVE. I(WE) AGREE THAT ANY CHANGE IN THE LANDHOLDINGS INFORMATION DECLARED IN THIS VERIFICATION WILL BE PROVIDED VERBALLY TO THE DISTRICT(S) WITHIN 30 CALENDAR DAYS OF SUCH CHANGE, AND A NEW FORM(S) WILL BE FILED WITH THE DISTRICT(S) WITHIN 60 CALENDAR DAYS OF SUCH CHANGE.

3(a). Street address or rural route number, city, state, and ZIP code of landholder/trustee/executor/administrator:	3(b). Mailing address if different from street address:
4(a). Telephone number where questions can be directed: ( )	4(b). Contact person:

ANNUAL LEASE RENEWAL OR ANNUAL LEASE EXTENSION

Complete if applicable. For additional space, use page 2 of this form or your own similar attachments. See this form's separate instructions for further guidance regarding annual leases.

5(a). Name of other party to the annual lease:

5(b). Effective date of the annual lease renewal or extension: | 5(c). Length of annual lease renewal or extension (cannot exceed 12 months):

5(d). District name:

5(e). Legal description of land parcel(s) or assessor's parcel number:

CHANGE IN OPERATOR Complete if applicable. For additional space, use page 2 of this form or your own similar attachments.

6(a). Name of previous operator:

6(b). Name of new operator:

6(c). District name:

6(d). Legal description of land parcel(s) or assessor's parcel number:

7. **SIGNATURE(S)** Attention: This verification must be signed and dated. Please read the attestation statement in item 2 above before signing.

Signature of Landholder/Trustee/Executor/Administrator/Authorized Agent	Date	Signature of Spouse or Other Required Signature	Date
Signator's Title or Office Held (if applicable)		Other Required Signature	Date
Other Required Signature	Date	Other Required Signature	Date

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person to knowingly and willfully submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

This verification is required by Public Law 97-293. Failure to verify can result in prosecution and/or loss of water deliveries from Federal reclamation projects. Information obtained in this verification is protected by the Privacy Act of 1974, system of records notice INTERIOR/WBR-31, and will be used to administer the acreage limitation provisions of Federal reclamation law. The Secretary of the Interior or the district may require additional information in order to administer these laws. The Secretary may also require a copy of your lease(s).

FORM 7-21VERIFY (2003)

LANDHOLDER'S NAME:	
ANNUAL LEASE RENEWAL OR ANNUAL LEASE EXTENSION	
Name of other party to the annual lease:	
Effective date of the annual lease renewal or extension:	Length of annual lease renewal or extension (cannot exceed 12 months):
District name:	
Legal description of land parcel(s) or assessor's parcel number:	
Name of other party to the annual lease:	
Effective date of the annual lease renewal or extension:	Length of annual lease renewal or extension (cannot exceed 12 months):
District name:	
Legal description of land parcel(s) or assessor's parcel number:	
Name of other party to the annual lease:	
Effective date of the annual lease renewal or extension:	Length of annual lease renewal or extension (cannot exceed 12 months):
District name:	
Legal description of land parcel(s) or assessor's parcel number:	

CHANGE IN OPERATOR
Name of previous operator:
Name of new operator:
District name:
Legal description of land parcel(s) or assessor's parcel number:
Name of previous operator:
Name of new operator:
District name:
Legal description of land parcel(s) or assessor's parcel number:
Name of previous operator:
Name of new operator:
District name:
Legal description of land parcel(s) or assessor's parcel number:

Mr. OSE. I can make a pdf file in about a hour and a half. I can take this form and convert it to a pdf file in a hour and a half and put it on the Web site. What is the problem with doing that? You talk about the travel time in rural areas for a farmer to come to the office, fill out the forms.

Mr. CAMERON. I agree it is crazy, or have it mailed to you, I agree.

Mr. OSE. Separate and apart from the aggravation of having to fill the form out accurately. What is the problem?

Mr. CAMERON. You have a very good point, and I will commit to you that we will get back to you with a schedule for getting these things on-line. There are lots of irrigation districts scattered around the country and we need some coordination across the West but we will get back to you with the schedule.

[The information referred to follows:]

ADDITIONAL INFORMATION FOR THE SUBCOMMITTEE

Schedule for Reclamation Reform Act of 1982 (RRA) forms to be placed on the Internet:

RRA forms will be made available on the Internet in a "pdf" format for downloading starting in June 2002. By October 2003, districts and landholders (direct or indirect landowners or lessees) will be able to electronically complete certain RRA forms and submit such forms electronically to the Bureau of Reclamation and participating districts, as applicable. By October 2004, districts and landholders will be able to electronically complete all RRA forms and submit such forms electronically to the Bureau of Reclamation and participating districts, as applicable.

Traditionally, RRA forms for an upcoming water year are distributed in the fall. This has eliminated the confusion and other problems Reclamation encountered in the mid-1980's when Reclamation tried to distribute RRA forms during other times of the year.

Mr. OSE. I took note of the comment about the irrigation districts earlier and for the record, the men and women who run those irrigation districts, the knowledge about who needs water and when they need it is embedded in their heads not on some paperwork. Shifting the onus of why this information is collected to the irrigation districts, I am not ready to accept it is they who need it. They have it intuitively; they know where water needs to be and they know the systems for delivery and all that without relying on these forms.

Mr. Shipman, I have in my hands Form CCC–21 and Form FSA–578. The first is a Supplement to Commodity Credit Corporation Storage Agreements, Declaration of Eligibility to Receive Storage Payments under a CCC Storage Agreement. The second is a report of acreage, two different forms. Why do they have the same OMB approval number, 0560–0004 on the report of acreage and 0560–0004 on the Commodity Credit Corporation form? I thought each form had its own independent number.

Mr. SHIPMAN. I believe you are right. Whether or not that is a typographical error on our part or an oversight in utilizing the same approval number, I don't know, but we will be happy to report back to your staff by the end of the day the answer to that question.

Mr. OSE. I would appreciate that.

My time is up. Mr. Otter.

[The information referred to follows:]

Question 1: Why do the CCC-21, Supplement to Commodity Credit Corporation (CCC) Storage Agreements Declaration of Eligibility to Receive Storage Payments Under a CCC Storage Agreement, and the FSA-578, Report of Acreage, forms both have an OMB control number of 0560-0004?

Response: The most likely explanation for the concern expressed during the hearing regarding the same OMB control number on both forms is that the committee had an older version of the CCC-21. Prior to the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), the Farm Service Agency had OMB approval to collect information using the FSA-578, CCC-21, and a variety of other forms under OMB control number 0560-0004. After enactment of the 1996 Act, FSA chose to reorganize many of its information collection activities - some new collections were created, others were eliminated. The FSA-578, Report of Acreage, continued to be approved under OMB control number 0560-0004 through June 30, 1997. In May, 1999, OMB approved form CCC-21 as a part of a new information collection package for the Highly Erodible Land Conservation and Wetland Conservation Programs and assigned control number 0560-0185 . The current version of form CCC-21 reflects this OMB control number and is approved through March 31, 2003.

Mr. OTTER. Mr. Shipman, I was listening to your testimony and your further response to questions the chairman asked you relative to your reduction of time. I am not sure I can recall the exact figure, but it was something like 2,854,710 hours of burden in the very report he referred to, the report on acreages. Is that in violation of the law?

Mr. SHIPMAN. Accounting for these violations I think you would agree is a bit of a dynamic process and as we resolve others and we have new burdens put on us, it creates new violations. By our accounting today, we have seven violations currently unresolved.

Mr. OTTER. Then that puts you in excess of the reduction but the new paperwork burdens that were created?

Mr. SHIPMAN. Yes, sir.

Mr. OTTER. I want you to have bragging rights on reduction but the figures we have don't jive with your formal testimony. Your formal testimony was there was a reduction. That is not what these figures are saying. That is not what the OMB is saying.

Mr. SHIPMAN. The point of our testimony was to highlight the reductions and not necessarily to point out those continuing violations or outstanding problems we have, so it was not an intent to mislead the subcommittee in any way but more to highlight some of the successes that we have had. Of the seven outstanding violations by my own research I have done sitting here this morning, five of those are longstanding, since 1997 or 1998, so they have long been outstanding.

At the same time, I would point out to you that one of the biggest of those is our Hazard Analysis Critical Control Point Meat and Poultry Inspection System reporting requirement. We face a balancing act between protecting food safety, delivering farm payments, and ensuring that the 20 or so ad hoc emergency producer assistance programs that Congress directed us to administer in the last few years are administered in a timely fashion, and trying to ensure that we comply with the Paperwork Reduction requirements as well. We find ourselves between the proverbial rock and a hard place many times between the committees of jurisdiction of the Congress. One wants us to administer these programs timely and effectively and at the same time, not do so in a burdensome way. I would like to think that we have struck a pretty good balance in the past and will continue to strive to do even better.

Mr. OTTER. I was looking for the warning that, if I didn't fill this out and send it back, I was going to go to jail, get fined, or both and I didn't find it on here.

Interestingly enough, it seems to me you have the genesis for the cooperation because on your own form it says "Providing incorrect information may result in prosecution under criminal and civil fraud statutes, including . . ." and then you quote all the titles.

"The information may be furnished to any agency responsible for enforcing provisions of the act and the IRS, the Department of Justice, or any other State and Federal law enforcement agency in response to the Court or Administrative Tribunal."

As you have already named your co-Federal agencies this information is important to, why do we have all these other forms?

Mr. SHIPMAN. I think that goes to your earlier question.

Mr. OTTER. It does indeed. Your requirement for information is somebody else's burden. Your violation of those laws is still somebody else's burden. They still suffer the consequences if it is not done correctly and right.

Mr. SHIPMAN. We have a number of very significant information technology investments underway at USDA and proposed in the very near future, which I think will greatly enhance our ability to share information in forms that are usable to other State and Federal agencies. I commit to you that we will do our very best to try and make that as useful a process as we can.

Mr. OTTER. I want to encourage you to keep up the successes you have in cooperation between agencies and up and down agencies. I use the new office in Boise, Idaho as an example of that process. That process has lightened the burden somewhat, but I think we have a long way to go.

Mr. OSE. We have gotten to the point that I would have hoped we would and I find we have been called for a vote on the floor. It is a series of votes. Our plan is to wrap up this panel, advise you we have a number of questions we are going to submit to you in writing, and we anticipate your answers.

We will ask the third panel to come forward at this time. We will attempt to complete the third panel's oral testimony prior to the 5-minute votes coming up shortly.

Mr. Otter, we need to have you go vote and come back so that I can go vote on the 5-minutes.

Mr. Shipman, Mr. Cameron, we appreciate your attendance. We apologize for the disruption in this process, because this is exactly where I wanted to get this hearing to so I could talk to the two of you about a number of subjects. We will do it in writing now. Thank you for coming.

Get the Farm Bill done, Mr. Shipman.

Will the third panel come forward? Welcome to our third panel, James M. Wordsworth, President, JR's Goodtimes, Inc., McLean, Virginia and Kenneth Buback, Vice President, Human Resources, Sutter Health, Sacramento, California. Welcome. As you heard earlier, we swear in our witnesses, so please rise.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative.

Mr. Wordsworth, we will go to you first, we have received your testimony and if you could summarize for 5 minutes.

STATEMENTS OF JAMES M. WORDSWORTH, PRESIDENT, J.R.'S GOODTIMES, INC.; AND KENNETH A. BUBACK, VICE PRESIDENT, HUMAN RESOURCES, SUTTER HEALTH

Mr. WORDSWORTH. Good morning.

Thank you for asking me to testify before you today. I commend your efforts to reduce the paperwork burden on small employers and for holding this hearing on this important issue. I will summarize the testimony I have submitted.

I am Jim Wordsworth, president of J.R.'s Goodtimes, Inc. and the owner of several small businesses. I am here to speak with you today on behalf of the U.S. Chamber of Commerce. The Chamber of Commerce is the world's largest business federation, represent-

ing an underlying membership of more than 3 million businesses and organizations of every size and every industry sector in every region of the country. Ninety-six percent of the Chamber's members are small businesses like me with fewer than 100 employees.

I have been a member of the Chamber since 1990, served on its Labor Relations and Small Business Councils since 1993, and was elected to the Board of Directors in June 2001. I grew up in several different small businesses in North Carolina owned by my father, mother, grandfather, and uncles. In 1974, I took my life's savings and a small business loan and opened J.R.'s Steakhouse in Virginia, a small 130 seat, fine dining restaurant. That was successful and in 1978, I opened J.R.'s Stockyards in Tyson's Corner, a 250-seat restaurant. Since that time, I have done a number of other things. I have several corporate picnic facilities, a company that builds jails and modular prisons in Marin and Stafford Counties, and have done land development in a number of limited partnerships.

Any one of these diverse business endeavors comes with its own particular set of rules and regulations specific to the industry. I might add some of these are necessary to protect public well being. We could not do business without regulations, requirements, and disclosures that protect at least the integrity of the transactions of all parties.

The problem with regulations is their cost. Plain and simple, regulations cost business money, money for lawyers, for accountants, and for paperwork. Unfortunately, every year, Federal, State, and local governments pass and promulgate more legislation, rules, and regulations. Frankly, the sheer number of legal requirements through which a business must navigate is dumb-founding.

To illustrate, I submit along with my testimony, an 8½ x 14 document that lists the name of Federal/State regulations in 10 point type which restaurant owners in Virginia must comply with. Please note the list fills both sides of the document and remember almost each and every one of these laws requires some form of paperwork.

While I could discuss the paperwork problem for every aspect of running a business, I will focus my testimony on a couple of specific things having to do with labor immigration laws and regulations.

In its reports to Congress on the cost and benefits of regulations, the OMB reports the Department of Labor regulations alone imposed over 181 million hours of paperwork on business annually since 1999. The annual cost to business for this 181 million hours exceed $5.43 billion with a disproportionate cost of that being assessed to small companies. The manager or owner has to fill out the forms.

These costs are strangling business, especially fledgling companies. It is hard enough for a new business to make it. My business, the restaurant industry, national statistics say 80 percent of all new restaurants starts will fail in 2 years; less than 7 of 100 will last 5 more years under the same financial management.

While I understand some of this paperwork is necessary and it is a byproduct of DOL's need to collect information, it appears that much of it really is unnecessary. A good example is the Fair Labor

Standards Act, Regulation 541. This imposes a complex set of tests to determine who is and is not eligible for overtime.

The Family and Medical Leave Act in several cases as many as 17 documents are required to document an employee leave.

Every business owner, operator, and manager would join me in complaints about OSHA and their recordkeeping requirements, although we understand the agency recently made significant improvements to its requirements. It is still a major source of paperwork burden.

I could go on, but time is limited, so I will present one final example, sponsoring legal alien employees for permanent residence. Over the years, we have sponsored many employees, 20–25. The amount of redundant, historic, and irrelevant paperwork to multiple agencies in this process is incredible. Phase 1 is a DOL certification with a whole page of requirements; phase 2 is INS certification; phase 3 is the application. In my written testimony I have listed all those requirements.

On a positive note, it is my understanding the current administration is taking action in regard to regulatory reform. Thank you for inviting us and for your time and attention. I would be glad to answer any questions.

[The prepared statement of Mr. Wordsworth follows:]

Statement of the U.S. Chamber of Commerce

ON: **"PAPERWORK INFLATION — THE GROWING BURDEN ON AMERICA"**

TO: **SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS OF THE COMMITTEE ON GOVERNMENT REFORM**

BY: **JAMES WORDSWORTH**

DATE: **APRIL 11, 2002**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross- section of the American business community in terms of the number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 83 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Testimony of James Wordsworth
President, J.R.'s Goodtimes, Inc.

On Behalf of the
U.S. Chamber of Commerce

Before the Subcommittee on Energy Policy, Natural Resources
and Regulatory Affairs
of the
Committee on Government Reform

United States House of Representatives

April 11, 2002
9:30 AM Hearing on:
"Paperwork Inflation – The Growing Burden on America"

Good morning Mr. Chairman and distinguished members of the Subcommittee. Thank you for asking me to testify before you today. I commend you for your efforts to reduce the paperwork burden on small employers and for holding a hearing on this important issue.

I am Jim Wordsworth, president of J.R.'s Goodtimes, Inc. and the owner of several small businesses. I am here to speak with you today on behalf of the U.S. Chamber of Commerce. The Chamber is world's largest business federation, representing an underlying membership of more than three million businesses and organizations of every size and in every industry sector and region of the country. Ninety-six percent of the Chamber's members are small businesses with fewer than 100 employees. I have been a member of the Chamber since 1990 and have served on its Labor Relations Committee since 1993. I was elected to the Chamber's Board of Directors in June of 2001 and also serve as a member of its Council on Small Business.

Small business has been a common thread throughout my entire life. I grew up in North Carolina where I worked in a number of small businesses owned by my father, mother, grandfather, and uncles. I moved to the Washington, DC area in 1970 to work as a large computer system's Account Manager for Burroughs Corporation.

In 1974, while working with Burroughs, I took my life savings and a small business loan and opened J.R.'s Steak House of Virginia, a small 130-seat fine dining restaurant. As the Steak House proved successful, in 1978, I opened J.R.'s Stockyards Inn, a 250-seat fine dining restaurant in Tysons Corner, Virginia, and resigned my twelve-year career with Burroughs. Since that time, I have opened a number of other small businesses including two corporate picnic facilities in McLean and Leesburg, Virginia, an off-premise catering company, a marina in Stafford County, Virginia, and a company that

designs and builds modular prisons. Along the way, I have also served as general partner in several small limited partnerships that acquired raw land, then planned, zoned, and developed subdivisions featuring amenities such as golf courses and waterfronts.

Any one of these diverse business endeavors comes with its own particular set of rules and regulations specific to the industry and, I might add, that some regulations are necessary to protect public well being. In fact, we could not do business without regulations, requirements, and disclosures that protect the integrity of transactions for all parties.

The problem with regulations, however, is their cost. Plain and simple, regulations cost business money; money spent on lawyers, money spent on accountants, and, yes, money spent on paperwork. Unfortunately, every year, federal, state, and local governments pass and promulgate more legislation, rules, and regulations. Frankly, the sheer number of legal requirements through which a business must navigate is dumbfounding. To illustrate, I submit, along with my testimony, an 8 ½ x 14 document that lists the names of Federal and State Regulations with which restaurant owners in Virginia are required to comply. Please note that the list fills both sides of the document, and, remember, almost each and every one of these laws and regulations requires some form of paperwork.

While I could discuss the paperwork problems for every aspect of running my business, your time is valuable, so I will limit my testimony to some aspects of the vast amount of paperwork created by the many of labor and immigration laws and regulations.

In its 2002 draft report to Congress on the Cost and Benefits of regulations, the Office of Management and Budget reports that Department of Labor regulations alone imposed over 181 million hours of paperwork on

business in fiscal year 2001.[1] Unfortunately, this is not an anomaly – but rather a trend. According to the OMB 2000 and 2001 reports, DOL created over 181 million hours of paperwork for fiscal years 1999 and 2000 as well.[2] While the number itself, 181 million hours, is astounding; also notable is that in all three reports, 2000, 2001 and 2002, the DOL had the dubious honor of being second only to the IRS in creating paperwork burdens for American business.

The cost of this paperwork on business is phenomenal. OMB estimates that processing the paperwork costs business $30 per hour.[3] Thus, DOL's regulations cost American business a whopping 5.43 **billion** – with a **b** – dollars in paperwork expenses alone! Unfortunately, as both OMB and Congress have recognized, small businesses bear a disproportionate amount of the regulatory costs and burdens.[4] In fact, a recent study sponsored by the Small Business Administration shows the total per employee cost of regulation can be as much as 60% greater for small employers.[5]

Frankly, these costs are strangling businesses – especially fledgling companies. It's hard enough for a new business to make it. Take the

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[1] Office of Management and Budget, *March 18, 2002 Draft Report to Congress On the Costs and Benefits of Federal Regulation*, Appendix C, page 114, http://www.whitehouse.gov/omb/inforeg/8stevensdraftmemoMarch18.pdf.

[2] Office of Management and Budget, *2001 Report to Congress On the Costs and Benefits of Federal Regulation*, page 13, http://www.whitehouse.gov/omb/inforeg/costbenefitreport.pdf; Office of Management and Budget, *2000 Report to Congress On the Costs and Benefits of Federal Regulation*, table 7, http://www.whitehouse.gov/omb/inforeg/2000fedreg-charts.pdf.

[3] Office of Management and Budget, *March 18, 2002 Draft Report to Congress On the Costs and Benefits of Federal Regulation*, Appendix C, page 113, http://www.whitehouse.gov/omb/inforeg/8stevensdraftmemoMarch18.pdf.

[4] Office of Management and Budget, *March 18, 2002 Draft Report to Congress On the Costs and Benefits of Federal Regulation*, Appendix C, page 121, http://www.whitehouse.gov/omb/inforeg/8stevensdraftmemoMarch18.pdf ("[I[n the finding section of the Small Business Regulatory Enforcement Fairness Act of 1996, Congress stated that '... small businesses bear a disproportionate share of regulatory costs and burdens.' This is largely attributable to fixed costs – costs that all firms must bear regardless of size)."

[5] Id.

restaurant industry for example: national statistics on restaurant viability say that 80% close within twenty-four months of opening, and only 7% will last five years under their original financial structure.

While I understand that some of this paperwork is a necessary by-product of the DOL's need to collect information, it appears that much of it may be unnecessary.

A good example is Fair Labor Standards Act regulation "541." It sets forth a series of indecipherable tests employer must use to determine which employees are exempt from the overtime requirements. Because the tests are incomprehensible, employers often avoid possible noncompliance by classifying employees as nonexempt even though the employee is probably exempt. This can greatly increase an employer's paperwork burden because they are required to keep significantly more records for nonexempt employees.

The Family Medical Leave Act regulations also generate quite a bit of paperwork for employers. Under the regulations, an employer may have to process over 17 documents for every employee who takes leave.[6] The employer must keep each of the documents along with a collection of other FMLA records for at least three years.[7] There must be something DOL can do to reduce this burden.

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[6] See 29 C.F.R. Parts 825.300-312 & 825.500 (Posting notices in languages in which employees are literate regarding employees rights and information regarding filing complaints to DOL (number of notices depends on linguistic abilities of workforce); provide in any employee handbook/guidance notice of employee rights and obligations in languages in which employees are literate; notice of employee's need for leave; provide employee who request leave with another notice of rights and obligations; provide employee with notice of medical certification each time certification is needed, which can be up to six times (up to 3 original medical certifications, and two 30-day re-certifications and one fitness for duty certification); the medical certifications themselves (another 6 documents); notice of employee's intent to return to work; and notice of cessation of FMLA benefits).
[7] See 29 C.F.R. Part 825.500.

Every business owner, operator or manager will join me in complaints about Occupational Safety and Health Act's regulatory record keeping requirements. Although the agency recently made significant improvements to those requirements, they are still a major source of paperwork burdens. They required that, for every event in my workplace that arguably could impact an employee's health or safety, I determine whether the event must be recorded by applying a complex multi-factor test just to determine whether the event (or change in employee health condition) is "work-related." Then, assuming I have determined it is work-related, there are another dozen factors I must assess to determine whether the event or condition must be recorded on an OSHA form.

While I could go on and on, time is limited, so I will present you with one final example: sponsoring legal alien employees for permanent residence. Over the years we have sponsored many employees. The amount of redundant, superfluous, historical and/or irrelevant paperwork to multiple agencies in this process is incredible. If I may, I would like to recite theses procedures the step-by-step.

Alien Petition for Employment and Residence Process

Phase 1: DOL Employment Certifications.

As the employer, I must:

- petition DOL to certify the employee as a skilled worker before INS application can begin.
- complete and submit to DOL an information/application form to an immigration attorney to serve as a prospective employer/sponsor.

submit to DOL a letter to confirm employee's current employment, job description, employment history, tenure etc., with copies of W-2's to verify.
submit to DOL a notarized affidavit, again detailing employment, job description and specific duties, rate of pay, history, etc.
submit to DOL a completed Notice of Entry as Attorney or Representative form to identify and authorize the representative/attorney for employee.
submit to DOL a completed Application for Alien Employment Certification, where I identify the job offer, detail job description (to minute detail), skill level, work schedule, hours of business operation. specific education requirements, specific experience requirements, specific offered rate based on State survey of prevailing rates for specified job.
Commonwealth of Virginia conducts random employment surveys to determine employment trends and prevailing rates/benefits. If, during the duration of the DOL certification process, a new survey determines that there has been a change in the prevailing rate of the proffered job, then all new letters, affidavits, applications, etc., must be resubmitted.
If all the above goes well, then the DOL issues a letter of permission to proceed. If there are any errors or omissions, the paperwork must be resubmitted until it is all complete and correct. All paperwork reviews can take anywhere from several weeks to a couple months.
Once the DOL has issued a Letter of Certification, I must then run an employment "help wanted" ad for 3 consecutive days in a local newspaper. (Previously 3 days in 2 consecutive weeks i.e. Sunday, Wednesday, then Sunday again to count as second week).
I must also post the employment ad prominently in the workplace for 10 consecutive days. I must then submit a sworn affidavit that the ad was posted as specified and required.

- The employment ad in the newspaper and the one posted in the workplace must disclose all details of job offer, including prevailing wage offer, skill level and requirements.
- Only American citizens or lawful residents can be considered for the job.
- I must keep records of all inquiries (in person, phone, email, fax), all applications, all interviews, and all communications with applicants - all information regarding the interviewing and hiring process.
- I must then submit all employment advertising information along with all the application and interview documentation and results.
- If the evidence/affidavits prove that no American worker applied or accepted the proffered job, then the DOL can now issue a Certification of Skilled Worker for the petitioning employee.
- Time frame for this phase is 6 months to 1 year.

<u>Phase 2: Employee petitions to INS for employment certification</u>.

- After the DOL has issued the Certification of Skilled Worker, I must then petition the INS for the employment certification/visa, on behalf of the employee.
- All the above letters, applications, affidavits and documentation must be re-certified and resubmitted.
- I must then submit tax returns or annual reports or some financial reporting evidence (certified by a CPA) that the company has the specific job available and that the company can afford to pay the prevailing/offered wage for the specific job proffered.
- After a lengthy review process, the INS will then issue a Notice of Approval to proceed. This enables the employee to proceed with their application to adjust their status and apply for Permanent Residence.

- Time frame for this phase is another 6 months to 1 year.

Phase 3: Employee applies for Permanent Residence.

- I must now resubmit all the above information again to the INS.
- If the employee decides to apply for a visa outside the U.S. then all their information must be submitted to National Visa Center (NVC), which is under the Department of State.

Timeframe for this last phase is 6 – 18 months of mostly waiting.

I must store and maintain all paperwork as current (now 2 – 3 years old) and continue to proffer employment and/or continue actual employment of the petitioning employee.

Now bear in mind, this is one application for one employee.

Unfortunately, while there has been a lot of talk about paperwork reduction – there has not been a lot of action. Since the original "Paperwork Reduction Act of 1980," there have been a myriad of Congressional, Administration, and OMB studies, hearings, and directives aimed at reducing the paperwork load placed on business. Despite all the studies, hearings, and directives, here we are in 2002, "the electronic age," and we still have stacks of manual documents to file, many times with redundant information, to Federal, State, and Local bureaucracies, that can't or don't communicate with one another. There must be something that can be done that would allow business to return to producing goods and services, rather than filling out an endless stream of paperwork.

On a positive note, it's my understanding the current administration is taking action with regard to regulatory reform. For example, OMB's 2002 draft report states that DOL and the Equal Employment Opportunity Commission are considering revising some of the regulations that have created this

paperwork problem.[8] I urge you to encourage OMB and the Agencies in continuing this effort and to urge them to revise these regulations as well as the many others that impose needless paperwork.

Thank you for your time and interest. I would be glad to answer any questions you might have.

[8] Office of Management and Budget, *March 18, 2002 Draft Report to Congress On the Costs and Benefits of Federal Regulation*, Appendix B, page 106-107 (DOL is considering revising: the Record keeping and notification requirements under the Family and Medical Leave Act; the Equal Opportunity Survey; and the EEOC is in the process of changing the Uniform Guidelines for Employee Selection Procedures).

Regulations and Restaurants From A to Z

Federal (61 Items, 11 Agencies)
Accessibility to disabled customers (DOJ)
Advance payment for Earned Income Credit (IRS)
Age discrimination (EEOC)
Alcohol excise taxes (IRS)
Annual occupational tax for alcohol–sellers (BATF)
Blood-borne pathogen program for employees who give first-aid (OSHA)
Citizenship-status discrimination (DOJ)
Commuting plans for employers in high-pollution areas (EPA)
Continued health benefits for former employees (IRS)
Copyright law and restaurant music (DOJ)
EEO-1 (EEOC)
Egg-refrigeration standards (USDA)
Exempt managers (DOL)
Family and Medical Leave Act (DOL)
Federal income taxes (IRS)
Federal income tax withholding for employees (IRS)
FICA payroll taxes (IRS)
FICA payroll taxes on tips (IRS)
FUTA payroll taxes (IRS)
Grease trap waste disposal (EPA)
Hazard Communication Standard (OSHA)
Health claims and restaurant foods (FDA)
Health benefit plans and the American with Disabilities Act (EEOC)
I-9 Form (Employment eligibility verification forms) (INS)
Immigration Reform and Control Act of 1986 (INS)
Independent contractors, reporting of payments to (IRS)
Job application forms, permissible questions (EOC)
Magnetic media reporting of Forms W-2, 8027 (IRS, SSA)
Material Safety Data Sheets (OSHA)
Meal credit (DOL)
Minimum wage (DOL)
National origin discrimination (EEOC)
Notice to employees of eligibility for Earned Income Credit (IRS)
Nutrient-content claims and restaurant foods (FDA)
Overtime pay rules (DOL)
Payroll-tax deposits (IRS)
Polygraph ban (DOL)
Poster: Equal employment opportunity (EEOC)
Poster: Polygraph (DOL)
Poster: Minimum wage (DOL)
Poster Family and medical leave (DOL)
Poster OHSA (OSHA)
Race discrimination (EEOC)
Reasonable accommodation for workers with disabilities (EEOC)
Refrigeration equipment and CDC phase-out (EPA)
Religious discrimination (EEOC)
Restaurant closings, 60 days advance notice (DOL)
Retirement benefit plan compliance (401K) (IRS)
Sex discrimination (EEOC)
Teen labor: Hours restricted for workers under 16 (DOL)
Teen labor: Occupations restriction for workers under 18 (DOL)
Tip credit (DOL)
Tip reporting and IRS Form 8027 (IRS)
Tip allocation (IRS)
Tip-income audits (IRS)
Tip pools (DOL)
Uniforms: Deposits, costs, maintenance (DOL)
Veterans' employment rights (DOL)

W-2 Forms (Wage and Tax statements (IRS, SSA)
W-4 Forms (Employees' Withholding Allowance Certificate) (IRS)
Workplace phones, hearing –aid compatibility

State – Virginia (41 items, 8 Agencies)
Alcohol Beverage Tax
Business Licensing Fees
BPOL Tax/Gross Receipts Tax
Child Labor Laws
Child Labor Work Permits
Corporation Annual Report Fee
Corporation Excise Tax
Corporate Organization And Qualification Fees
Dairy Permit/Fee
Entertainment License Fees
Entertainment Tax
Fire Cod Compliance
Highway Signage Fees
Hour Restriction for Employees under 16
Hour Restrictions for employees 16 & 17 years old
Liability Laws
Litter Control Fee
Liquor License/Fees
Mandatory Rest Breaks
Minimum Wage Laws
Noise Compliance
Occupation Restrictions for Minors
Payment of Wage Laws
Personal Income Tax
Pollution control Laws
Poster Requirements
Property Tax
Record-keeping Requirement/Wage Reporting
Room Occupancy Tax
Sales and Use Tax
Sanitation/Food Preparation Regulations
State OSHA Requirements
State Water Control Board
Termination Payment Law
Unemployment Insurance
Unemployment Tax
Wage Deduction Laws
Wage Exemption Regulations
Waste Disposal Laws
Water Discharge Laws and Fees (local)
Workers compensation Insurance
Zoning (local)

County – Fairfax (10 items, 5 Agencies)
Alcohol – Mixed Beverage License Fee
Business Licensing Fees
BPOL Tax/Gross Receipts Tax
Entertainment License Fees
Fire Code Compliance
Health Department Regulations
Signage ordinances
Noise Compliance
Property Taxes
Special Event Permit applications/fees
Zoning

Mr. OSE. Thank you.

Mr. Buback, you are recognized for 5 minutes for your testimony. I will be back, and I have read your testimony.

Mr. BUBACK. Good morning.

I am Ken Buback and I am here representing the Society for Human Resource Management, the world's largest association devoted to human resource management issues and representing more than 165,000 individual members. I am also vice president for Human Resources for Sutter Health, a network of not for profit community-based hospitals and care centers in northern California. Sutter Health serves more than 100 communities in the northern part of the State and employs more than 35,000 people.

Before I begin, I would like to recognize my daughter, Katie Buback, who is present. Katie is a student at St. Mary's College of California and is currently attending the Washington semester program at American University.

To illustrate the enormous nature of paperwork challenges confronting employers, I would like to show you chart A as part of my testimony, which simply lists the paperwork and recordkeeping requirements under the 27 statutes with which we must comply. Those are here to my right.

Today, I intend to illustrate the paperwork and administrative complexity of just one of these 27 statutes. This is an example of the interpretative complexities of the Family and Medical Leave Act. These interpretations are at times vague and even contradictory. The cumulative impact of these requirements diverts critical resources away from patient care and drives up health care costs. A review of FMLA interpretative problems is especially timely since the OMB is required by law to review the paperwork requirements before they expire on June 30 of this year.

Certainly the FMLA has made an important contribution. However, the spirit of the law is not well served by the complexities, which leave employers guessing as to how to comply and leave employees guessing as to what is protected under the changing legal interpretations.

I would like now to draw your attention to chart B in my testimony, and I will take you through the chart in a second. The FMLA was enacted to allow eligible employees up to 12 weeks of unpaid leave for family and medical leave purposes. The family leave part of FMLA has not been problematic. However, the medical leave component of FMLA has been increasingly complex.

The first obstacle, as we look at the chart, the manager faces is determining what constitutes a serious health condition for eligibility purposes. The regulatory definitions and interpretations are extremely complex and confusing. The DOL has issued inconsistent and vague opinion letters on this subject. Looking at the chart top to bottom, the first part of this is related to determining the eligibility of an individual. There are 69 regulations covering this process, 25 process steps involved in both charts.

Upon examining the eligibility requirements as stated by the regulations, a determination needs to be made. There are very tight notification timeframes required of the employer. We must also take into consideration State regulations that interact with the Federal statutes, which also make it extremely complex.

Upon notifying the individual of their eligibility we then move to the certification mode at the bottom of page 1. This is a 15-day timeframe where the interaction of the health care provider and the employee has to resolve frequently complex issues in a very short amount of time. Assuming that the individual is eligible based on medical certification, we move then to the top of page 2, which begins to look at the tracking mechanism, determining when a person is eligible and is it a continuous leave situation or is it intermittent. If it is intermittent, these are unscheduled, unplanned leaves of absence for an eligibility period of 480 hours per year taken by the employee based on health reasons. As you can imagine, in a health care setting where we have 24-hour, 7-day-a-week coverage for patient care activities, this is extremely problematic for us.

Following the tracking of the leave that we see here, we then assume the leave is fulfilled, the employee's condition is improved, and they are eligible to return to work. They are appointed to their previous job or a comparable job in the organization.

At the bottom in the red, you will see the requirements for recordkeeping purposes. Each of these 25 transactions require some sort of recordkeeping or documentation for the record. I think the notes at the bottom of the page are very noteworthy. The validity of 11 different FMLA regulations have been challenged in the courts in 58 different cases. This makes it very difficult for employers to recognize what are the actual rules for eligibility and administering this leave process.

Also, the interplay between the ADA, FMLA, Worker's Comp is probably one of the most difficult areas of employment law for both managers and HR professionals to manage. The opinion letters are sometimes conflicting interpretations and confuse employers and employees alike as to what is eligible and what is not. Frequently Federal and State regulations overlap and conflict.

The paperwork challenges confronting employers are enormous. FMLA is a good law and has become inadvertently too complex. We hope these administrative processes can be clarified soon so that the FMLA works as intended. We look forward to working with you, the OMB, and the Department of Labor to make FMLA a model of effectiveness rather than a model of administrative complexity.

I would be happy to answer any questions you might have.

[The prepared statement of Mr. Buback follows:]

TESTIMONY OF

KENNETH A. BUBACK

VICE PRESIDENT OF HUMAN RESOURCES

SUTTER HEALTH

ON BEHALF OF

THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT

ON

"PAPERWORK INFLATION – THE GROWING BURDEN ON AMERICA"

BEFORE

THE GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

April 11, 2002

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Mr. Chairman and Members of the Subcommittee:

Good morning. I am Ken Buback, Vice President of Human Resources for Sutter Health, a network of not for profit, community-based hospitals and care centers in Northern California. At the request of the Society for Human Resource Management (SHRM), I am here today representing SHRM on this important issue of paperwork inflation.

SHRM is the world's largest association devoted to human resource management. Representing more than 165,000 individual members, the Society serves the needs of HR professionals by providing the most essential and comprehensive set of resources available. As an influential voice, SHRM is committed to advancing the human resource profession to ensure that HR is an essential and effective partner in developing and executing organizational strategy. Founded in 1948, SHRM currently has more than 500 affiliated chapters within the United States and members in more than 120 countries. Visit SHRM Online at www.shrm.org.

As one of the nation's leading not for profit networks of community-based health care providers, Sutter Health serves more than twenty Northern California counties from the Oregon border to the San Joaquin Valley, and from the Pacific coast to the Sierra foothills. Sutter Health hospitals and care centers treat more inpatients than any other network in Northern California and are leaders in infant deliveries, neonatology, orthopedics, pediatrics, and cancer care services. Sutter Health has care centers in more than 100 Northern California cities and towns including more than two dozen acute care hospitals, physician training programs, medical research facilities, region-wide home health, hospice, and occupational health networks, and long term care centers. Sutter Health's medical centers and care centers have relationships with approximately 5000 physicians and altogether employ more than 35,000 people.

I. Overview and Listing of Paperwork Burdens and Regulatory Requirements

I commend the members of the Subcommittee for their interest in paperwork and regulatory burdens and associated compliance problems. To illustrate the enormity and of the paperwork challenges confronting employers, I have attached a chart which simply lists the 27 recordkeeping and retention requirements under the numerous statutes with which Sutter Health must comply **(Chart A)**. Each of these statutes and their implementing regulations and interpretations has its own associated paperwork requirements for the regulated community. Just to point out a few examples from Chart A[1]:

- The Department of Labor's (DOL's) OSHA paperwork reflects 4,425,351 hours of paperwork burden,
- The DOL's Fair Labor Standards Act reflects 926,156 hours,

[1] According to the Office of Management and Budget's (OMB's) inventory of approved paperwork.

- The DOL's PWBA-ERISA requirements reflect a total of 3,962,221 hours,
- The Equal Employment Opportunity Commission's Employer Information Report reflects 402,700 hours, and
- The DOL's Family and Medical Leave Act (FMLA) paperwork requirements reflect 645,625 hours.

The specific federal forms listed in my chart amount to approximately 16,832,381 hours of burden for the public according to the Office of Management and Budget's (OMB's) inventory of federal paperwork.[2] Of course this does not include time trying to wade through the complexities of:

- Interrelated laws with sometimes contradictory requirements,
- Differing federal and state requirements,
- A tapestry of legal challenges to various regulations and interpretations, and
- Confusing and contradictory non-regulatory guidance documents.

II. An Example Which is Ripe for Review

Unfortunately, the Department of Labor's interpretations are at times vague and contradictory and the cumulative impact of these requirements diverts critical resources away from patient care and drives up health care costs due to regulatory and/or administrative burdens. To illustrate the paperwork requirements and complexity of administrative requirements involved with just one of these 27 statutory requirements alone, I would like to draw your attention to **Chart B:** "A Business Process Outline Related to the Administrative and Paperwork Requirements for FMLA Compliance". A review of FMLA interpretive problems is especially timely since the Office of Management and Budget is required by law to review the paperwork requirements before they expire on June 30, 2002.

As the leading association of the human resources profession, SHRM and its members are vitally concerned with the proper application of the FMLA. SHRM has long recognized its special responsibility to support and encourage compliance with the FMLA. The FMLA recordkeeping and notification requirements have historically been of great concern to SHRM members, since they are charged with implementing the FMLA in large and small companies across the nation. SHRM welcomes opportunities for this kind of involvement since our members have experienced numerous difficulties in their good faith efforts to comply with FMLA record keeping and notification requirements.

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[2]The White House, Office of Management and Budget, Inventory of Active Information Collections, http://www.whitehouse.gov/library/omb/OMBINVC.html.

In 1997, SHRM founded the FMLA Technical Corrections Coalition which is a diverse, broad-based nonpartisan group of approximately 300 leading companies and associations. Members of the Coalition are fully committed to complying with both the spirit and the letter of the FMLA and strongly believe that employers should provide policies and programs to accommodate the individual work-life needs of their employees. At the same time, the Coalition believes that the FMLA and the corresponding federal regulations should be revised to protect those employees that Congress aimed to assist while streamlining compliance and eliminating administrative problems that have arisen.

Certainly, the FMLA has made an important contribution to providing a supportive environment for employees and their families in a time of need. Sutter Health applauds the work of Congress in passing such progressive, family friendly legislation. Sutter Health desires to work closely with regulators and others to clarify the original intent of the law and make its application and implementation less onerous for employers and employees alike! Sutter Health unconditionally embraces the intent of the FMLA in our quest to be the employer of choice in the communities we serve.

The spirit of the law is not well served by complexities which leave employers guessing as to how best comply and which leave employees guessing as to what may be protected under changing legal interpretations. Neither are the spirit of the law and effective enforcement of its protections well served by "administrivia" which requires employers to divert resources to track FMLA in tiny segments – as small as single minutes. The FMLA is exhibit A of a very well intended law, which has resulted in unnecessary confusion and litigation because of problematic executive branch interpretations and inconsistent non-regulatory guidance.

The DOL's final FMLA implementation regulations became effective for private sector employers on April 6, 1995. The FMLA was enacted to allow eligible employees up to twelve (12) weeks of unpaid leave for birth or adoption, or foster care (family leave) or for the "serious health condition of the employee, employee's child, or the employee's spouse (medical leave). The "family" leave part of the FMLA has not been problematic in the workplace. However, because of vague and expansive interpretations by the prior Administration, the "medical" leave component of the FMLA has become increasingly complex to administer. The expansive regulatory definition and varying interpretations of what constitutes a "serious health condition" make administering leaves far too complicated.

In a preliminary survey by Spencer Fane Britt & Browne LLP, nearly 60 federal lawsuits have been filed since the FMLA was enacted challenging the validity of DOL FMLA regulations

themselves.[3] Most of them have been filed in the last three years. Employers are winning most of the cases decided so far. The federal courts are holding that various DOL regulations are invalid. On March 19, 2002, the Supreme Court struck down a portion of the existing DOL regulations in the first FMLA case before the Supreme Court (Ragsdale v. Wolverine Worldwide, Inc.). Although the Court only focused on one particular DOL regulation, there are a number of other DOL FMLA regulations that impose "across the board" penalties that will not meet the Court's standard. Consequently, other DOL regulations that include penalty provisions are now in question, will probably not withstand judicial scrutiny, and will probably be held invalid by various courts unless the DOL amends the regulations to be consistent with the Supreme Court's recent decision.

In light of the historic Ragsdale decision and the fact that many other parts of the Department of Labor regulations are similarly inconsistent with Congressional intent, an increasing number of lawsuits challenging FMLA regulations are expected. Had the Department of Labor more closely reflected the intent of Congress in its FMLA implementing regulations in the first place, this litigation and confusion could have been avoided. If the DOL does not amend its other problematic interpretations, continued adherence with these interpretations likely will result in unnecessary litigation that will cost all parties (employees, employers, unions and the courts) additional time, effort, and money. This would be a regrettable waste of resources--a waste that is totally avoidable if the DOL restores its regulatory interpretations to properly reflect the original Congressional intent.

III. Surveys and Practical Examples Document the Interpretive Problems

Unfortunately, the greatest cost of the FMLA interpretive problems is to employees themselves. Two Department of Labor studies as well as the Society for Human Resource Management Surveys have all confirmed that by far the most prevalent method that employers use to cover work during FMLA leaves is to assign it temporarily to other co-workers. With the FMLA interpretations requiring little or no notice, employers have responded by requiring unscheduled overtime that is frequently unwelcome to coworkers. Work coverage for questionable unscheduled absences has been especially challenging in health care.

Even a survey conducted by the prior Administration's DOL confirmed FMLA implementation problems. The DOL report found that the share of covered establishments reporting that it was somewhat easy or very easy to comply with the FMLA declined 21.5% from 1995 to 2000.[4]

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[3] Spencer Fane Britt & Browne LLP, *Preliminary Survey of Court Decisions Reported by Westlaw® Involving Challenges to the Validity of the FMLA Regulations*. The survey covered both published and unpublished decisions reported as of March 20, 2002.

[4] Balancing the Needs of Families and Employers Family and Medical Leave Surveys, U.S. Department of Labor, 2000 Update, released January 2001.

The SHRM® 2000 FMLA SURVEY found that organizations clearly want to follow and support the spirit and intent of the FMLA, and in some cases they go beyond the FMLA, but appear to find obstacles in doing so. As a result, human resources professionals are calling for more clarification and education on such issues as overall compliance, managing intermittent use of leave, determining serious health condition coverage, and communicating with care providers and physicians.

Given the SHRM survey's focus, the consistencies with previous research and the direct human resources responsibilities of the participants, the survey provides substantive, relevant data calling for a review of FMLA recordkeeping and notification requirements. The survey results are consistent with the challenges that we have experienced within the Sutter Health network as we have worked in good faith to comply with the letter as well as the spirit of the FMLA.

The Act's implementing regulations and interpretations have left most human resources professionals struggling with management of intermittent leave, communications with physicians and often difficult determinations as to whether a "serious health condition" exists within the meaning of the FMLA.

Below is a summary of some of the key findings along with some practical examples from our experience within the Sutter Health network. The following items are serious deficiencies of the Department of Labor's FMLA interpretations and result in tremendous documentation burdens.

A. Serious Health Condition Interpretations and Non-Regulatory Guidance Have Been Problematic

In passing the FMLA, Congress stated that the term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief, recognizing that "it is expected that such conditions will fall within the most modest sick leave policies."[5] The DOL's current regulations are extremely expansive, defining the term "serious health condition" as including, among other things, any absence of more that three (3) days in which the employee sees any health care provider and receives any type of continuing treatment (including a second doctor visit, or a prescription, or a referral to a physical therapist). Such a broad definition potentially mandates FMLA leave where an employee sees a health care provider once, receives a prescription drug, and is instructed to call the health care provider back if the symptoms do not improve. The regulations also define as a "serious health condition" any absence for a chronic health problem, such as arthritis, asthma, or diabetes, even if the employee does not see a doctor for that absence and is absent for fewer than three days.

[5] H.R. REP. NO. 103-8, at p. 40 (1993).

Most of the leaves taken under the FMLA have been for employees' own illnesses, most of which were previously covered under sick leave and/or paid time off policies. The DOL has been inconsistent and somewhat vague in its opinion letters, leaving employers and workers guessing as to what the DOL and the Courts will deem to be "serious." The following excerpts from DOL opinions highlight the difficulty human resource professionals face:

- April 7, 1995 DOL opinion letter No. 57 said that "The fact that an employee is incapacitated for more than three days, has been treated by a health care provider on at least one occasion which has resulted in a regimen of continuing treatment prescribed by the health care provider does not convert minor illnesses such as the common cold into serious health conditions in the ordinary case (absent complications)."

- December 12, 1996 DOL opinion letter No. 86 then said letter No. 57 "expresses an incorrect view," that, in fact, with respect to "the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc.," if any of these conditions met the regulatory criteria for a serious health condition, e.g., an incapacity of more than three consecutive calendar days that also involves qualifying treatment (continuing treatment by a health care provider), "then the absence would be protected by the FMLA. For example, if an individual with the flu is incapacitated for more than three consecutive calendar days and receives continuing treatment, e.g., a visit to a health care provider followed by a regimen of care such as prescription drugs like antibiotics, the individual has a qualifying 'serious health condition' for purposes of FMLA."

Inclusion of all these various absences in the definition of "serious health condition" has inadvertently changed the FMLA statute into a national sick leave policy—something that Congress specifically wanted to avoid.[6] Confusion over the definition of "serious health condition" has a ripple effect on many other aspects of the FMLA's medical leave administration, for example, use of intermittent leave and tracking issues.

When read with the other interpretations, the very expansive definition of "serious health condition" suggests that any time an employee has missed work for three (3) days and reports feeling ill, the employer (e.g., the manager) must inquire as to whether the employee's condition

[6]The Family and Medical Leave Act of 1993, Public Law 103-3, Sec. 403 states: "ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act."

is one that would make them eligible for FMLA. Compounding this problem for managers is that in California under the regulations issued by the California Fair Employment and Housing Commission (FEHC), it is a violation to ask the health care provider to disclose the underlying diagnosis of the serious health condition on the certification form. As a result, managers are left trying to determine whether an employee who does not come to work for three (3) or more days because of illness is entitled to FMLA protection. More often than not, even the minor ailments entitle an employee to FMLA coverage.

These problems have placed one of the worst of all factors into companies' decision-making processes regarding the application of their leave policies -- growing legal uncertainties. Unfortunately, this has had a chilling effect on the expansion of paid leave policies.

We would all like to see private sector employers expand paid leave policies for their workers. I believe that in order to facilitate the expansion of paid leave policies, we must first address current problems with the FMLA's regulations and interpretations that are actually serving as a disincentive for companies to offer or expand paid leave benefits.

B. Intermittent Leave Tracking is Very Difficult

The issue of intermittent leave continues to be extremely difficult for human resources professionals. The SHRM® 2000 FMLA Survey found that a strong majority of our profession believes that a reasonable modification (e.g., ½ day increments) would help them more effectively administer the Act.

Three-quarters (76%) of respondents stated they would find compliance easier if the DOL allowed FMLA leave to be offered and tracked in ½ day segments rather than by minutes. Moreover, respondents were asked if their organization had automated tracking of intermittent FMLA leave. Less than one-fifth (17%) of respondents indicated that their organizations have automated the tracking of intermittent leave.

Example:

In the healthcare industry, managing intermittent leave is particularly difficult. Given the expansive definition of "serious health condition" and the broad entitlement to intermittent leave, employers are put in a very difficult position when employees use intermittent leave. For example, ailments such as migraine headaches, allergies, asthma, and back pain have all recently been the subject of intermittent certification in our organization. In this situation, we must allow the employee up to 480 hours off of work to tend to these conditions. More often than not, the time off comes without any advance notice. It may come moments before a shift begins, during a shift or at the end of the day.

The regulations prohibit us from requiring a note from the employee once we've received an initial certification for an ongoing condition. For example, a certification for intermittent leave for migraine headaches may say, "employee may be absent intermittently, 3-4 times per month." As a result, we must arrange to cover the employee's patient care responsibilities without advance notice and without adversely impacting our patients or our other valued employees. Additionally, none of the intermittent absences subject the employee to any coaching or counseling on absenteeism until after the expiration of the 480 hours, or 60 days. Even then, the employer's policy on unscheduled absenteeism would not be implicated until the unprotected absences have already reached an intolerable level.

Intermittent leave is an important component of the FMLA; however, the expansive definition of serious health condition has changed the nature of most types of intermittent leave. Treatments such as chemotherapy, radiation, and kidney dialysis were the types of conditions contemplated by Congress, but are among the more infrequent uses of FMLA intermittent leave. It is much more common to have multiple employees in a single department or work unit certified for intermittent leave for conditions such as migraine headaches, back aches, allergies, etc. which Congress assumed would be covered under an employer's sick leave plan rather than the FMLA. The nature of these conditions make advance planning for staffing virtually impossible.

C. Medical Certification Needs to Be Clarified

The Certification of Health Care Provider form (WH-380) may be used to certify a serious health condition under the FMLA. Due to the limits imposed by the Department of Labor's regulations, the employer's health care provider cannot contact the employee's health care provider unless the employee grants the employer permission. Nor can the employer's health care provider obtain the usual documentary support for a disability determination. These limitations either lead the employer to deny FMLA coverage due to lack of sufficient certification or to grant FMLA coverage despite the lack of sufficient factual support just to avoid a dispute.

This rule also applies to the certification, or fitness for duty report, that the employer is entitled to upon the employee's return. The regulations state that "a health care provider employed by the employer may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired. The employer may not delay the employee's return to work while contact with the health care provider is being made." 29 CFR 825.310. For employers whose employees are in safety sensitive positions, these restrictions on contacting the physician are not just burdensome, but can create unnecessary risk to patients and co-workers.

Example:

In one recent situation we had an employee who returned with a fitness for duty evaluation from her physician following back surgery. The note indicated that she was fit to "return to full duty." This employee was a nurse in the Critical Care unit and had various lifting, pushing and pulling requirements that we questioned. The employee refused to allow us to talk with her physician. Under the FMLA regulations, this employee needed to be returned to her position without delay. Subsequent observations of this employee indicated that she was unable to perform her job duties and she was subsequently removed from patient care pending an evaluation.

Problems faced in determining the validity of an employee's FMLA certification need to be addressed by clarifying that sufficient certification under the FMLA must allow employers to verify FMLA leave and an employee's fitness to return in the same way they verify other employee absences for illness, while protecting employee privacy in the process. This will allow employers and health care providers to communicate so that health care providers understand the requirements of the employee's job. This clarification would simply give the employer more information upon which to determine whether or not a leave request qualifies under the FMLA.

D. Lack of Advance Notice is an Issue

Another FMLA form reflected in the inventory is the "Employer Response to Employee Request for Family or Medical Leave" (Form WH-381). Respondents stated that on average 60% of employees taking FMLA leave do not schedule the leave in advance. When respondents were asked if they thought that some FMLA requests were not legitimate but had to be granted due to the DOL's regulations/interpretations, 52% responded affirmatively.

Example:

One recent example involved a health care employee with a significant history of absenteeism. This employee was told that she could not have any unexcused absences for the next 90 days. This employee knew that absences due to her asthma, which had previously been certified as intermittent leave, and absences due to her workers' compensation injury would not be counted against her. On the 89th day, the employee called up and said she wouldn't be at work because her back hurt and she would be going to the doctor. After confirming that the absence was not due to her asthma or workers' compensation leave, the employer counseled this employee. The employee saw her physician who gave her anti-inflammatory medication and told her to alternate between ice and heat when her back hurt. As a result, the employee was eligible for FMLA and the employer's counseling had violated the FMLA.

IV. Conclusion and Recommendations

A. Specific Recommendations

Again, I unconditionally embrace the spirit of the FMLA. However at a minimum, the following areas should be addressed by at once in order to allow employers and human resource professionals to more effectively implement the FMLA:

Serious Health Condition Misinterpretations: Restore the regulatory definition of "serious health condition" to reflect serious conditions as intended by Congress in the Act's legislative history. Address the December 12, 1996 DOL opinion letter No. 86.

Intermittent Leave: Minimize unnecessary tracking and administrative burdens while maintaining the original intent of the law, by permitting employers to require employees to take "intermittent" leave (FMLA leave taken in separate blocks of time due to a single qualifying reason) in increments of up to one-half of a work day.

Certification: Allow employers to verify FMLA leave the same way that they verify other employee absences for illness. Employers should be permitted to communicate with health care providers to ensure that they understand the requirements of the employee's job and the employer's willingness to make alternative work (such as "light duty") available to the employee.

Request for Leave/Notification Requirements: It would be helpful to shift the burden to the employee to request that leave be designated as FMLA leave. This would address concerns about employers having to pry into the employee's and the employee's family's private matters, and would help eliminate personal liability for employer supervisors who should not be expected to be experts in the vague and complex regulations. Certainly the current two (2) day notification period for designation of leave as FMLA leave should be expanded.

B. Course of Action

SHRM strongly supports legislation that has been introduced in Congress (H.R. 2366 and S. 489) that would require the DOL to reissue the FMLA implementing regulations in accordance with the original Congressional instructions provided in the legislative history. It would of course be simpler and more appropriate for the Executive Branch to simply interpret the law the way that it was originally designed.

C. Conclusion

The paperwork challenges confronting employers are enormous. The FMLA is a good law that has become inadvertently too complex. The FMLA's paperwork and regulatory burdens which lead to documentation problems that are diverting important human resources and increasing the costs of providing health care and offering other services.

We hope that these administrative processes can be clarified in the context of overall FMLA technical corrections so that the FMLA works as intended. I hope that this review of FMLA implementation concerns and examples will assist the Subcommittee, the Office of Management and Budget, and the DOL as we work together to make the FMLA a model of effectiveness, rather than a model of administrivia and complexity.

I would be happy to answer any questions the Subcommittee may have.

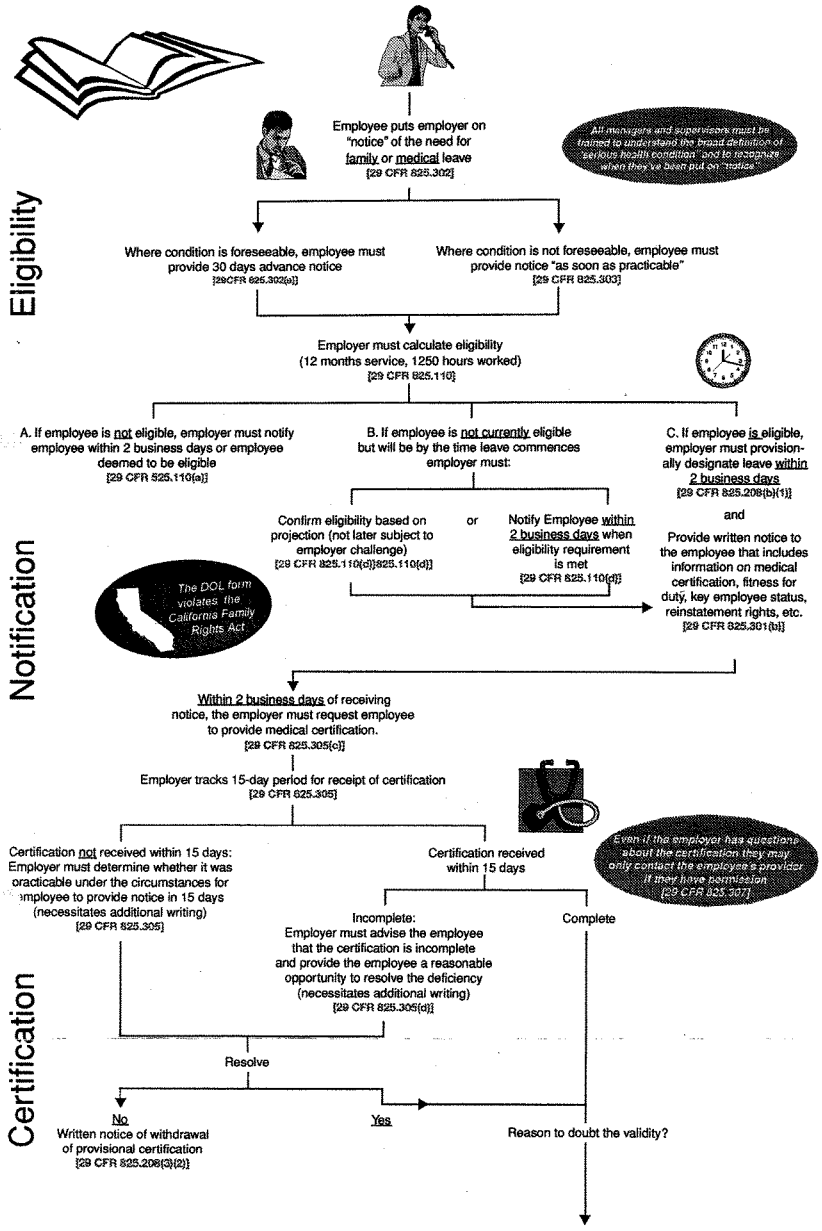
CHART A
LISTING OF PAPERWORK AND RECORDKEEPING REQUIREMENTS
SUTTER HEALTH

Records/ Documents	Statute/ Regulation	Retention Period
1. Employment records (i.e., hiring, promotions, demotions, transfers, layoffs, terminations, rate of pay or other terms of compensation, selection for training, etc.)	Title VII, 29 C.F.R. § 1602.12 and 1602.14; The Americans with Disabilities Act (42 U.S.C. §§ 12101–12213)	1 year
2.Same as above **PLUS** job descriptions, occupation qualifications, collective bargaining agreements, retirement, pension and insurance plans, seniority and merit systems, job orders for recruitment, job advertisements, job applications, test papers, physical examinations.	Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621–634)	1 year
3. Test papers of employer–administered aptitude or other employment tests.	Age Discrimination in Employment Act of 1967; Title VII FEHA (Gov. Code §§ 12900–12996)	1 year 2 years
4. Records needed for preparation of the California Employer Information Reports (CEIR).	2 Cal. Code Regs. § 7287	2 years
5. Records relating to compliance with the federal FMLA including records of leave taken, employer policies relating to leave and notices and other communications relating to the taking of leave.	Family Medical Leave Act of 1993 (29 U.S.C. §§ 2601–2654); 29 CFR 825.500	3 years
6. Results of physical examinations.	Age Discrimination in Employment Act of 1967	1 year
7. Employers with one hundred or more employees, EEO – 1 reports.	Title VII, EEOC regulations	Indefinite
8. Written affirmative action plans.	Executive Order No. 11246	Not Specified – however, the Office of Federal Contract Compliance relies on the EEOC's federal retention requirement of not less that 12 months. 29 C.F.R § 1602.14.
9. The OSHA 300 and annual summaries of occupational injuries and illnesses.	OSHA (29 C.F. R. §§ 1904.2–1904.6)	5 years
10. A claims file for each work–injury claim, including those claims which were denied.	8 Cal. Code Regs. § 14307	5 years from date of injury or date on which compensation benefits were last provided. Closed claim files may be microfilmed for storage, but original paper files must be maintained for at least 2 years after claim closes.
11. A claim log of all working–injury claims.	8 Cal. Code Regs. §§ 10101.1; 10103.1;14304	5 years

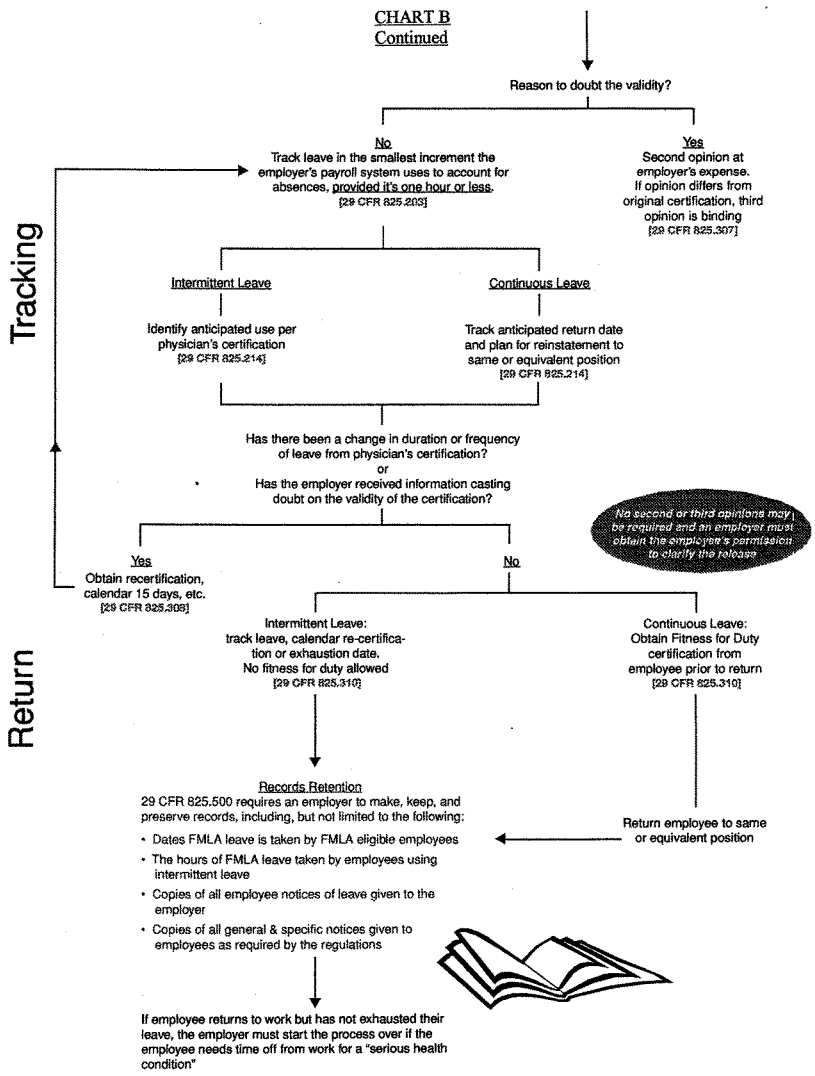
12. Records of employee exposure to hazards such as toxic chemicals, high levels of noise, airborne contaminants, or blood borne pathogens.	8 Cal. Code Regs. § 3204(d)	30 years after termination of employment.
13. Backup documentation for any report filed with the Secretary of Labor under the Labor Management Reporting and Disclosure Act.	Labor–Management Reporting and Disclosure Act (29 U.S.C. §§ 433–436)	5 years
14. Disclosure of plan descriptions, annual reports, and summary annual reports. (Plans must provide in sufficient detail the information from which any plan, description, report, or certified information filed under ERISA can be verified for accuracy and completeness).	ERISA (29 U.S.C. §§ 1001–1381)	6 years after filing.
15. Records sufficient in detail to determine benefits due under ERISA, or that may become due to employees.	29 U.S.C. § 1059	Indefinite
16. Unemployment Insurance Records specifying the following details re–contributions: (1) pay period; (2) name, social security number, date of hire or rehire, and place of work of each employee; (3) remuneration paid to each employee; (4) disbursement records that show payments to anyone who performed services to employer; and (5) any other information necessary to enable the employer to determine an employee's total remuneration in each week.	Unemployment Insurance Code (Un. Ins. Code § 1085)	Four years from date the contributions become due or the date the contributions are paid.
17. Records of veterans complaints and actions taken.	Rehabilitation Act of 1973 Vietnam Era Veterans' Readjustment Assistance Act of 1972	1 year 1 year
18. Payroll records, including: (1) required payroll records that include each employee's name, address, occupation, hours worked each day and week, wages paid and date of payment, amounts earned as straight–time pay and overtime, and deductions; (2) plans, trusts, and collective bargaining agreements; (3) employee notices; (4) sales and purchase records.	Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201–219) Child Labor Law Age Discrimination in Employment Act of 1967 Equal Pay Act	3 years
19. Basic time and earning cards; wage rate tables; work time schedules; order shipping, and billing records; records of additions to or deductions from wages.	29 CFR § 516.6	2 years (from date of last entry)
20. Employee wage records; (1) the names, addresses of all employees; (2) the age of any minors employed; and (3) daily hours worked by and wages paid to all employees.	Labor Code § 1174	2 years
21. Collective bargaining agreements, employment contracts.	Fair Labor Standards Act of 1938	3 years
22. Sales and purchase records.	Fair Labor Standards Act of 1938	3 years
23. Earnings records, including timecards, rate tables, and work schedules.	Fair Labor Standards Act of 1938	2 years
24. Order, shipping, billing and customer records.	Fair Labor Standards Act of 1938	2 years
25. Records of additions to or deductions from wages paid.	Fair Labor Standards Act of 1938	2 years
26. Employment permit or educational certificate (only for minors).	Child Labor Law	Duration of employment
27. Job orders to employment agencies for recruitment.	Age Discrimination in Employment Act of 1967	1 year

CHART B

Business Process Outline Related to the Administration and Paperwork Requirements for FMLA Compliance



Continues on page 2...



Notes:

Validity of 11 different FMLA regulations has been challenged in the courts through 58 cases.

The interplay of the ADA, FMLA and workers' comp is one of the most difficult areas of employment law.

Opinion letters and their sometimes conflicting interpretations confuse employers and employees alike.

Federal and State regulations often overlap and conflict.

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Mr. OTTER [assuming Chair]. Thank you, Mr. Buback.

I would ask both of you gentlemen in your respective industries and your associations within those industries, have you ever gone to the GAO or OMB and said what they are asking us for right now is an additional paperwork burden and we think it is in violation of the Paperwork Reduction Act?

Mr. BUBACK. We have worked primarily through professional associations in terms of trying to bring awareness to this issue. This is the sixth time this particular subject has been brought before a legislative committee, so we are very motivated, we are very interested in working with OMB to make these changes as soon as possible and would be willing to work with this committee as well.

Mr. OTTER. Mr. Wordsworth.

Mr. WORDSWORTH. Only through monitoring the paperwork reduction activities of 1995, 1997, 1998, which really didn't produce anything, but not specifically with OMB on a specific requirement.

Mr. OTTER. The OMB, as you heard earlier, is the one charged with the responsibility for finding violations by the Federal agencies for this. I would encourage you that, if you haven't made that a part of your political operation within the national organizations you belong to, to certainly go to the OMB. I hope when you do that, you will do so in a positive way. Take these forms with you, take this maze you have up here, Mr. Buback, and, when you go, say here is the information you really need, here is the kind of form we might suggest you would use in order to accomplish that need because it is important information. We are talking about employees' rights, talking about some demographics that we need in the Nation to take a look down the road in terms of some of the benefits that are supplied by the Federal Government.

I would encourage you, if you haven't, to make that a generous portion of your political effort here in Washington, DC, because I know coming out of industry myself, for the 30 years I was in the private sector, at one time vice president of administration of a food company, I had 87 people working for me just to fill out government forms. When we decided we couldn't afford to take the government business, we were then sued by the government because we refused to bid on their bid requests. I had to hire some more people and fill out some more forms for that.

I would also ask you to go through a lot of the rest of the forms and encourage those organizations that you belong to, to go through those with creative and constructive criticism. Quit going back to the agencies, that won't work, we know that. We showed you the violations this morning because there is no penalty. If you will go to the GAO or to the OMB, I think you will probably get a much better response. Failing that, I would go to your Members in Congress, including the two sitting at this dias, and encourage us to make those same opportunities available for the GAO and the agencies.

Mr. OSE [resuming Chair]. You have about 2 minutes left to vote.

Mr. OTTER. Did you want to respond?

Mr. BUBACK. Just a comment that we have and will continue to work with the OMB and others in this area and we will be looking forward to the June 30 results in terms of next steps of engagement there.

Mr. WORDSWORTH. I also wanted to comment I know the U.S. Chamber is working on their comments on the OMB 2002 report.

I brought with me—it just came in the mail 2 days ago—this document. This is a 21-page form from OSHA that has my name on it and the postmark that has to be filled out on any accidents or illnesses I had in my business that could possibly have been job related. It conveniently doesn't fit in any file cabinet, so I guess it gives it great dignity.

Mr. OSE. Gentlemen, Mr. Otter has gone to catch a vote. He may be back after that.

I want to go to chart A, Mr. Buback. You cite any number of statutes in here. Do you know whether or not the regulatory forms issued under these statutes are current or whether they have lapsed?

Mr. BUBACK. Off the top of my head, I couldn't tell you, given the number there. I would be happy to get back with you and submit something in writing if you like.

Mr. OSE. I am interested in that. I noticed in your testimony you had quite a bit of discussion about the Family and Medical Leave Act and the manner in which it is implemented, the recordkeeping and what have you. We will certainly followup on the questions that you have raised.

Mr. BUBACK. We have continued to submit our concerns to the OMB. We look forward to the June 30 date related to further action and further partnership of exploring those issues of FMLA.

Mr. OSE. I also had an opportunity to meet with one of your fellow service providers in Sacramento, Kaiser Permanente, recently. They brought up the subject you have here on page 8 having to do with INS certification for foreign workers, the primary concern being how do they meet their demand for nurses in the various care wards and the like. Can you take us through this briefly, understanding I am going to leave in about 2 minutes?

Mr. BUBACK. In terms of the nursing shortage and other critical health care employer shortages in the industry, we are very concerned about that in terms of having adequate supplies of health care workers. That has led us to do a number of different things in terms of working with schools, colleges, special training programs. Another one of those strategies has been looking at foreign recruitment. We found our internal national supply is just not meeting our needs andm therefore, we do international searches for qualified professionals, particularly in the nursing profession. It is extremely complicated, extremely paperwork burdensome, and yet we struggle with the need of providing 24-hour, 7-day-a-week care to our patients.

Again, we look forward to working with whatever agencies, OMB and others, to do what we can to reduce those burdens.

Mr. OSE. There are a bunch of submittals cited in your testimony, application for alien employment. That is Mr. Wordsworth's testimony, but the system has to be similar for you. Are there steps we could take out of that process?

Mr. BUBACK. Absolutely. I think you saw in my other illustration that was one example of one statute or regulation. I think each of these can be streamlined and need to be reviewed. They are confus-

ing, complex, sometimes contrary to one another, so there is a lot of opportunity there.

Mr. OSE. Mr. Wordsworth, I appreciate your comments because it is not only in California but clearly in Virginia too. We are not talking about unskilled labor in the case of nurses or people in your industry. We are talking about people who bring skills to this job we literally cannot meet within this country today from lack of training or what have you. The choices, as in Mr. Buback's case, to provide enough nurses, to provide care, do we shut down wards? In your case or your colleagues in the Chamber, do I shut down an assembly line and push everyone out of work for that particular team? That is a very real issue.

As with the previous panel, I want to apologize, because I have to go vote. That is what they hired me to do. I do want to add a couple remarks. Panel 1, I have to say I am very disappointed in the progress we have made to date on reducing paperwork burdens. You guys are kind of like exhibit A and B as to what success we have or haven't had. Besides the dismal record at OMB, OMB has failed to improve the agency management of paperwork. We have over 400 violations of the paperwork law last year by the agencies where they have illegally levied a burden on the public, and there is no excuse for that. The statute is clear.

IRS, which accounts for 83 percent of the public's burden, they are like the poster child for dismal performance in paperwork reduction. They levied over 200 million additional hours of burden on the public in this past year.

The second panel, Agriculture and Interior clearly have a long way to go to properly manage their paperwork burdens they impose on the public. Those two forms we had, one for the Commodity Credit Corporation and the other for the report on acreage, frankly are clear indications of the confusion that reins there.

We are trying to bring some rationality to this so we are not collecting the same information on six or seven or eight different forms. The statute is clear. I don't think either of you consider yourselves victims, but you are being victimized by this. Congress is trying to fix it. We will leave the record open for 10 days and we will be sending the Labor Department a letter with your testimonies attached asking them to respond directly. I do appreciate your coming. Thank you for coming.

This hearing is adjourned.

[Whereupon, at 12:14 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[The prepared statement of Hon. John F. Tierney and additional information submitted for the hearing record follow:]

April 11, 2002 Statement of Rep. John F. Tierney
House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs Hearing on "Paperwork Inflation – The Growing Burden on America"

Mr. Chairman, thank you for holding this hearing. I strongly support efforts to eliminate unnecessary, duplicative, and overly-burdensome paperwork. I hope we will hear about some success stories in this area today. Although estimates of paperwork burden are interesting, the real question is whether the government is collecting the right information from the right people and doing so efficiently.

Despite a recent news report claiming that the wealthiest 5% of Americans carry a heavy tax burden, other reports indicate that more wealthy taxpayers are evading their tax burden by underreporting their income.

For example, this Sunday's *New York Times* reported that the IRS is not collecting the information it needs to ensure that the wealthy are paying their share of taxes. The IRS *"does not track nonwage income as closely as wage income -- and in some cases does not verify it at all, even as the IRS says that cheating on nonwage income is rising."* With the information it currently collects, the IRS cannot verify whether business owners, landlords, investors and partners are honestly and accurately reporting their earnings. Furthermore, some Americans are taking advantage of the IRS's lack of information and cheating the government of an estimated $70 billion a year by hiding income in offshore accounts.

Even when the IRS is collecting the right information, it has not always been putting it to good use. The IRS generally does not match individual tax returns of wealthy Americans with third party reports on that income -- such as reports on partnership, company and trust income. My understanding is that IRS Commissioner Rossotti, who has joined us today, estimated that as much as one dollar of every five dollars from partnerships is not reported on individual tax returns. In other words, honest American taxpayers are picking up the tab for these lost funds, which is an estimated 9 to 64 billion dollars this year alone. The *Times* reports *"the larger sum, if collected, would be enough to exempt from income taxes the 62.5 million taxpayers -- half of all those who file -- who made less than $508 a week. And there would still be $29 billion left."*

Moreover, the IRS is more likely to audit returns submitted by low wage earners who may be understating their tax liability by a few thousand dollars than returns submitted by wealthy individuals who may be understating their liability by tens of thousands of dollars. A taxpayer who applies for the Earned Income Tax Credit has a 1 in 47 chance of being audited while an individual earning more than $100,000 has a 1 in 145 chance of an audit.

This is in addition to the problem of corporate abuse of tax laws and expatriation. By incorporating in Bermuda or the Cayman Islands, companies that are owned primarily by U.S. investors, and that receive all the protections and benefits of being located in the U.S., avoid millions each year in U.S. taxes.

Enron has about 900 subsidiaries abroad, including the Cayman Islands and Bermuda. It ended up paying no US taxes in four of the last five years and received $382 million in income tax refunds. Another company, Tyco, formerly headquartered in Exeter, New Hampshire, has created a nominal headquarter office in Bermuda to avoid paying U.S. taxes. Despite revenue of $36 billion last year, the company avoided paying $400 million in taxes it would have had to pay if it had not changed its mailing address. And yet Tyco continues to have the majority of its operations in the U.S., where most of its investors live as well. I wonder what information the IRS is collecting on these issues?

The paperwork and taxes avoided by these companies, which also include Global Crossing, Cooper Industries, Foster Wheeler Ltd., Nabors Industries and Accenture, is in stark contrast to the burden imposed on the individual taxpayer who can't simply establish a mailing address overseas and legally avoid paying their taxes. Even more problematic is that two other companies, Ingersoll-Rand, which is already incorporated overseas, and Stanley Works, which is in the process of nominally moving its headquarters, together hold 300 federal contracts.

As this practice becomes more common, one Ernst and Young tax partner cited patriotism as the only potentially troubling issue that corporations should consider before moving offshore. But, she said, profits trump patriotism.

I am pleased that Commissioner Rossotti recently acknowledged the need to increase the IRS's audits of individuals engaged in partnerships and trusts. This is a step in the right direction, and I encourage him to continue with these efforts. I am also pleased that several bills have been or will be introduced in the House and Senate to address the issue of Bermuda tax havens.

I am aware, Mr. Chairman, that you have asked OIRA to provide in-depth paperwork analyses of a number of safety, environmental, and public health protections. I also know that in the past this type of regulatory review has been used to significantly weaken regulations opposed by industry. And in December, a *Washington Post* article alleged that a similar effort was again underway. According to the article, *"A lobbyist said he was disturbed by what he perceived as an 'underhanded' campaign to use obscure paperwork guidelines as a back-door mechanism to gut long-established regulations. He was told that the campaign had Graham's blessing, if not his fingerprints. The campaign is being run out of the House Government Reform subcommittee on energy policy, natural resources and regulatory affairs, . . . The goal, several attendees said, was not just to reduce unnecessary paperwork, but to persuade Graham to use little-known provisions of the Paperwork Reduction Act to try to weaken paperwork-intensive regulations."*

In his prepared testimony, Dr. Graham has expressed a willingness to evaluate the paperwork burden of regulations proposed for review by the Subcommittee majority.
I have two comments about this issue. First, it would be greatly disturbing, if, as reported in the *Post* article, this Subcommittee's staff were working with industry lobbyists and with the implicit or explicit blessing of OIRA to weaken important federal regulations through paperwork reduction. Second, it would be a great misuse of scarce resources for OIRA to focus its efforts on reviewing the paperwork burden imposed by regulations in what Dr. Graham characterizes as

a "labor intensive" undertaking, when there are more important paperwork and regulatory issues to attend to.

Mr. Chairman, I hope you will join me in asking Dr. Graham to focus OIRA's efforts where they are most needed. Rather than working to find a technical excuse for undermining important safety, environmental, and public health protections, OIRA should focus more of its resources on the IRS, which is responsible for about 83% of the government-wide paperwork burden, is not collecting enough information from wealthy taxpayers and corporations, and is not putting some of the information it collects to good use. I look forward to learning more about all of these issues from our witnesses and welcome their testimony.

DAN BURTON, INDIANA,
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April 17, 2002

BY FACSIMILE
The Honorable John D. Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Dr. Graham:

This letter follows up on the April 11, 2002 hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "Paperwork Inflation - The Growing Burden on America." As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Thursday, May 9, 2002. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Enclosure

cc: The Honorable Dan Burton
The Honorable John Tierney

Q1. Specific Plans to Reduce Paperwork. The Office of Management and Budget's (OMB's) Fiscal Year (FY) 2002 Information Collection Budget (ICB) reveals that only the Commerce Department - due to the end of the decennial Census - had substantial **net program decreases** from FYs 2000 to 2001. Unfortunately, as the General Accounting Office (GAO) testified, OMB erroneously included the Transportation Department's 42.5 million hours violation of law from 10/1/01 to 3/4/02 for the "Driver's Record of Duty Status" (formerly called the "Hours of Service of Drivers Regulations") as a program decrease instead of as an adjustment since it was in continuous use without any reduction in burden on the public.

a. What significant paperwork reduction initiatives - **with at least a 100,000 hours decrease due to an agency action** - were accomplished since January 20, 2001, and what significant initiatives are planned in the remainder of 2002 for the following four non-Internal Revenue Service (IRS) agencies which each levy over 114 million paperwork hours of burden on the public?

- HHS?
- Labor?
- SEC?
- EPA?

b. OMB's FY 2002 ICB shows that two agencies - Agriculture and the Federal Communications Commission (FCC) - had significant **net program increases** in burden on the public - 5.7 million and 11.7 million hours, respectively. The FCC was one of the 12 agencies deleted from coverage by OMB's ICB Bulletin this year. Which FCC information collection(s) accounted for most of this increase? Was the increase due to a change in law or was it made at the discretion of the FCC?

c. Despite the Paperwork Reduction Act's (PRA's) requirement for OMB to identify all changes in burden, Appendix C in OMB's FY 2002 ICB, entitled "Significant Paperwork Reductions and Increases - FY 2001 & 2002," fails to identify many of the specific increases and decreases in **IRS paperwork**, which produce a net increase of over 200 million hours on the public. What specific non-statutorily required increases of 100,000 hours or more did the IRS levy on the public and why? Please provide a full accounting for this net increase of over 200 million hours of burden on the public.

d. What significant paperwork reduction initiatives were accomplished and are planned to reduce burden on the following key groups?

- Farmers?
- Small businesses?
- State and local governments?

Q2. Program Decreases due to Agency Actions. GAO explained that, in recent years, OMB has indicated in its ICB reports what specific type of action precipitated a program

change in burden - a new statute, an agency action, or a reinstated/expired collection. OMB's chart on page 63 in its FY 2002 ICB combines program changes due to agency action with those due to new statutes (in a column headed "FY 2001 Changes Due to New Statute or Agency Action") so the public cannot see what program changes were due to agency action. Please provide a breakdown for each agency of the program changes column to separately identify affirmative agency actions to reduce paperwork.

Q3. Disclosure of OMB's Role in Paperwork Reduction. Since 1993, OMB has been required by executive order to disclose specific changes made during the course of its review of agency **regulatory** proposals. The PRA requires OMB to keep the Congress "fully informed" (44 USC §3514). To hold OMB accountable to Congress and the public, in April, I asked if OMB would keep similar information about its review of agency **paperwork** proposals. In October, OMB replied, "Administrator Graham is actively exploring ways to develop a capacity to maintain a record of changes made ... during OMB's review." In 1981, OMB's computerized system began to record if a paperwork was approved with or without change due to OMB's review.

a. Will OMB commit to keep information, as of July 1, 2002, about the specific changes made, if any, during its paperwork review? If not, why not?

b. I have expressed my support for your prompt, post-review and return letters in the regulatory area. In the paperwork reduction area, how many prompt and post-review letters and how many disapprovals under the PRA has OMB issued since January 20, 2001? If any, please provide a copy of each such letter.

Q4. Resolution of Agency PRA Violations.

a. In September, I asked OMB to provide resolution dates for each agency violation of the PRA. To date, OMB has not yet fully provided this information. Please provide this information for the hearing record.

b. The law requires OMB to include in its report to Congress a list of "all" violations of the PRA (44 USC §3514(a)(2)(A)(ii)). The **12 agencies deleted from coverage** by OMB's ICB Bulletin this year accounted for **64 violations** of the PRA last year -- whereby agencies illegally imposed paperwork burden on the public without any or current OMB approval, as required by law. What is the number of violations during FY 2001 in these 12 agencies? Please provide information for each of the 12 for the hearing record.

c. Two of the 12 deleted agencies include the Small Business Administration (**SBA**) and the Federal Emergency Management Agency (**FEMA**). Did SBA and FEMA resolve each of their 28 and 20 PRA violations, respectively, from FY 2000? If not, why, and when will they be resolved?

d. Last year's ICB revealed that **HUD** and **Agriculture** had 99 and 96 PRA violations, respectively, during FY 2000. During FY 2001, these agencies again top the list, with 113 and 67 violations, respectively. What steps has OMB taken since January 20, 2001 to rectify the chronic paperwork violations problems at these two agencies?

Q5. Progress in Reviewing Regulatory Paperwork. The FY 2001 Treasury and General Government Appropriations Act required an OMB report to Congress which: (a) evaluated the extent to which the PRA reduced burden imposed in agency rules ("regulatory paperwork"), (b) evaluated the burden imposed by each major rule imposing more than 10 million hours of burden, and (c) identified specific expected reductions in regulatory paperwork in FYs 2001 and 2002. OMB's report did not fully respond to the statutory requirements. In response, in September, I asked OMB to reexamine 15 specific non-IRS rules each imposing over 10 million hours of burden.

What is the progress of reexamining the paperwork in each of the following rules?:

- Labor: Process Safety Management (PSM) of highly hazardous chemicals (79 million hours on August 30, 2001)
- SEC: confirmation of Securities Transactions (56 million hours)
- Transportation: Hours of Service of Drivers regulations (42 million hours)
- Transportation: Inspection, Repair, & Maintenance (35 million hours)
- SEC: recordkeeping by Registered Investment Companies (21 million hours)
- FTC: Truth in Lending regulation (20 million hours)
- HHS: Investigational New Drug (IND) regulations (17 million hours)
- EPA: standards for the use or disposal of Sewage Sludge (13 million hours)
- Labor: Bloodborne Pathogens standard (13 million hours)
- FTC: Fair Packaging & Labeling Act regulation (12 million hours)
- Treasury: recordkeeping & reporting of Currency & Foreign Financial Accounts (12 million hours)
- Labor: OFCCP recordkeeping & reporting requirements (11 million hours)
- HHS: Medicare & Medicaid for Home Health Agencies (10 million hours)
- HHS: Clinical Laboratory Improvement Amendments (CLIA) (10 million hours)
- Education: Federal Family Education Loan program (10 million hours)

Q6. Public Disclosure. The PRA's "Public Protection" provision is an important OMB tool to reduce paperwork. In April, I asked if OMB would publish a monthly OMB Notice in the Federal Register identifying: (a) all expirations of OMB PRA approval and (b) information describing action by the executive branch to achieve each major program reduction. Such a Notice could be widely circulated by interest groups to the affected public and will more fully actualize the PRA "Public Protection" provision. In October, OMB replied that, from information on its website, "the public can determine whether a particular agency collection has a currently valid OMB approval."

I do not believe that OMB's website provides sufficient information for the public to assess monthly results in paperwork reduction and paperwork for which the public is no longer required to comply. As a consequence, will you publish such a Federal Register Notice? If not, why not?

Q7. Staffing for IRS Paperwork. IRS accounts for 83 percent of all government-wide paperwork burden. Most of this paperwork burden is due to forms which the public has to complete, not regulatory rulings. In the last few years, its paperwork reduction initiatives have barely made a dent in this burden. Currently, OMB has only one person working part-time on IRS paperwork. In April, I asked if OMB would increase its staffing devoted to IRS paperwork reduction. In October, OMB replied, "Administrator Graham does not intend to make staffing decisions on IRS until he better understands IRS' initiatives in this area."

To improve results, will you increase OMB staffing devoted to IRS paperwork reduction? If so, to how many full-time equivalents? If not, how will you assure this Subcommittee that next year will show sizeable paperwork reduction results by the IRS?

Q8. Status of OMB/DOI/USDA Joint Effort. At last year's April 24, 2001 hearing, a public witness identified duplicative and burdensome paperwork imposed on farmers. In May, I wrote a joint letter to OMB Director Daniels and Interior Secretary Norton asking for OMB to work jointly with the Departments of the Interior and Agriculture to eliminate any duplicative paperwork. What is the status of this joint effort?

Q9. Resolution of Agency PRA Violations. What specific steps has OMB taken to resolve each of the following extant PRA violations:

- OMB #: 0938-0366 - HHS's "Intermediate Care Facilities for the Mentally Retarded, Conditions of Participation" with **6,839,873** hours when OMB approval expired on 10/31/**96**
- OMB #: 2502-0458 - HUD's "Real Estate Settlement Procedures Act (RESPA) ... Model Disclosure Statement ..." with **6,139,920** hours when OMB approval expired on 11/30/**97**
- OMB #: 0560-0004 - Agriculture's "Report of Acreage" with **2,854,710** hours when OMB approval expired on 6/30/**97**
- OMB #: 1830-0510 - Education's "Reporting Requirements for Adult Education Act" with **598,930** hours when OMB approval expired on 10/31/**94**

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MAY - 9 2002

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your letter of April 17, 2002, enclosing additional questions as a follow-up to your April 11, 2002, hearing on the Paperwork Reduction Act (PRA). I appreciated the opportunity to testify before the Subcommittee and share OMB's views on how we can work with you and the agencies to improve the Federal government's performance under the PRA.

Enclosed are OMB's responses to your follow-up questions. If you would like any additional information, please contact me at your convenience.

Sincerely,

John D. Graham
Administrator

Enclosure

cc: The Honorable Dan Burton
The Honorable John Tierney

Q1. *Specific Plans to Reduce Paperwork. The Office of Management and Budget's (OMB's) Fiscal Year (FY) 2002 Information Collection Budget (ICB) reveals that only the Commerce Department - due to the end of the decennial Census - had substantial* ***net program decreases*** *from FYs 2000 to 2001. Unfortunately, as the General Accounting Office (GAO) testified, OMB erroneously included the Transportation Department's 42.5 million hours violation of law from 10/1/01 to 3/4/02 for the "Driver's Record of Duty Status" (formerly called the "Hours of Service of Drivers Regulations") as a program decrease instead of as an adjustment since it was in continuous use without any reduction in burden on the public.*

a. What significant paperwork reduction initiatives - ***with at least a 100,000 hours decrease due to an agency action*** *- were accomplished since January 20, 2001, and what significant initiatives are planned in the remainder of 2002 for the following four non-Internal Revenue Service (IRS) agencies which each levy over 114 million paperwork hours of burden on the public?*

- *HHS?*
- *Labor?*
- *EPA?*
- *SEC?*

Answer: Department of Health and Human Services (HHS)

For FY 2001, HHS achieved one significant burden reduction of at least 100,000 hours:

- *Procurement – Solicitations and Contracts.* HHS achieved this burden reduction through increased use of Government-wide Acquisition Contracts, task and delivery order contracts, electronic commerce, and the increased threshold of use of commercial items. HHS estimates that these factors have resulted in a burden reduction of 448,020 hours.

For FY 2002, HHS plans the following burden reductions of 100,000 hours or more:

- *Medicare Secondary Payer (MSP).* The Centers for Medicare & Medicaid Services (CMS) recently revised the MSP requirements for Medicare outpatient services. Previously, CMS required that patients and hospitals update MSP information every outpatient visit and then reduced the frequency to once every 30 days. In its latest PRA submission, CMS has further reduced the frequency of these updates to once every 90 days. CMS estimates that this policy change will result in a burden reduction of at least 146,312 hours.

- *Medicare Provider Cost Report Reimbursement Questionnaire.* CMS plans to eliminate forms in this cost report that are redundant with another CMS reporting requirement, the Provider Enrollment Form (CMS-855). CMS estimates these eliminations will result in a burden reduction of 624,971 hours.

- *Important Message from Medicare.* This standard disclosure will replace two existing inpatient hospital discharge rights notices: the Hospital Issued Notice of Non-coverage (HINN), and the Notice of Discharge & Medicare Appeal Rights (NODMAR). CMS also will reduce burden by providing hospitals more flexibility in how they notify beneficiaries (i.e. posters, reusable laminated clipboards, counter top tent cards, individual handouts, etc.).

Department of Labor (DOL). DOL achieved two burden reductions of at least 100,000 hours:

- *Insurer to General Account Policyholders.* DOL amended regulations to only require that an insurance company disclose certain information annually and other information only upon request. The reduction in burden of 737,702 hours reflected the less burdensome requirements of the final rule.

- *Ergonomic Program Standard.* This collection was discontinued due to Public Law 107-5, signed on 3/20/01, which disapproved OSHA's final Ergonomics Program. This resulted in a program change reduction of 40.6 million hours.

For FY 2002, DOL has planned the following burden reduction initiatives:

- *Electronic Reporting Initiative.* Labor organizations, union officers and employees, labor relations consultants, and surety companies are required to file various reports. This new electronic reporting initiative will enhance the efficiency of this information collection.

- *Mine Act Regulation Streamlining.* Current regulations require coal mine operators to continuously maintain an average concentration of respirable coal mine dust. Most coal miners do their own sampling. DOL plans to publish a final joint dust rule stating that DOL will assume a portion of the sampling responsibilities. This will effectively decrease the public's burden by 40,690 hours and save the public $1.5 million in costs.

Environmental Protection Agency (EPA). EPA achieved one burden reduction of at least 100,000 hours:

- *Consolidated PCB Program Consolidated Information Collection.* As described in detail in Appendix C of the FY 2002 Information Collection Budget, EPA achieved a significant burden reduction by promulgating changes to its PCB regulations to, among other things: provide flexibility in selecting disposal technologies for PCB wastes; expand the list of prescribed, self-implementing decontamination procedures; and provide less burdensome mechanisms for obtaining EPA approval for a variety of activities

In 2002, EPA's Office of Solid Waste (OSW) plans to propose a rule to streamline or eliminate many reporting and recordkeeping requirements of the Resource Conservation and Recovery Act (RCRA) program. This OSW effort will streamline data collection for RCRA's Biennial Report, which is a major information collection mechanism for hazardous waste generation and management.

Securities and Exchange Commission (SEC). Since January 1, 2001, the SEC has not accomplished any 100,000 hour decreases due to agency action. OMB is unaware of any SEC significant burden reduction initiatives planned for the remainder of 2002.

b. OMB's FY 2002 ICB shows that two agencies - Agriculture and the Federal Communications Commission (FCC) - had significant ***net program increases*** *in burden on the public - 5.7 million and 11.7 million hours, respectively. The FCC was one of the 12 agencies deleted from coverage by OMB's ICB Bulletin this year. Which FCC information collection(s) accounted for most of this increase? Was the increase due to a change in law or was it made at the discretion of the FCC?*

Answer: We requested that FCC provide us with information responsive to this question. FCC informed us of two collections that substantially increased burden. Both of these information collections were in proposed rules that FCC promulgated pursuant to statute. At the final rulemaking stage, FCC took action to reduce the burden of both collections. Specifically, they are:

- *Receipt of Service Confirmation Form and Adjustment of Funding Commitment and Modification of Receipt of Service Confirmation Form - Universal Service for Schools and Libraries, FCC Forms 486 and 500.* This collection was revised in February 2001. The burden hours increased from 45,000 hours to 1,065,000, resulting in a program change increase of 1,020,000 hours. This collection was due to the Commission's implementation of Section 254 of the Telecommunications Act of 1996 (Section 1721 of the Children's Internet Protection Act, Public Law 106-554). On March 31, 2002, FCC reduced the burden to 75,000 hours.

- *Implementation of the Wireless Communications and Public Safety Act of 1999, Public Law 106-81.* The burden estimate for this proposed new collection was 10,982,470 hours. However, on January 18, 2002, at the final rule stage, the burden hour estimate was reduced to 3,100 hours, resulting in an adjustment of -10,979,370 hours. This adjustment was made because the initial burden estimates were based on overestimates of the number of entities that would be affected by this collection. Burden estimates originally estimated a universe of 116,494 carriers and 83,506 State and local government entities. The estimate of the number of carriers and State and local government entities was reduced to include only those carriers that do not currently provide 911 service. Also, the frequency of the reporting was also reduced from quarterly to two reports.

c. Despite the Paperwork Reduction Act's (PRA's) requirement for OMB to identify all changes in burden, Appendix C in OMB's FY 2002 ICB, entitled "Significant Paperwork Reductions and Increases - FY 2001 & 2002," fails to identify many of the specific increases and decreases in ***IRS paperwork****, which produce a net increase of over 200 million hours on the public. What specific non-statutorily required increases of 100,000 hours or more did the IRS levy on the public and why? Please provide a full accounting for this net increase of over 200 million hours of burden on the public.*

Answer: We requested that IRS provide us with information responsive to this question. As you know, IRS accounted for almost all of the Department of the Treasury's net increase of approximately 259 million burden hours during FY 2001. About 214 million hours of this total represented program changes. According to GAO, about two-thirds of these program changes (143 million hours) were not statutorily required and were instead initiated by IRS. IRS conducted a review of information collections that represented 96 percent (136 million hours) of these non-statutorily required increases. IRS' review indicated that:

- 21 million hours should have been classified as statutory changes, thus lowering the number of hours of Service-initiated change to 122 million hours.
- 14 million hours were added to allow for the identification of a third-party designee.
- 90 million hours resulted from the IRS requesting additional information to address noncompliance involving offshore tax shelters and other foreign tax evasion schemes. For example, IRS required taxpayers to attach a list of their partnership holdings and provide more information on the type of income for which a foreign credit was claimed.
- 8 million hours resulted from our efforts to facilitate IRS e-file.
- 2 million hours resulted from a correction of a prior-year computation error.
- 2 million hours resulted from a change to improve compliance in the fuel excise tax area.

IRS noted that these increases fall almost entirely into one of two categories. One category includes changes made to ensure greater compliance, especially in areas that have been subject to abuse. The other category includes changes that result in higher burden estimates for certain forms, but that in fact lower overall burden or that otherwise makes compliance easier for taxpayers. Examples of these changes include IRS' efforts to facilitate e-file and allow for the identification of a third-party designee.

The following table lists those IRS information collections with increases of more than 100,000 burden hours, with a notation indicating if the change was required

by statute. Note, for many of the other collections listed, some of the burden increase was the result of statutory requirements.

Form/Information Collection	Burden Increase (Hours)
1098-T	*1,053,933
1040ES	120,000
1065	74,804,120
990, Sched A and B	*1,130,492
8867	*167,369
1116	*113,152
1041, Sched D, J, K-1	*1,570,085
1099-MISC	3,865,898
1099-R	*1,749,081
1099-PATR	137,280
990T	135,426
1120W	396,000
8868	1,373,335
1120	1,094,526
8812	*6,185,000
1120, Sched. D, H, N, and PH	4,441,164
1065, Sched. D and K-1	15,444,451
4136	127,220
940, 940PR	1,258,365
6406	*218,750
1040EZ	*3,897,582
5307	*3,819,430
5300, Sched Q	*2,621,900
943, 943PR, 943A, 943A-PR	526,961
1041, Sched D, J, K-1	*8,372,121
5471	*219,060
1041 Sched D, J, K-1	*1,013,284
8851	*1,540,000
2290	144,500
8275, 8275-R	1,605,000
2290EZ	495,000
IRA Required Minimum Distribution Reporting	1,170,000
4562	16,835,000
8594	215,600
8038, 8038-G, 8038-GC	532,006
941, 941PR, 941SS, 941 Sched B, 941PR Sched B	22,097,698
RP 2002-XX	7,371,000
990 Sched A, B	727,100
8606	242,085

8050	348,600
720X	109,560
720	406,046
8879	5,440,000
RP 2001-56 Demonstration Auto Use	100,000
8878	610,000
1040-SS, 1040PR	*2,656,120
1040 Sched A, B, C, C-EZ, D, D-1, E, EIC, F	19,011,704
1040A Sched 1, 2, 3 and EIC	8,689,904
941, 941PR, 941SS, Sched B	928,570
RP 2001-VCAP	346,500
Form 720-TO	*2,285,280
720-CS	*148,485
8865	*285,875
Reg. 107186-00 Electronic Payee Statements	2,844,950
Form 8582-CR	1,787,850
8873	*27,640,000
RP 2000-XX – 940 e-file program	207,125
TRAC for use in food and beverage industry	296,916
Form 990-PF	367,885
5227	733,940
8862	*330,000
8844	128,400
1045	165,660
1120 Sched D, H, N, PH	3,891,413
1042, 1042-S	143,780
Publication 1345	2,924,627
1120-S	11,275,350

*Statutory

d. What significant paperwork reduction initiatives were accomplished and are planned to reduce burden on the following key groups?

- *Farmers?*
- *Small businesses?*
- *State and local governments?*

Answer: Agencies did not report any 100,000 hour decreases in the burden imposed on farmers, small businesses, or State and local governments during FY 2001. However, several significant paperwork reduction initiatives are planned for these key groups.

Farmers. For farmers, USDA has developed a burden reduction initiative called the Loan Deficiency Payments (LDP) Program Enhancement. This initiative will develop a new Internet-based delivery system for processing loans, thereby reducing burden and simplifying the program policy. A more complete description of this initiative appears on page 48 of OMB's report to Congress, *Managing Information Collection and Dissemination*, which we submitted on April 10, 2002.

Small Businesses. To relieve paperwork burden on small businesses, IRS has started two initiatives. First, IRS has to decided to exempt, beginning in tax year 2002, small corporations with less than $250,000 in gross receipts and $250,000 in assets from completing Schedules L, M-1, & M-2 of Form 1120; Parts III and IV of Form 1120-A; and Schedules L and M-1 of Form 1120S. These changes will allow these small businesses, for example, to use recordkeeping based on their checkbook or cash receipts and disbursements journal, instead of the more complicated double-entry system. IRS estimates that these changes will affect approximately 2.6 million small businesses and reduce their burden by 61 million hours.

In another initiative, IRS is decreasing the number of tax-related forms that an employer must file while increasing the availability of electronic tax filing and modeling for businesses. This initiative is expected to reduce the burden of tax law compliance for businesses. In the aggregate, small businesses stand to save up to $6.4 billion over six years. See page 32 of *Managing Information Collection and Dissemination* for a more detailed description.

In addition to these efforts, SBA is developing a burden reduction initiative called One-Stop Business Compliance Information, which will help small businesses by creating a one-stop point of service web portal where they can easily access information about laws and regulations. Estimates indicate that businesses will save $58 million annually by searching for information in an organized, user-

friendly manner in one portal. This initiative is discussed in greater detail on pages 31, 40, and 41 of *Managing Information Collection and Dissemination.*

State and Local Governments. Several burden reduction initiatives are also planned to reduce burden on State and local governments. One of these initiatives, the E-Grants project, will make it easier for potential grant recipients to obtain information about Federal grants. This initiative will ease burden on State and local governments as the Federal government awards over $300 billion in grants each year to State, local, and tribal governments, universities, and non-profit organizations. A more complete description of this initiative appears on pages 41 and 42 of *Managing Information Collection and Dissemination.*

Another initiative, the Geospatial Information One-Stop, will provide access to the Federal government's spatial data assets in a single location. This initiative will help make this information more accessible to State and local governments and reduce duplicative efforts. The project is described in more detail on page 34 of *Managing Information Collection and Dissemination.*

In addition, the Social Security Administration is managing an initiative, e-Vital, which would expand the existing vital records online data exchange efforts between Federal agencies and State governments. This project would eliminate much of the burden associated with delivering vital record information from local governments to the federal government, enabling a more efficient and effective benefit qualification. This initiative is described on page 35 of *Managing Information Collection and Dissemination.*

Q2. Program Decreases due to Agency Actions. GAO explained that, in recent years, OMB has indicated in its ICB reports what specific type of action precipitated a program change in burden - a new statute, an agency action, or a reinstated/expired collection. OMB's chart on page 63 in its FY 2002 ICB combines program changes due to agency action with those due to new statutes (in a column headed "FY 2001 Changes Due to New Statute or Agency Action") so the public cannot see what program changes were due to agency action. Please provide a breakdown for each agency of the program changes column to separately identify affirmative agency actions to reduce paperwork.

Answer: The following chart provides, for each agency, a breakdown of program changes due to statutory requirements and program changes due to agency action. This breakdown is based on the information reported in Appendix C of the FY 2002 ICB, "Significant Paperwork Reductions and Increases--FY 2001 & 2002." Because these exhibits excluded changes of less than 10,000 hours, they do not represent a comprehensive accounting of all FY 2001 burden changes.

Agency	Changes Due to Statute (millions of hours)	Changes Due to Agency Action (millions of hours)
USDA	+.71	+1.37
Commerce	+.02	-28.6
Defense	+.2	-.85
Education	0	-1.57
Energy	0	-.6
HHS	0	+1.57
HUD	0	-0.48
Interior	0	-.02
Justice	+3.4	-.29
Labor	-38.8	+36.4
State	0	-.11
Transportation	+.05	+1.02
Treasury	+92.98	+121.48
VA	0	-.05
EPA	+.63	+.08

Q3. Disclosure of OMB's Role in Paperwork Reduction. Since 1993, OMB has been required by executive order to disclose specific changes made during the course of its review of

*agency **regulatory** proposals. The PRA requires OMB to keep the Congress "fully informed" (44 USC §3514). To hold OMB accountable to Congress and the public, in April, I asked if OMB would keep similar information about its review of agency **paperwork** proposals. In October, OMB replied, "Administrator Graham is actively exploring ways to develop a capacity to maintain a record of changes made ... during OMB's review." In 1981, OMB's computerized system began to record if a paperwork was approved with or without change due to OMB's review.*

a. Will OMB commit to keep information, as of July 1, 2002, about the specific changes made, if any, during its paperwork review? If not, why not?

Answer: OMB is beginning to collect information on whether an agency's information collection changed during PRA reviews. Specifically, OMB's computerized database has begun to indicate whether a collection request is "approved without change" from what the agency originally submitted or "approved with change."

OIRA is also currently working with the Regulatory Information Services Center (RISC) at the General Services Agency (GSA) to create a new information system that will replace OIRA's current, somewhat antiquated, database. GSA has hired Booz-Allen Hamilton to develop this new system, which will expand on the existing system, the RISC/OIRA Consolidated Information System (ROCIS), that RISC uses to produce the Semi-Annual Unified Agenda of Federal Regulatory and Deregulatory Actions. Our goal is have the new, enhanced ROCIS fully operational by November 2003.

ROCIS will be an internet-based system that will accept paperwork and regulatory submissions from Federal agencies and provide materials to OIRA staff for their review. ROCIS will maintain a record of each OIRA review, including the information submitted by an agency and a record of OIRA's actions. Almost all the public records that are currently located in OIRA's Docket Library in paper form will be accessible to the public in electronic form. Search capabilities in the new system will make it easy for individuals to search these public files for information about paperwork and regulatory issues that might be of interest.

b. I have expressed my support for your prompt, post-review and return letters in the regulatory area. In the paperwork reduction area, how many prompt and post-review letters and how many disapprovals under the PRA has OMB issued since January 20, 2001? If any, please provide a copy of each such letter.

Answer: On March 4, 2002, OMB sent the Environmental Protection Agency a "prompt letter" encouraging the agency to consider a number of specific steps to improve the practical utility and public availability of information on the environmental performance of industrial facilities. The text of the letter is available on OMB's website at <http://www.whitehouse.gov/omb/inforeg/epa_tri3_prompt030402.html>.

According to OMB's computerized database, OMB disapproved 23 agency information collection requests between January 20, 2001 and April 23, 2002. Attached is a list of these disapprovals.

Q4. Resolution of Agency PRA Violations.

a. In September, I asked OMB to provide resolution dates for each agency violation of the PRA. To date, OMB has not yet fully provided this information. Please provide this information for the hearing record.

Answer: We do not have information on resolution dates for each agency violation of the PRA. We have, however, initiated a process to address this important matter. On November 14, 2001, OMB sent a memo to the chief information officers (CIOs) and general counsels for each agency covered by the Paperwork Reduction Act, asking for an update of agency efforts on resolving outstanding agency violations from the FY 2001 ICB.

Eight agencies responded to the memo. While many of the violations noted in the FY 2001 ICB had been resolved by the cut-off date for the FY 2002 ICB, 47 outstanding violations from FY 2001 and prior years still remained unresolved, not including those collections in place or modified without OMB approval.

We are continuing to follow up with all agencies to ensure strict compliance with the PRA. We will be sending another memo to agencies, listing the violations that are still outstanding. For those agencies with a substantial number of outstanding violations, we will be following up that memo with meetings with the CIO and GC to determine how these violations will be resolved, and how further violations will be avoided in the future.

*b. The law requires OMB to include in its report to Congress a list of "all" violations of the PRA (44 USC §3514(a)(2)(A)(ii)). The **12 agencies deleted from coverage** by OMB's ICB Bulletin this year accounted for **64 violations** of the PRA last year -- whereby agencies illegally imposed paperwork burden on the public without any or current OMB approval, as required by law. What is the number of violations during FY 2001 in these 12 agencies? Please provide information for each of the 12 for the hearing record.*

Answer: For the 12 agencies that were not covered by OMB's ICB Bulletin this year, Appendix A details collections that expired during the last fiscal year and had not been reinstated as of September 30, 2001, and collections that were reinstated during the fiscal year. Each individual collection that appears on this list is not necessarily a violation of the PRA. This information only represents what OMB provides each agency to assist them with reviewing their FY 2001 actions to identify PRA violations. Next year, OMB will include the 12 agencies not covered by OMB's ICB Bulletin and will ask for PRA violation information for both FY 2002 and FY 2001.

*c. Two of the 12 deleted agencies include the Small Business Administration (**SBA**) and the Federal Emergency Management Agency (**FEMA**). Did SBA and FEMA resolve each of their 28 and 20 PRA violations, respectively, from FY 2000? If not, why, and when will they be resolved?*

Answer: OMB's November 14, 2001, memorandum to agency CIOs and general counsels stressed the importance of full agency compliance with the PRA. OMB also requested detailed information from CIOs on the steps they were taking to resolve PRA violations that we reported in the FY 2001 ICB.

Both SBA and FEMA have responded to the November 14th memo. Neither agency has resolved all of their FY 2000 PRA violations. The information in the following tables, which was provided to OMB by SBA and FEMA, indicates the status of their violations.

SBA Violations		
OMB No.	**Collection Title**	**Compliance Status**
3245-0015	8(a) Business Development Application Forms	This collection has been consolidated into 3245-0331, "8(a)/SDB Paper and Electronic Application (7/31/2004)." OMB 83-C was forwarded to OMB on 5/8/2001.
3245-0071	Application for 503/504 Loan	SBA is seeking a renewal of this collection. PRA package was approved by OMB on 4/23/2001.
3245-0073	Application for CDC	The Office of Financial Assistance has requested this form be exempt from PRA requirements due to low respondent rate.
3245-0077	Small Business Lending Companies Reporting and Recordkeeping Requirements	The Office of Financial Assistance is currently working on the PRA package. We anticipate submission by 6/02/2002.
3245-0080	Statement of Personal History	This collection has been reinstated. New expiration date is 5/31/2002.
3245-0108	Small Business Development Counseling Record	This collection has been reinstated. New expiration date is 4/30/2004.
3245-0132	Lender Transcript	SBA is seeking a renewal of this collection. PRA package was approved by OMB on 3/12/2001.
3245-0185	Secondary Participation Guaranty and Certification Statement	This collection has been reinstated. New expiration date is 3/31/2004.
3245-0188	Personal Financial	This collection has been reinstated. New expiration

	Statement	date is 11/30/2004.
3245-0189	Business Loan Reconsideration Request	The Office of Financial Assistance is currently working on the PRA package. We anticipate submission by 6/02/2002.
3245-0191	Reporting and Recordkeeping for Lenders	The Office of Financial Assistance is currently working on the PRA package. We anticipate submission by 6/02/2002.
3245-0203	Contract Progress Report	Currently under review by the Office of GC/BD.
3245-0205	8(a) Annual Update	The Office of GC/BD is currently working on the PRA package. We anticipate submission by 7/02/2002.
3245-0270	Semi-Annual Report on Services in Connection with Obtaining Federal 8(a) Contracts	The Office of GC/BD is currently working on the PRA package. We anticipate submission by 7/02/2002.
3245-0307	Surety Guarantee Graduation Questionnaire	This collection was discontinued due to a decrease in respondents – less than 10. OMB 83C was forwarded to OMB on 1/28/2002.
3245-0314	Voluntary Customer Surveys	SBA is seeking a renewal from OMB. We anticipate the PRA package will be submitted by 4/2002.

FEMA Violations		
OMB No.	**Collection Title**	**Compliance Status**
3067-0161	National Fire Incident Reporting System	This was an unapproved collection. The Information Collections Management staff is working with the program manager to reinstate the collection. A draft of the proposed clearance package addressing OMB's "Terms of Clearance" is currently under review. This collection will be submitted as an emergency clearance request so that it can be brought into compliance as quickly as possible.
3067-NEW	Federal Hotel and Motel Fire Safety Declaration Form	This was an unapproved collection. FEMA staff is working with the program manager to request OMB approval of this collection. The proposed clearance package is currently under review. This collection will be submitted as an emergency clearance request so that it can be brought into compliance as quickly as possible.
----	Format for Identifying Exemplary Practices in	This was an unapproved collection. The Information Collections Management staff is working with the program office to determine the status of this collection, i.e., whether it is still being

	Emergency Management	used, and if so to get the OMB clearance package prepared and submitted to OMB.
----	Reader Survey Form	This was an unapproved collection. The form is no longer being used to survey readers of the FEMA publication titled "Partnerships in Preparedness, A Compendium of Exemplary Practices in Emergency Management" Volumes I, II, III, IV.
----	Project Impact Commitment Form	This was an unapproved collection. The "Project Impact" initiative has been discontinued. FEMA is not disseminating any publications relating to this initiative and any information collections that have been identified or previously approved by OMB are no longer needed.
3067-0181	Survey of Contractor Responsibility	This was a lapsed collection. The collection is no longer being used and should have been formally submitted as a discontinued collection through OMB's notification process.
3067-0207	Hazard Mitigation Grant Program Application	This was a lapsed collection. A draft regulation is currently being coordinated that implements Section 404(c) of the Disaster Mitigation Act of 2000 and amends the Hazard Mitigation Grant Program regulation currently in 44 CFR Part 206 Subpart N. The program office will be working with the Office of General Counsel to publish the proposed rule sometime in May 2002. In addition, the application requirements in FEMA guidance documents will also be reviewed together with draft regulation for completion of the OMB clearance package.
3067-0229	Mortgage Portfolio Protection Program	This was a lapsed collection. The draft OMB clearance package is pending review by the Information Collections Management staff. Because this collection is contained in a FEMA regulation, the OMB clearance package will be submitted for an emergency processing approval.

*d. Last year's ICB revealed that **HUD** and **Agriculture** had 99 and 96 PRA violations, respectively, during FY 2000. During FY 2001, these agencies again top the list, with 113 and 67 violations, respectively. What steps has OMB taken since January 20, 2001 to rectify the chronic paperwork violations problems at these two agencies?*

Answer: We take our responsibility for eliminating PRA violations very seriously. As mentioned above, on November 14, 2001, OMB sent a memo to the chief information officers and general counsels for each agency covered by the Paperwork Reduction Act, asking for an update of agency efforts on resolving outstanding agency violations from the FY 2001 ICB. Both HUD and USDA replied to the memo, and listed the steps they were taking on each individual violation in order to bring the collection into compliance with the PRA.

In the FY 2002 ICB, HUD had 37 unresolved violations of previously approved collections, and had resolved 76 violations throughout FY 2001. USDA had 21 unresolved violations of previously approved collections, and had resolved 40 violations throughout FY 2001. While the number of unresolved violations is still unacceptably high for these agencies, they have both made considerable progress in resolving existing violations and avoiding new violations.

We are continuing to follow up with all agencies to ensure strict compliance with the PRA. We will be sending another memo to agencies, listing the violations that OMB reported as outstanding in the FY 2002 ICB. For those agencies with a substantial number of outstanding violations, such as HUD and USDA, we will be following up that memo with meetings with the CIO and GC to determine how these violations will be resolved, and how further violations will be avoided in the future.

Q5. Progress in Reviewing Regulatory Paperwork. The FY 2001 Treasury and General Government Appropriations Act required an OMB report to Congress which: (a) evaluated the extent to which the PRA reduced burden imposed in agency rules ("regulatory paperwork"), (b) evaluated the burden imposed by each major rule imposing more than 10 million hours of burden, and (c) identified specific expected reductions in regulatory paperwork in FYs 2001 and 2002. OMB's report did not fully respond to the statutory requirements. In response, in September, I asked OMB to reexamine 15 specific non-IRS rules each imposing over 10 million hours of burden.

What is the progress of reexamining the paperwork in each of the following rules?:

- *Labor: Process Safety Management (PSM) of highly hazardous chemicals (79 million hours on August 30, 2001)*
- *SEC: confirmation of Securities Transactions (56 million hours)*
- *Transportation: Hours of Service of Drivers regulations (42 million hours)*
- *Transportation: Inspection, Repair, & Maintenance (35 million hours)*
- *SEC: recordkeeping by Registered Investment Companies (21 million hours)*
- *FTC: Truth in Lending regulation (20 million hours)*
- *HHS: Investigational New Drug (IND) regulations (17 million hours)*
- *EPA: standards for the use or disposal of Sewage Sludge (13 million hours)*
- *Labor: Bloodborne Pathogens standard (13 million hours)*
- *FTC: Fair Packaging & Labeling Act regulation (12 million hours)*
- *Treasury: recordkeeping & reporting of Currency & Foreign Financial Accounts (12 million hours)*
- *Labor: OFCCP recordkeeping & reporting requirements (11 million hours)*
- *HHS: Medicare & Medicaid for Home Health Agencies (10 million hours)*
- *HHS: Clinical Laboratory Improvement Amendments (CLIA) (10 million hours)*
- *Education: Federal Family Education Loan program (10 million hours)*

Answer: OMB has conducted a review of the 15 regulations identified by the Subcommittee as imposing more than 10 million hours of paperwork burden. The results of this review are summarized in Appendix B. For each regulation, information is provided that describes the associated reporting and recordkeeping requirements, the burdens they impose, the status of OMB's approval of the requirements, and a recommendation by OIRA staff to take action outside the normal Paperwork Reduction Act (PRA) review and approval process.

As a general matter, OIRA carefully scrutinizes regulatory monitoring and reporting requirement when they are first issued and when they are subsequently submitted to OMB for renewal of approval under the PRA. OMB's review of collections in regulations focuses on minimizing paperwork burden while ensuring that agencies obtain the information they need to ensure compliance with applicable standards. Even in cases where OMB decides not to pursue an initiative with an agency to address the reporting burdens in a particular rule, the PRA process provides an

opportunity to regularly assess burdens.

OMB's initial review of the 15 regulations identified one candidate for reform (the Department of Transportation's Drivers Record of Duty Status) and three possible candidates for reform – the Department of Labor's OFCCP Recordkeeping and Reporting Requirements, the Department of Labor's Process Safety Management rule, and the Department of Health and Human Services' Use of the OASIS for Home Health Agencies. For the 11 other regulations, OMB does not recommend any action beyond the regular PRA review process.

It should not be surprising that OMB's review found few candidates for reform. Selecting targets based on hour burden alone fails to take into consideration the usefulness, or practical utility, of the information Federal agencies need to achieve important programmatic missions. As indicated in Appendix B, OMB has found that the paperwork burden imposed by 11 of the 15 rules is justified by their practical utility. Many of these 11 regulations address important public needs, such as protecting the country from future terrorist attacks and providing basic consumer protections in the credit and securities markets.

OIRA will make final decisions about whether to work on these 15 rules when OIRA's public comment process on existing rules and information collections ends at the end of the month. The public nominations for reform of regulatory and paperwork requirements will be considered in conjunction with these 15 rules. The President has instructed OIRA to give particular attention to burdensome rules that impact the small business community yet have little or no public benefit.

Q6. Public Disclosure. The PRA's "Public Protection" provision is an important OMB tool to reduce paperwork. In April, I asked if OMB would publish a monthly OMB Notice in the Federal Register identifying: (a) all expirations of OMB PRA approval and (b) information describing action by the executive branch to achieve each major program reduction. Such a Notice could be widely circulated by interest groups to the affected public and will more fully actualize the PRA "Public Protection" provision. In October, OMB replied that, from information on its website, "the public can determine whether a particular agency collection has a currently valid OMB approval."

I do not believe that OMB's website provides sufficient information for the public to assess monthly results in paperwork reduction and paperwork for which the public is no longer required to comply. As a consequence, will you publish such a Federal Register Notice? If not, why not?

Answer: OMB has determined that we will not publish such a *Federal Register* notice for the following reasons. First, to issue the type of notice you describe, OMB would have to make individual, case-by-case legal determinations for each item that OMB included in the announcement. As the courts have made clear (and as OMB discussed at length in the preambles to OMB's 1995 PRA implementing regulations), an agency's failure to comply with the PRA does not override statutory requirements under which the public is required by law to submit information to an agency. OMB would therefore have to request that the Justice Department conduct a legal review of the underlying statute for each collection to determine if the reporting is required by statute and not simply by agency action. Obtaining the Justice Department's concurrence before publishing the notice would also be necessary because Justice would be responsible for bringing any enforcement actions.

Second, the information on violations could easily become out-of-date in the intervals between each *Federal Register* notice. An agency, for example, could obtain OMB's approval of a collection after it appeared in the *Federal Register* notice but before the next notice is published. This "out of date" problem would leave members of the public in the position of relying on an OMB notice that is no longer correct.

Third, we believe a much better use of Federal resources would be to eliminate violations by having a "zero tolerance" policy for PRA violations by agencies. This is the objective of the process described in our response to Question 4 above. Moreover, we would not want to suggest that PRA violations are acceptable as long as they are published in the *Federal Register*. Finally, we think it would be unwise to divert government resources from the day-to-day efforts by OMB and agency CIOs to relieve paperwork burden to the legal reviews and the interagency consultations that would be required to publish the notice, since, as GAO noted at the hearing, most resolutions of violations do not result in burden reductions for the public.

Q7. Staffing for IRS Paperwork. IRS accounts for 83 percent of all government-wide paperwork burden. Most of this paperwork burden is due to forms which the public has to complete, not regulatory rulings. In the last few years, its paperwork reduction initiatives have barely made a dent in this burden. Currently, OMB has only one person working part-time on IRS paperwork. In April, I asked if OMB would increase its staffing devoted to IRS paperwork reduction. In October, OMB replied, "Administrator Graham does not intend to make staffing decisions on IRS until he better understands IRS' initiatives in this area."

To improve results, will you increase OMB staffing devoted to IRS paperwork reduction? If so, to how many full-time equivalents? If not, how will you assure this Subcommittee that next year will show sizeable paperwork reduction results by the IRS?

Answer: It is our judgement that OMB's current staffing level for IRS paperwork review is appropriate. This conclusion is based on (1) a consideration of OMB's general PRA oversight responsibilities, (2) OMB's historical experience with the PRA, (3) our conclusion that the Tax Code is the source of most taxpayer burden, and (4) our engagement with IRS on its effort to improve its measurement of taxpayer burden.

PRA Oversight. We must consider OIRA's overall staffing level in light of our efforts to work with all agencies, including IRS, to ensure that the Federal government does all that it can to reduce paperwork burden while improving the productivity, efficiency, and effectiveness of Federal programs. This oversight requires OMB to balance of the quality of the information that agencies collect, use, and disseminate against the reporting burdens imposed on the public. To meet its regulatory review and information collection review responsibilities, OIRA allocates its staff to those areas where there is the most opportunity for impact. EPA and HHS regulations have more economic impact than the rules of other agencies, and are among the highest volume regulators as well. By way of contrast, we do not formally review Treasury regulations.

Historical Oversight of IRS Paperwork. The current staffing level for IRS paperwork review has not changed since the Paperwork Reduction Act was first enacted in 1980. Since then, OMB and IRS have acquired over 20 years of experience complying with the PRA's requirements. Most of the more burdensome IRS information collections – many of which are high-volume tax forms that are based on statutory requirements – have been reviewed by OMB on a recurring basis. OMB and IRS have therefore resolved many paperwork issues in previous reviews. Consequently, even though the number and overall burden of IRS collections have increased – primarily due to statutory revisions to the Internal Revenue Code and demographic and economic changes (e.g., increases in population and expanded economic activity) – OMB has not had to increase its staffing devoted to the review of IRS collections.

The Tax Code and IRS Burden. In evaluating IRS's record on burden reduction, it is

important to note the challenge IRS faces in administering the Tax Code. To ensure taxpayer compliance with our tax laws, IRS must collect a tremendous amount of information. This task is complicated by a massive, complex Tax Code that is subject to continuous revision. In the 15 years following the 1986 overhaul of the Code, Congress passed 84 tax laws. These laws required IRS to create and/or revise reporting and recordkeeping requirements, which in turn increased taxpayer burden. Moreover, there are other factors outside the control of IRS – most notably increases in the frequency of tax filings due to economic growth – that increase the IRS burden hours.

Measuring Burden. In recognizing that the Tax Code hinders IRS's ability to reduce taxpayer reporting burden, OMB has worked with IRS and Treasury to replace its current burden estimation methodology with a new measure of compliance burden. This revised measure will provide policymakers with a tool to assess the effects of legislative proposals to create and revise statutory provisions on the taxpayer burden *before* they are enacted. The specific goals of the new methodology include (1) measuring compliance burden more comprehensively and accurately by, for example, accounting for electronic filing methods; (2) providing a tool to reduce compliance burden during the development and analysis of legislative and administrative proposals; and (3) providing a tool to explain current levels of taxpayer burdens and the changes in those burdens due to administrative or statutory changes. We believe that the capability of the new model to predict changes in burden due to changes in tax law – as well as changes in IRS tax administration – will allow OMB, Treasury, IRS, and Congress to work together to achieve tax policy objectives in a manner that minimizes taxpayer burden, consistent with the effective and fair collection of needed tax revenue.

Q8. Status of OMB/DOI/USDA Joint Effort. At last year's April 24, 2001 hearing, a public witness identified duplicative and burdensome paperwork imposed on farmers. In May, I wrote a joint letter to OMB Director Daniels and Interior Secretary Norton asking for OMB to work jointly with the Departments of the Interior and Agriculture to eliminate any duplicative paperwork. What is the status of this joint effort?

Answer: The Bureau of Reclamation (DOI), USDA, and OMB completed a review of the Bureau of Reclamation information collection, "Individual Landholder's Certification and Reporting Forms for Acreage Limitation" (OMB # 1006-0005) in March. During the review, OMB, DOI, and USDA staff examined both the universe of respondents for the collection and the data elements required to implement each agency's programs. DOI, USDA, and OMB staff concluded that, while there is some overlap in DOI and USDA respondents, statutory and regulatory program requirements for the agencies require different information collections for different categories of respondents. For example, if the Bureau of Reclamation requires irrigation water users to file a form, their filing status and the information required depends on whether the respondent is an individual, entity, charitable organization, trust, or public entity and if the respondent is subject to the new law or the old law. USDA does not require separate forms for these classes of respondents, nor do they always require respondents to identify themselves according to the Bureau of Reclamation categories.

Similarly, while both DOI and USDA collect detailed information, the nature of the detail required by each agency differs in such a way that it is not possible to disaggregate, aggregate, or otherwise transform one agency's collection of information to serve the other's purpose. For example, the Bureau of Reclamation collects information on irrigable and irrigation land located in certain water districts that have a contract with Reclamation. Information on the location of the land within the water district and whether it is irrigable or irrigated land are critical to implementation of the program. Lease and acreage information are required to meet statutory mandates. USDA collects some acreage and lease information, but they collect this information based on who will receive benefits. Information on irrigation may be collected if it affects benefits, but USDA does not collect information on whether land is irrigable. Perhaps more importantly, USDA does not collect information on either leases or acreage by water district. As a result, it would be difficult – if not impossible – to transform the current USDA collected data into a form that could be used by the Bureau of Reclamation.

Although DOI, USDA, and OMB concluded that the information collections are not duplicative, DOI and USDA recognized that information technology might be used to address concerns of their common customer base. At the end of the DOI, USDA, and OMB review, USDA and DOI agreed to examine opportunities for reducing burden through increased use of information technology.

Q9. Resolution of Agency PRA Violations. *What specific steps has OMB taken to resolve each of the following extant PRA violations:*

- *OMB #: 0938-0366 - HHS's "Intermediate Care Facilities for the Mentally Retarded, Conditions of Participation" with **6,839,873** hours when OMB approval expired on 10/31/**96***
- *OMB #: 2502-0458 - HUD's "Real Estate Settlement Procedures Act (RESPA) ... Model Disclosure Statement ..." with **6,139,920** hours when OMB approval expired on 11/30/**97***
- *OMB #: 0560-0004 - Agriculture's "Report of Acreage" with **2,854,710** hours when OMB approval expired on 6/30/**97***
- *OMB #: 1830-0510 - Education's "Reporting Requirements for Adult Education Act" with **598,930** hours when OMB approval expired on 10/31/**94***

Answer: *OMB # 0938-0336—HHS's Intermediate Care Facilities for the Mentally Retarded, Conditions of Participation.* This collection expired on October 31, 1996, and has not been reinstated. OMB will be sending a letter to CMS to determine what actions have been or will be taken in the near future to rectify the situation and to account for the burden associated with this collection. Obviously, a violation such as this is unacceptable, and we will work with HHS both to resolve it and ensure that such violations do not occur in the future.

OMB # 2502-0458—HUD's Real Estate Settlement Procedures Act (RESPA)... Model Disclosure Statement.... This collection expired on November 30, 1997, and HUD is planning on resubmitting the collection for clearance in the very near future. The 60-day *Federal Register* notice was published in late February 2002. Once comments are received (if any) and reconciled, HUD will submit the package to OMB for clearance. When we meet with the HUD CIO and GC we will cite this as an example of one of the most egregious violations, and we will explore steps that must be taken to avoid such violations in the future.

OMB # 0560-0004—Agriculture's Report of Acerage. OMB approval of this collection expired on June 30, 1997. With the passage of the 1996 Farm Bill and the consequent removal of most production controls, OMB requested that the Farm Service Agency (FSA) of USDA examine their information collections to determine whether they were necessary for the proper functioning of the agency. In July of 1996, OMB specifically requested that FSA examine their requirement for producers to report planting information for their crops (acreage reports) in person to FSA county offices. OMB was particularly concerned about the undue burden placed on producers from the "face-to-face" contact required for the reporting and about duplicative reporting. USDA's Risk Management Agency (RMA) collects nearly identical information from many of the same producers. With no response from USDA, OMB again asked USDA to describe the acreage reports that they would

continue to collect and the basis for the collection in 1997. In response, USDA committed to an in-depth review of their information collections. On September 30, 1997, USDA submitted an information collection for approval to OMB. The submission did not respond to the terms of clearance on the previous approval and did not adequately address the issues identified by OMB. OMB thus disapproved the package on November 26, 1997. OMB has met with the FSA numerous times and, in Fall 2000, with FSA and RMA, to assist USDA in resolving these issues. USDA has also submitted two packages for OMB approval since the original disapproval. Neither package provided a sufficient rationale for the continued collection of these reports and, therefore, was not approved. Most importantly, both the meetings and the submissions to OMB revealed that USDA has not resolved the issues surrounding the duplicate collection of information between RMA and FSA. In their last submission to OMB, USDA could not even provide a timetable for resolution. While some progress was made on changing the requirements for reporting, FSA has also not provided substantive evidence of change at the county office. When we meet with the USDA CIO and GC, we will discuss this violation of the PRA, and explore steps that will be taken to assure that this violation will be remedied in the very near future.

OMB # 1830-0510—Education's Reporting Requirements for Adult Education Act. OMB approval of this collection expired on September 31, 1994. Program staff elected not to renew the collection in the expectation that Congress soon would reauthorize the Adult Education Act. Congress, however, did not complete the reauthorization of the law until 1998. In the interim, the Department did not require States to respond to the law's reporting requirements, but did continue to accept submissions from States. This was a violation of the Paperwork Reduction Act. This violation was resolved on January 11, 2000, with OMB's approval of a new collection, *Adult Education Annual Performance and Financial Reports* (1830-0027), which collects similar information relating to the State grant program authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Investment Act, PL 105-220). There is a significant difference in the number of burden hours of the two collections because of differences between the two authorizing statutes and, most importantly, a difference in how burden hours were calculated for the two collections.

Appendix A
Expirations and Reinstatements, FY 2001

Federal Acquisition Regulation

OMB Number	Title	Date of Expiration	Date of Reinstatement
9000-0023	Balance of Payments Program Certificate -- FAR Sections Affected: 25.305(a), 52.225-6	09/30/2001	
9000-0077	Quality Assurance Requirements --FAR Sections Affected: Supbarts 46.1 thru 46.3; 52.246-2 thru 52.246-8; 52.246-10; 52.246-12; 52.246-15	06/30/2001	09/20/2001
9000-0088	Travel Costs--FAR Sections Affected: 31.205-46	06/30/2001	09/20/2001
9000-0102	Prompt Payment--FAR Sections Affected: Subparts 32.9; 52.232-5; 52.232-26; 52.232-27; 52.212-4	06/30/2001	09/20/2001
9000-0137	Simplified Acquisition Procedures/FACNET – FAR Sections Affected	02/28/2001	
9000-0138	Contract Financing--FAR Sections Affected Subparts 32.0; 32.1, 32.2; 32.5, 32.10; 52.232-29 thru 32	06/30/2001	09/20/2001

Federal Communications Commission

3060-0028	Application for Authorization in the Auxiliary Broadcast Services	05/31/2001	
3060-0035	Application for Renewal of Auxiliary Broadcast License	05/31/2001	
3060-0048	Application for Consent to Transfer of Control	01/31/2001	

OMB		Date of	Date of

Number	Title	Expiration	Reinstatement
3060-0068	Application for Consent to Assign an Experimental Authorization	01/31/2001	12/14/2001
3060-0079	Application for an Amateur Club, RACES, or Military Recreation	06/30/2001	
3060-0096	Application for Ship Radio Station License (and Temporary	05/31/2001	
3060-0104	Temporary Permit to Operate a Part 90 Radio Station	04/30/2001	
3060-0107	Private Road Application for Renewal, Reinstatement and/or	06/30/2001	
3060-0108	Emergency Alert System, EAS Activation Report	05/31/2001	
3060-0134	Application for Renewal of Private Radio Station License	05/31/2001	
3060-0136	Temporary Permit to Operate a General Mobile Radio Service System	09/30/2000	
3060-0209	Personal Attacks -- Section 73.1920	03/31/2001	
3060-0210	Section 73.1930 Political Editorials	03/31/2001	
3060-0224	Requests for Waiver -- 90.151	03/31/2001	
3060-0226	Modification of License -- 90.135(d) and (e)	02/28/2001	
3060-0253	Connection of Telephone Equipment to the Telephone Network -- Part 68; Sections 68.106, 68.108, 68.110	04/30/2001	

OMB Number	Title	Date of Expiration	Date of Reinstatement

3060-0314	Section 76.209, 1612, and 76.1613 --Fairness Doctrine; Personal Attacks; Political Editorials	03/31/2001	
3060-0318	Notification of Commencement of Service or of Additional or Modified Facilities	01/31/2001	
3060-0319	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee	06/30/2001	
3060-0330	Applications to Hold Interlocking Directorates -- Part 62	04/30/2001	
3060-0348	Section 76.79 and 76.1702-Records Available for Public Inspection	02/28/2001	
3060-0361	Changes During License Term -- 80.29	04/30/2001	
3060-0425	Selection Procedure for Mutually Exclusive ITFS Applications	03/31/2001	
3060-0443	Conditional Temporary Authorization to Operate a Part 90	04/30/2001	
3060-0444	220 and 800 MHZ Construction Letter	06/30/2001	
3060-0577	Expanded Interconnection with Local Telephone Company Facilities	09/30/2000	
3060-0579	Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services	09/30/2000	
OMB Number	Title	Date of Expiration	Date of Reinstatement

3060-0623	Application for Mobile Radio Service Authorization or Rural	06/30/2001	
3060-0630	Directional Antenna System Tolerances -- Section 73.62	09/30/2001	
3060-0639	Implementation of Section 309(j) of the Communications Act, Competitive Bidding – PP Docket No. 93-253 First Report and Order	09/30/2001	
3060-0640	Construction of SMR Stations Request for Additional Information	03/31/2001	
3060-0646	Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers -- CC Docket No.94-129	01/31/2001	
3060-0746	Application for Electronic Renewal of Wireless Radio Services	06/30/2001	
3060-0794	DTV Report on Construction Progress	09/30/2000	
3060-0796	Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket 92-237 (Semi-Annual Access and Usage Reporting Requirements)	12/31/2000	
3060-0808	Amendments to Uniform System of Accounts for Interconnection -- CC Docket No. 97-212 (Proposed Rule)	02/28/2001	
3060-0811	Implementation of Section 309(j) of the Communications Act	09/30/2000	
3060-0820	Transfers of Control Involving Telecomm. Carriers	09/30/2001	
OMB Number	Title	Date of Expiration	Date of Reinstatement

3060-0827	Request for Radio Station License Update	09/30/2001
3060-0829	Streamlining of Mass Media Applications, Rules and Processes	07/31/2001
3060-0831	MDS and ITFS Two-Way Transmissions (Proposed Rule)	07/31/2001
3060-0832	Performance Measurements and Reporting Requirements for Services and Directory Assistance -- CC Docket No. 98-56 (NPRM)	07/31/2001
3060-0838	Streamlining of Radio Technical Rules in Parts 73 and 74 of the	09/30/2000
3060-0840	Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation -- CC Docket No. 98-77 (Proposed Rule)	09/30/2001
3060-0845	1998 Annual Biennial Review of ARMIS Reporting Requirements	09/30/2000
3060-0846	Amendment of the Commission's Rules to Provide for Use of	06/30/2001
3060-0847	1998 Biennial Regulatory Review, Review of Accounting and Cost	09/30/2000
3060-0869	Review of the Commission's Broadcast and Cable Equal Employment Streamlining Proceeding (Proposed Rule)	09/30/2000

OMB Number	Title	Date of Expiration	Date of Reinstatement
3060-0925	Study to Provide Information on Historical Participants in Broadcast and wireless Licensing by the FCC and Secondary Market 1950 to Present	09/30/2000	
3060-0941	Report on Line Sharing	11/30/2000	
3060-0958	Repeal or Modification of the Personal Attack and Political Editorial Rules, MM Docket No. 83-484	04/30/2001	
3060-0964	Certification for Waiver of September 30, 2000 Deadlines	03/31/2001	
3060-0976	Policy and Rules Concerning the International Interexchange	07/31/2001	
Federal Deposit Insurance Corporation			
3064-0024	Annual Report of Trust Assets	08/31/2001	
3064-0089	Asset Marketing Survey, Loans and Real Estate	10/31/2000	
3064-0107	Dispute Resolution Neutrals Questionnaire	11/30/2000	
3064-0132	Asset and Liability Back-Up Program	10/31/2000	
3064-0142	Deposit Insurance Survey of Consumers	05/31/2001	
Federal Emergency Management Agency			
3067-0021	Claims for National Flood Insurance Program (NFIP)	03/31/2000	12/07/2000
3067-0206	FEMA Grant Administration Forms	03/31/2000	02/22/2001

OMB Number	Title	Date of Expiration	Date of Reinstatement
3067-0208	State Administrative Plan for the Hazardous Mitigation Grant Program	09/30/1996	12/05/2000
3067-0219	Approval and Coordination of Requirements to use the NETC for Extracurricular Training Activities	03/31/2000	12/05/2000
3067-0248	Emergency Management Exercise Reporting System (EMERS)	10/31/1996	11/28/2001
3067-0272	Capability Assessment for Readiness (CAR)	07/31/2001	10/26/2001
Federal Energy Regulatory Commission			
1902-0024	Monthly Report of Cost and Quality of Fuels for Electric Plants	07/31/2000	01/23/2001
1902-0070	Gas Pipeline Rates: Rate Tracking	12/31/2000	10/05/2001
1902-0084	Gas Pipeline Rates: Refund Requirements	07/31/2000	02/15/2001
1902-0144	Emergency Natural Gas Sale, Transportation and Exchange	07/31/2000	02/15/2001
1902-0152	Gas Pipeline Rates: Rate Tracking (Formal)	11/30/2000	
1902-0155	Certificated Rate Filings: Gas Pipeline Rates	01/31/2001	10/05/2001
1902-0181	Pilot Project For Electronic Filing of Documents	11/30/2000	
1902-0183	California Public Utility Sellers Weekly Report	06/30/2001	
1902-0184	California Natural Gas Marketer's Report	06/30/2001	

OMB Number	Title	Date of Expiration	Date of Reinstatement
Federal Trade Commission			
3084-0116	Survey of Rent-to-Own Customers	09/30/2001	
National Aeronautics and Space Administration			
2700-0003	NASA Contractor Financial Management Reports	06/30/2001	10/15/2001
2700-0009	AST-Technology Utilization	04/30/2001	09/20/2001
2700-0050	Patent Waiver Report	08/31/2001	
2700-0052	NASA FAR Supplement, Part 1827, Patents, Data and Copyrights	05/31/2001	11/20/2001
National Science Foundation			
3145-0001	Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form	02/28/1984	02/26/2002
3145-0033	Survey of Public Attitudes and Understanding of Science and Technology	04/30/2000	02/01/2001
3145-0136	EHR Generic Clearance	02/28/2001	
3145-0141	1999 National Survey of College Graduates (NSCG)	04/30/2001	
3145-0161	Cross-Project Evaluation of The National Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC)	09/30/1998	11/29/2001

OMB Date of Date of

Number	Title	Expiration	Reinstatement
3145-0172	Outcomes and Impacts of Research Programs of the International Institute for Applied Systems Analysis	09/30/2000	
Nuclear Regulatory Commission			
3150-0031	NRC Form 244, Registration Certificate - Use of Depleted Uranium Under General License	07/31/2000	12/06/2000
3150-0189	Joint NRC/EPA Survey of Sewage Sludge/Ash	06/30/2001	
Securities and Exchange Commission			
3235-0136	Record Retention Requirements for Registered Transfer Agents	09/30/2001	
3235-0442	Recordkeeping and Reporting Requirements Relating to Broker- Dealer Trading Systems (17 CFR 240.17a-23)	03/31/2001	
3235-0516	Issuers Registering Offerings of Securities That Are Not Eligible To Use Other Forms -- Form A	03/31/2001	
3235-0517	Small Business Issuers Securities Registration -- Form SB-3	03/31/2001	
3235-0519	Securities Registration -- Form C	03/31/2001	
3235-0520	Securities Registration -- Form B	03/31/2001	
3235-0521	Rule 425	06/30/2001	09/17/2001
3235-0544	Online Investor Behavior Survey	09/30/2001	

OMB		Date of	Date of

Number	Title	Expiration	Reinstatement
Small Business Administration			
3245-0012	Requests from Borrowers (Reports, Records, and Financial Statements)	09/30/2001	
3245-0015	8(a) Business Development (BD) Program Applications	05/31/2000 07/31/2001	02/22/2001
3245-0063	SBIC Financial Reports	04/30/2001	07/19/2001
3245-0074	CDC Annual Report Guide	11/30/1997	12/06/2000
3245-0075	National Training Participant Evaluation Questionnaire	10/31/2000	
3245-0076	Notice to New SBA Borrowers	10/31/2000	03/29/2001
3245-0078	Portfolio Financing Report	04/30/2001	07/19/2001
3245-0080	Statement of Personal History	06/30/1996	05/02/2001
3245-0083	Amendments to License Application	08/31/2001	
3245-0091	Request for Counseling	06/30/2001	
3245-0108	SBDC Counseling Record	08/31/2000	04/13/2001
3245-0118	Disclosure Statement	09/30/2001	
3245-0132	Lender Transcript of Account	05/31/2000	03/12/2002
3245-0183	SBA Counseling Evaluation	10/31/2000	
3245-0185	Secondary Participation Guaranty Agreement	08/31/2000	03/29/2001
3245-0188	Personal Financial Statement	03/31/2000	11/21/2001

OMB Number	Title	Date of Expiration	Date of Reinstatement

3245-0200	Settlement Sheet	06/30/2001	03/12/2002
3245-0228	Client's Report of 7(j) Task Order Service Received	04/30/2001	
3245-0312	Survey of Job Creation and Retention in the DELTA Program	03/31/2000	01/18/2001
3245-0313	Federal Agency Appraisal Form	06/30/2000	12/07/2000
3245-0314	Voluntary Customer Surveys in Accordance with E.O. 12862	09/30/2000	
3245-0315	8(a) Electronic Application Follow-Up Survey	10/31/2000	
3245-0316	Mentoring Programs that Work, Women's Network for Entrepreneurial Training	12/31/2000	
3245-0317	Small Disadvantaged Business Certification Application	07/31/2001	
3245-0332	New Markets Venture Capital Program	07/31/2001	
Social Security Administration			
0960-0108	Report of Work Activity, Continuing Disability	11/30/2000	
0960-0141	Disability Report, Adult	04/30/2001	
0960-0284	Waiver of Your Right to Personal Appearance before an Administrative Law Judge	06/30/1990	08/30/2001
0960-0406	State Agency Schedule for Equipment Purchases for SSA	09/30/2001	
0960-0408	Time Report of Personnel Services for Disability Determination	09/30/2001	

OMB Number	Title	Date of Expiration	Date of Reinstatement

0960-0429	Notification of Projected Completion Date	07/31/2001	
0960-0504	Disability Report, Child	03/31/2001	
0960-0531	Social Security Request for Information	09/30/2001	
0960-0549	Request to Have Supplemental Security Income Overpayment Withheld from My Social Security Benefits	09/30/2001	
0960-0552	Work History Report	04/30/2001	
0960-0601	Qualified Medicare Beneficiary Demonstration Project	12/31/2000	
0960-0603	Function Report: Adult Function Report, Third Party	08/31/2001	
0960-0604	Symptoms Report	08/31/2001	
0960-0609	National Study of Health and Activity (NSHA)	09/30/2001	01/02/2002
0960-0611	Social Security Card Fee Survey	09/30/2000	
0960-0613	Referral System for Vocational Rehabilitation Providers (RSVP)	09/30/2001	
0960-0620	Advance Notice of Termination of Child's Benefits, and Student's Statement Regarding School Attendance	06/30/2001	

Appendix B
Non-IRS Regulatory Paperwork Over 10 Million Hours:
Candidates for Reform

1. DOL/OSHA: Process Safety Management (PSM) of Highly Hazardous Chemicals (OMB Control No. 1218-0200)

Summary. The standard applies to all facilities that operate a process involving more than a threshold amount of a highly hazardous chemical. The standard is intended to prevent or minimize the consequences of a catastrophic release of toxic, reactive, flammable or explosive chemicals. It places a number of requirements on such facilities including process hazard analysis, operating procedures, training, procedures for management of changes, incident investigations and several others.

Burden. The total burden is 79 million hours. The two most burdensome provisions are the requirement for procedures for the management of change (50 million hours), and the requirements for a quality assurance program to ensure the continued mechanical integrity of equipment (10 million hours). While there were no public comments on the previous submission, previous comments said that the burden was underestimated.

Status. OMB last approved this collection in October 1999; its approval expires in October 2002.

Recommendation: Possible Candidate for Reform. OMB will have an opportunity to assess the burden of this requirement in light of its practical utility when DOL requests an extension of approval later this year. There may be changes to the standard that would reduce burden without reducing practical utility. Any such change would require a lengthy rulemaking.

2. SEC: Confirmations of Securities Transactions (OMB Control No. 3235-0444)

Summary: Rule 10b-10 requires broker-dealers to disclose basic trade information to customers regarding their securities transactions. The information required by Rule 10b-10 includes: the date and time of the transaction, the identity and number of shares bought or sold, and the trading capacity (i.e., agent or principal) of the broker-dealer. In addition, depending on the trading capacity of the broker-dealer, the rule requires the disclosure of commissions and, under specified circumstances, mark-up and mark-down information. Transaction confirmations serve several functions, both for investors and for broker-dealers. As a practical matter, broker-dealers often use confirmations as customer invoices or billing statements. In addition, transaction confirmations inform investors of transaction details so they can check for errors or misunderstandings; provide investors with consumer information so they can evaluation the cost and quality of the service they receive from their broker-dealers; disclose possible conflicts of interest that may arise between investors and broker-dealers; and safeguard against fraud by permitting investors to detect problems associated with transactions.

Burden. SEC estimates that broker-dealers send approximately 3.36 billion confirmations annually. The average cost per confirmation is estimated to be 89 cents, including postage. The average cost to the industry in fiscal year 2000 was estimated to be $2.99 billion.

Status. OMB last approved this collection in January 2001; its approval expires in January 2004

Recommendation: No Action. SEC staff is planning to recommend to the Commission that SEC amend Rule 10b-10 to accommodate trading in securities futures products. According to SEC, these amendments would have little effect on PRA burden. Most transaction confirmations are generated by automated systems, which allow confirmations to be generated efficiently. Some firms deliver confirmations electronically, which also creates greater efficiencies. Further, Rule 10b-10 contains exemptions that are aimed at streamlining burden.

3. DOT: Drivers Record of Duty Status (OMB Control No. 2126-0001)

Summary. The "Hours of Services" (HOS) regulations are housed in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSR). The regulations spell out the number of hours a driver can be on duty and drive. The record of duty status is the primary tool used by the FMCSA to determine the compliance of motor carriers and CMV drivers with the maximum driving the duty time limitation prescribed in the FMCSRs.

Burden. The burden of this collection is 161,364,492 hours (up from 42,464,327). The burden includes the time required for 4,246,434 drivers to complete the record of duty status (estimated at 26 hours per year) and 12 hours per year per driver for the carriers to review the drivers' compliance.

Status. OMB last approved this collection in March 2002; its approval expires in March 2005.

Recommendation: Candidate for Reform. FMCSA is in the midst of a lengthy rulemaking to revise the current rules. FMCSA has hired a contractor to develop a regulatory impact analysis for a forthcoming final rule, which will address the burden issue. OMB's review of this rule will thus provide an opportunity to address the burden of this information collection.

4. DOT: Inspection, Repair, and Maintenance (OMB Control No.2126-0003)

Summary. The information is used by the FMCSA and State officials during compliance and enforcement activities to verify that a motor carrier has established an inspection, repair, and maintenance program for its equipment which meets the standards in part 396 of 49 CFR. It is generally recognized that there is a relationship between inspection, repair, and maintenance practices for CMVs and defect-related CMV accidents. CMVs are frequently operated in excess of 100,000 miles annually.

Burden. The burden of this collection is 35,107,856 hours.

Status. OMB last approved this collection in May 2001; its approval will expire in May 2004.

Recommendation: No Action. Safety professionals, enforcement officials, and employees in the trucking and motor coach industries recognize the documentation of CMV inspection, repair, and maintenance as an important activity to the furtherance of highway safety. These records are also critically important in determining if a motor carrier's maintenance practices were causal factors in an accident.

5. SEC: Recordkeeping by Registered Investment Companies (OMB Control No. 3235-0178)

Summary. The Investment Company Act of 1940 requires registered investment companies ("funds") and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by SEC rules. The rules require funds and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain accounts, books, and other documents that form the basis for financial statements required to be filed under section 30 of the Act, and of the auditor's certificates relating thereto. The recordkeeping requirements are a key part of the Commission's investment company regulatory program because they allow the Commission to monitor the operations of funds and evaluate their compliance with the Federal securities laws.

Burden. SEC estimated that these rules impose an average burden of approximately 4,800 annual hours per fund. The estimated total annual burden for all 4295 funds subject to the rule therefore was approximately 20,616,000 hours. Based on conversations with fund representatives, however, Commission staff believe that, even absent these requirements, most of the records created pursuant to the rules would generally be created as a matter of normal business custom to, for example, prepare financial statements.

Status. OMB last approved this collection in March 2000; its approval expires in March 2003.

Recommendation: No Action. Commission staff will begin the process of extending OMB's approval during the next year. These notices will include new estimates of the rule's paperwork burden and justification.

6. FTC: Truth in Lending Requirements (OMB Control No. 3084-0088)

Summary. The Federal Trade Commission's (FTC) Truth in Lending Requirements are designed to further comparison credit shopping and informed credit decisionmaking by requiring accurate disclosure of the costs and terms of credit to consumers. The requirements are promulgated by the Board of Governor's of the Federal Reserve System (Regulation Z) and implement the Truth in Lending Act (TILA).

Burden. The burden of the information collection is 21.5 million hours. The Commission estimates the number of annual required disclosures to be 5.4 billion responses.

Status. OMB last approved this collection in January 2000; its approval expires in December 2002.

Recommendation: No Action. The predominant burden of the disclosure requirements (all but approximately 1 million burden hours in recordkeeping) are associated with specific disclosure requirements in Regulation Z and the vast majority of the requirements are expressly mandated by TILA.

7. HHS/FDA: Investigational New Drug (IND) Regulations (OMB Control No. 0910-0014)

Summary. This collection is associated with FDA regulatory requirements for submission of a new drug application. An IND is submitted by a physician who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed. A physician might submit a research IND to propose studying an unapproved drug, or an approved product for a new indication or in a new patient population. The IND application must contain information in three broad areas, animal pharmacology and toxicology, manufacturer information and clinical protocols.

Burden. The total burden is 17 million hours. The provisions of the regulations with the highest burden are the application itself (3 million hours), making amendments to the protocol (4 million hours), and recordkeeping of individual case histories (4 million hours).

Status. OMB last approved this collection in September 1999; its approval expires in September 2002.

Recommendation: No Action. While certain sections of the regulations can likely be reformed to achieve small burden changes, it is unlikely that reform would lead to large changes given the practical utility of the information provided.

8. EPA: NPDES and Sewage Sludge Monitoring Reports (OMB Control No. 2040-0004)

Summary. This ICR authorizes the collection of Discharge Monitoring Reports (DMRs) from National Pollutant Discharge Elimination System (NPDES) permittees. These reports are the primary vehicle by which EPA and the States oversee compliance with the discharge requirements of the Clean Water Act. Industry-specific requirements to monitor particular pollutants are contained in individual effluent guidelines. In recent years, EPA has increasingly included alternatives to monitoring in new or revised guidelines. For example, facilities in the pulp and paper industry are allowed to submit information on operating parameters (that is routinely gathered by facilities anyway) in lieu of monitoring Chemical Oxygen Demand (COD), once they have completed an initial two-year monitoring period to determine the appropriate

range of parameter values. Facilities in several other industries are allowed to develop a management plan for toxic chemicals in lieu of monitoring.

Burden. The current reporting burden of this collection is 14.2 million hours.

Status. OMB last approved this collection in February 2002; its approval expires in February 2005.

Recommendation: No Action. This ICR is not recommended for further streamlining at this time. EPA has undertaken a number of streamlining efforts in recent years. For example, in 1996, EPA issued guidance to States recommending reduced monitoring frequencies for facilities with superior environmental performance (e.g., that discharge less than 50% of allowable pollutant quantities). At the time, EPA estimated a 25% burden reduction once States had fully implemented the guidance.

9. DOL/OSHA: Bloodborne Pathogens Standard (OMB Control No. 1218-0180)

Summary. This collection is associated with the OSHA standard for protecting workers exposed to contaminated needlesticks (largely in the hospital setting). It sets a number of requirements for employers to protect such workers including employee training, maintenance of a needlestick injury log, and recording of vaccinations to such workers. The standard was amended in 2000 as the result of a bill passed with strong bipartisan support requiring greater protection of workers exposed to needlesticks.

Burden. The burden of this collection is 13 million hours. The protections added by the 2000 legislation will increase the burden by an additional 2 million hours. The most burdensome provisions are the requirements to record Hepatitis B Vaccines and the training of potentially exposed workers.

Status. OMB last approved this collection in March 2001; its approval expires in March 2004.

Recommendation: No Action. The increasing risk to hospital workers of injuries from needlesticks was a key factor in the statutory expansion of these protections in 2000-2001. We therefore believe it would not be prudent to revisit this issue until the effect of the new law can be better understood.

10. FTC: Fair Packaging and Labeling Requirements (OMB Control No. 3084-0110)

Summary. The Federal Trade Commission enforces consumer disclosure requirements under the Fair Packaging and Labeling Act (FPLA). The Commission establishes requirements for the manner and form of labeling consumer commodities. The FTC rules (16 CFR 500) specifically require disclosure of product identity, net quantity of contents, and the name and location of the company responsible for the product. The purpose of the FPLA and the accompanying

regulations was to standardize the means used by sellers to disclose package content information to buyers and to eliminate consumer deception and confusion concerning product size representations.

Burden. FTC estimates the burden of FPLA to be 12 million hours, and the number of disclosures to be 1.2 million.

Status. OMB last approved this collection in January 2000; its approval expires in December 2002.

Recommendation: No Action. FTC does not have information indicating public suggestions and comment relating to the burden associated with the consumer disclosure regulations. FTC will be reviewing the status of this program more thoroughly as it prepares its request for extension towards the end of the year.

11. Treasury: Recordkeeping & Reporting of Currency and Foreign Financial Accounts (OMB Control No. 1506-0009)

Summary. This collection encompasses 16 related reporting and recordkeeping requirements that are at the core of the Treasury Department's anti-money laundering regulations for banks, savings associations, credit unions, securities broker-dealers, casinos, and money services businesses (such as money transmitters, sellers of money orders and travelers checks, and check cashers). The information collections also involve reporting and recordkeeping concerning the transportation in or out of the country of cash in amounts greater than $10,000, as well as reports by persons subject to the jurisdiction of the United States concerning foreign bank accounts. Finally, one of these information collections involves special reports of transactions pursuant to geographic targeting orders, which can be issued by Treasury when circumstances indicate that enhanced scrutiny of transactions within a particular geographic area is warranted.

Burden. Treasury estimates the burden of this requirement to be 11.6 million hours, and the number of reports by financial institutions to be 13 million.

Status. OMB last approved this collection in March 2002; its approval expires in March 2005.

Recommendation: No Action. These requirements, most of which concern the reporting and recordkeeping of cash transactions greater than $10,000 (as well as certain smaller transactions structured to avoid these reporting requirements) are necessary for law enforcement to trace funds through the financial system. Not only are they used to trace narcotics traffickers and other criminals, they are vital in tracing the financing that supports terrorist activities.

12. DOL/OFCCP: Recordkeeping and Reporting Requirements (OMB Control No.1215-0072)

Summary. This collection is associated with OFCCP regulations governing the maintenance of affirmative action plans by Federal contractors. It also includes the requirements for contractors to respond to OFCCP audits and requests for information.

Burden. The burden of this collection is 11 million hours. OFCCP modified its regulations in December 2000 streamlining the requirements of this collection somewhat. However there have been considerable complaints from contractors about the information OFCCP requests on its audits which is not outlined in regulation. The most prominent of these have been OFCCP's burdensome interpretation of the definition of a job applicant in EEOC's Uniform Guidelines on Employee Selection Procedures. We also note that the regulatory reform that streamlined the requirements of the affirmative action plan also introduced the Equal Opportunity Survey for federal contractors, a separate collection with a burden of approximately 1 million hours.

Status. OMB last approved this collection in January 2001; its approval expires in June 2002.

Recommendation: Possible Candidate for Reform. While revising the underlying regulation is not recommended, meaningful reform may be possible by examining the audit practices of OFCCP and addressing the "applicant" issue. The EO Survey was a priority one item in last year's cost-benefit report and the Department of Labor is examining its options regarding its use.

13. HHS/CMS: Medicare/Medicaid Programs Use of the OASIS for Home Health Agencies and Supporting Regulations (OMB Control No. 0938-0760)

Summary. This reporting requirement and supporting regulations require that Home Health Agencies (HHAs) report to CMS and states Medicare/Medicaid patient data using a standard core assessment data set, the Outcome and Assessment Information System (OASIS). The patient data are used for case mix adjustment in the prospective payment system for HHA Medicare reimbursement, as well as quality assurance/survey and certification efforts.

Burden. The burden imposed by this collection is 10,454,100 hours/annually. CMS expects that over time, this burden will decrease as HHAs replace their day-to-day medical recordkeeping formats with the OASIS. However, HHAs have been slow to adopt this new instrument; to date many HHAs continue to maintain OASIS along side their old recordkeeping systems. The forms include a comprehensive baseline survey, and subsets of this survey are administered as follow-ups and at discharge.

Status. OMB last approved this collection in June 2001; its approval expires in December 2002.

Recommendation: Possible Candidate for Reform. OMB extended clearance of the OASIS instrument through December 2002 under the condition that the next resubmission of OASIS include a new analysis of the practical utility of each of the OASIS data elements (including an assessment of the predictive value of each data element for reimbursement purposes and quality assurance efforts.) Numerous groups have argued that OASIS should be streamlined to contain

only those data elements essential for appropriate Medicare reimbursement. OMB also has requested that CMS refines its privacy policies with "deeming" organizations such as JCAHO and CHAP. Refinement of these privacy policies should maintain the confidentiality of sensitive data while reducing costly burden on HHAs contracting with deemed groups.

14. HHS/CMS: Clinical Laboratory Improvement Amendments of 1988 (CLIA 88) (OMB Control No. 0938-0612)

Summary. Pursuant to CLIA 88, these regulations set forth requirements that must be met by every laboratory testing human specimens for diagnostic purposes. The regulations cover independent laboratories, hospital-based laboratories, and physician laboratories. The rules include extensive recordkeeping and quality control requirements, intended to improve the accuracy of laboratory testing. Two aspects of these rules have received most of the attention over the years: regulation of physician office laboratories and requirements pertaining to cytotechnologists and pap smear testing. These rules regulated physician office laboratories for the first time and numerous efforts have been made to educate physician offices and streamline processes over the years. Certain tests commonly performed by physician offices have been waived from CLIA oversight. Also, a number of years ago, CMS developed an alternative questionnaire/survey process that allows good-performing physician labs to update past year information in a questionnaire and avoid on site inspections.

Burden. The most recent burden estimate for the CLIA rules is 10,230,714 hours annually. CMS believes that this burden is dropping over time as laboratories, particularly physician office labs, become more accustomed to the CLIA processes.

Status. OMB last approved this collection in June 2001; its approval expires in June 2004.

Recommendation: No Action. Further reductions in the CLIA program will be difficult, as long as pap smear testing remains an issue and more and more sophisticated testing moves to the physician office setting. Expeditious recognition of computer aided technologies and waivers of well designed, FDA-approved test kits may continue to ease these burdens in the future. As a result, the more burdensome provisions may be targeted on areas vulnerable to human error and greater risks of test inaccuracy.

15. Education: Federal Family Education Loan Program (OMB Control No. 1845-0020)

Collection. This collection is associated with the regulatory requirements for the Federal Family Education Loan (FFEL) program, the Direct Loan program, and the PLUS loan program. These programs include approximately 3,600 lenders, 6,000 institutions of higher education, 36 guarantee agencies, and 37 million borrowers. The overall outstanding loan balance for these programs is $250 billion. The Department of Education goes through a negotiated rulemaking process in order to promulgate any rules for the program.

Burden. The total burden is 10 million hours. The burden was reduced by 6.5 million hours (over 30% of overall burden) in 1998.

Status. OMB last approved this collection in December 2000; its approval expires in December 2003.

Recommendation: No Action. Since the rules (and related paperwork requirements) are the product of negotiated rulemaking, industry and student burdens have been vetted with stakeholders multiple times, and will continue to be discussed in future negotiated rulemakings. Any further burden reductions would have to consider impacts on program integrity.

23 ICR DISAPPROVALS SINCE 1/20/2001

OMB NBR	AGENCY	ACTION DATE	TITLE
0412-0560	AID	11/21/2001	Financial Report of all Expenditures (FRAE) (formerly known as
0420-0525	PEACE	04/05/2002	Peace Corps Fellows/USA Program Alumni Questionnaire
0572-0047	USDA-RUS	10/10/2001	Report of Compliance and Participation
0581-0123	USDA-AMS	02/13/2002	Reporting Requirements under the Regulations Governing Inspection Products
0596-0159	USDA-FS	05/24/2001	Public Perceptions of Pacific Northwest National Forest System
0596-0160	USDA-FS	08/30/2001	Public Perceptions of Land Use Change.
1018-0106	DOI-FWS	03/21/2002	Boating Infrastructure Grant Program Survey (P.L. 105-178);
1405-0136	STATE-AFA	04/05/2002	Attitude Survey Regarding Employment Choices
1559-0015	TREAS-CDFI	02/08/2002	CDFI Program Electronic Application Demonstration Project Survey
1875-0206	ED-OUS	08/07/2001	Survey of Parents of Magnet Schools Assistance Program (MSAP)
1875-0213	ED-OUS	10/16/2001	Information Technology Skill Certification Case Study
1910-5114	DOE-DOEOA	04/25/2001	Proram Quality Monitoring of IAC Participants: Clients, Alumni
2000-0527	EPA	10/18/2001	Monitoring Alternatives and the Pollution Prevention Alternative Products and Mahinery Point Source Category (40 CFR Part 438)
2020-0021	EPA-OECA	01/31/2001	Compliance Assistance Tool Evaluation Surveys
2040-0232	EPA-WATER	02/08/2001	Proposed Regulatory Revisions to the NPDES Regulations for Limitation Guidelines
2050-0178	EPA-SWER	10/17/2001	Investigations into Possible Noncompliance of Stationary Sources C.F.R Part 68.
2060-0468	EPA-AR	12/28/2001	National Survey on Environmental Management of Asthma
2080-0066	EPA-RD	10/26/2001	Stakeholder Preferences Regarding Envionmental Quality, County, New Jersey.
2120-0676	DOT-FAA	03/04/2002	NPRM for Anti-Drug and Alcohol Misuse Prevention Programs for
2138-0042	DOT-BTSA	10/23/2001	Reporting the Causes of Airline Cancellations and Delays
2900-0166	VA	10/12/2001	Application for Ordinary, Life Insurance and Information about
3245-0062	SBA	10/05/2001	SBIC License Application; Statement of Personal History and
3245-0314	SBA	02/22/2001	Voluntary customer surveys in accordance with E.O. 12862

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April 17, 2002

BY FACSIMILE
The Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service
Department of the Treasury
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Commissioner Rossotti:

This letter follows up on the April 11, 2002 hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "Paperwork Inflation - The Growing Burden on America." As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Thursday, May 9, 2002. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc: The Honorable Dan Burton
The Honorable John Tierney

Q1. Paperwork Reduction Initiatives in 2001-2002. The Office of Management and Budget's (OMB's) March 2002 inventory shows that the Internal Revenue Service (IRS) has 733 approved information collections, imposing 6.4 **billion** hours of burden on the public. Your testimony mentions 7 paperwork reduction initiatives in 2001-2002 resulting in only 72 **million** fewer hours of burden on the public. The four with over 1 million hours each are: -61 million hours for 2.6 million corporations to no longer be required to file Schedules L, M1 and M2; -5 million hours for fewer lines in the Schedule D for 1040 filers; -4.5 million hours for fewer lines in the Schedule D for 1041 estate and trust filers; and -1 million hours for fewer lines in the 6251 form for individuals to compute the Alternative Minimum Tax.

a. How many of IRS's 733 information collections were included in its proposed information collection budget (ICB) submission to OMB for **reductions** in burden in 2001 and 2002? And, how many hours of burden reduction are associated with each of these initiatives?

b. The General Accounting Office's (GAO's) written statement say that most of the increases that IRS identified in the ICB submission involved changes made at the initiation of the agency, i.e., they were not required by statute. Why did IRS decide to increase burden hours on the public for each of the following non-statutorily-required increases:

- +75 million hours, Form 1065, US Return of Partnership Income
- +11 million hours, Form 1120S, US Income Tax Return of an S Corporation
- +11 million hours, Schedules for Form 1120S
- + 7 million hours, Form 1120, US Corporation Income Tax Return
- + 4 million hours, Schedule N for Form 1120

c. Appendix C in OMB's Fiscal Year (FY) 2002 ICB, entitled "Significant Paperwork Reductions and Increases - FY 2001 & 2002," fails to identify most of the specific increases and decreases in IRS paperwork, which produce a net increase of over 200 million hours on the public. What specific decreases and increases of 100,000 hours or more did IRS submit to OMB in its proposed ICB? Please submit a full accounting for the hearing record.

Q2. Treasury's Burden Reduction Effort. How many people are working inside IRS or elsewhere in the Treasury Department to simplify tax forms and recordkeeping? What recommendations have the IRS-Treasury team produced and what is the status of these recommendations?

Q3. Burden Reduction for Small Businesses. Small businesses face more than 200 IRS forms, including more than 8,000 lines, boxes, and data requirements. In the Subcommittee's paperwork hearings in April of 1999, 2000 and 2001, you acknowledged that there is much duplication in IRS' reporting requirements for small businesses.

What specific paperwork reduction candidates did IRS pursue in 2001 and 2002 to date and will IRS pursue in the rest of 2002 to actually reduce the paperwork burden on small businesses, i.e., not new websites, CD-ROMs, training, etc.? What is IRS' estimate for the burden reduction hours associated with these initiatives?

Q4. Making Paperwork Reduction an IRS Goal. In last year's April 24, 2001 hearing, I asked, "Does the current SES [Senior Executive Service] performance standard include paperwork reduction ... If it does, is there a way to improve [it] or increase [its] importance?" You replied, "I think it is possible to take your concept and embed [it]." I followed up, asking, "is that a commitment on your part to look at it?" You replied, "Yes, I will."

a. What's the status of your review, i.e., to make paperwork reduction a commitment for your career SES staff in their annual performance appraisals under their executive performance agreements?

b. Did you also make paperwork reduction a Government Performance and Results Act (GPRA) goal and target in IRS' annual performance plan? If not, will you do so?

Q5. Efforts to Reduce Top IRS Paperwork. OMB's March 2002 inventory reveals that IRS has 41 information collections which each impose over 10 million hours of burden on the public. 10 of these each levy from 95 million to 1.5 billion hours of burden. What plans do you have to address burden reduction opportunities in each of them:

- individuals (form 1040) 1.5 billion hours
- partnerships (form 1065) 1.2 billion hours
- US corporations (form 1120) 495 million hours
- US S corporations (form 1120S) 489 million hours
- estates & trusts (form 1041) 398 million hours
- employer's quarterly Federal tax (form 941) 338 million hours
- individuals (form 1040A) 304 million hours
- depreciation & amortization (form 4562) 298 million hours
- employee's withholding (form W-4) 116 million hours
- individuals estimated taxes (form 1040-ES) 95 million hours

Q6. Burden Reduction for Farmers. In last year's April 24, 2001 hearing, a witness who is a farmer in California added up all of IRS's estimates for the tax forms that he is required to complete each year. The total was 542 hours 38 minutes. Vice Chairman Otter asked you if IRS had spoken to the "victims." You replied, "I have a list of nine groups here we go to on a regular basis. Most of these are practitioner groups that represent business."

Since the hearing, has IRS met with the American Farm Bureau Federation or other groups representing farmers for their recommendations for statutory and regulatory changes to reduce paperwork burden? If so, what recommendations did they offer?

Q7. Alternative Minimum Tax Reporting. IRS's 12/31/01 report entitled, "National Taxpayer Advocate: FY 2001 Annual Report to Congress," identifies 23 of the most serious problems encountered by taxpayers. Two are:

- #12: computing income tax using Schedule D (Capital Gains and Losses), and
- #18: computing the Alternative Minimum Tax (AMT).

IRS estimates that Form 6251, "Alternative Minimum Tax - Individuals," requires over **6 hours** for each affected taxpayer to complete. Apparently, in 1998, more than 3.4 million taxpayers included Form 6251 "just to demonstrate that they did not owe AMT" *(p. 58)*. The report states, "the number of taxpayers affected by AMT is expected to increase significantly over the next 10 years, from approximately 1.4 million to approximately 35.5 million" *(p. 59)*. According to IRS records, during the 1999 filing year, paid preparers completed 93% of all returns with AMT.

What plans does IRS have to simplify the applicable law and/or Form 6251?

Q8. Capital Gains Reporting. IRS estimates that Schedule D, Capital Gains and Losses, requires **7 hours 36 minutes** for each affected taxpayer to complete. Currently, IRS requires transaction level reporting of capital gains. Some believe that capital gains reporting can be greatly simplified by either allowing the tax filer to attach a broker's statement or by requiring reporting of net capital gains and losses instead of detailed information on each transaction. Is this a good idea?

Q9. Duplicative Reporting.

a. Has IRS made a crosscutting analysis to identify any duplication of identical information required to be provided in more than one tax form? If not, why not?

b. Please explain why taxpayers are asked to provide identical information in multiple places, e.g., on capital gains and losses [Schedule D, etc.], and supplemental income and losses from rental real estate [Schedule E & Form 8582, Passive Activity Loss Limitations]. Is IRS planning to simplify any of this reporting or any other duplicative reporting in the rest of 2002 and, if not, why not?

Q10. Depreciation of Farm Equipment. The Subcommittee asked the Farm Bureau to identify key paperwork problems. In response, the Farm Bureau identified a recent IRS change - Notice 2000-4 - which changed the rules for depreciating farm equipment, thus creating a new paperwork burden for farmers and ranchers. Many farmers trade-in used equipment when purchasing a new or pre-owned piece of equipment. Under the old rules, the new equipment was added to the depreciation schedule and the old equipment was taken off the depreciation schedule. The new rules add the new equipment but also leave on the old equipment, resulting in lengthy depreciation schedules. Taxes owed are the same under the new and old method. Will IRS return to the less burdensome approach? If not, why not?

5/9/02 HAND DELIVERED

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 8, 2002

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
Washington, D.C. 20515-1102

Dear Mr. Chairman:

I am responding to your April 17, 2002 request for information following the April 11, 2002 hearing before your subcommittee titled "Paperwork Inflation - The Growing Burden on America."

I hope this information is helpful. If you have any questions, please contact Floyd Williams at (202) 622-4725.

Sincerely,

Charles O. Rossotti

Charles O. Rossotti

Enclosure

cc: The Honorable John Tierney

Q1. Paperwork Reduction Initiatives in 2001-2002. The Office of Management and Budget's (OMB's) March 2002 inventory shows that the Internal Revenue Service (IRS) has 733 approved information collections, imposing 6.4 **billion** hours of burden on the public. Your testimony mentions 7 paperwork reduction initiatives in 2001-2002 resulting in only 72 **million** fewer hours of burden on the public. The four with over 1 million hours each are: -61 million hours for 2.6 million corporations to no longer be required to file Schedules L, M1 and M2; -5 million hours for fewer lines in the Schedule D for 1040 filers; -4.5 million hours for fewer lines in the Schedule D for 1041 estate and trust filers; and -1 million hours for fewer lines in the 6251 form for individuals to compute the Alternative Minimum Tax.

a. How many of IRS's 733 information collections were included in its proposed information collection budget (ICB) submission to OMB for **reductions** in burden in 2001 and 2002? And, how many hours of burden reduction are associated with each of these initiatives?

Answer:

Of the 733 information collections the IRS submitted to OMB 109 were for reductions in burden for 2001 and 2002 (up to April 18, 2002). The total burden reduction for these submissions is 47,743,019 hours.

Burden Reduction per Initiative

Form CT-2	**38 hours**
5471	**985,855**
RP 2000-17	**5,425**
Form 8816	**6,690**
972	**44**
8635/9383	**850**
Reg. 208156-91	**37,500**
Form SS-8	**185,791**
Tip reporting alternative commitment (hair styling industry)	**4,660**
Form 940, 940PR	**347,345**
990-PF	**1,396**
1120-F	**28,752**
2210	**2,500**
2220	**203,580**
1120-RIC	**10,389**
1120REIT	**1,147**
6478	**2,726**
2758	**839,077**
8853	**1,395**
990W	**10,258**
990T	**96,096**

5500EZ	2,500
1120POL	21,278
4626	317,400
RP 98-50	2,273,932
Notice 97-34	7,250
1120W	1,274,498
1120PC	2,134
1120L	1,195
1120IC-DISC	2,818
1040ES	1,103,992
8613	15
8847, Sched. A	106
8860	4,733
8815	360
5120	8,819
RP 2000-12	375
Form 1120-H	1,661,985
Reg. 251703-96	249,896
Form 6765	11,494
5308	390
1120-ND	1
LR-311-81 (TD 7925)	29,999
Form 5307	14
8390	415
8282, 8283	330
970	150
1023, 872C	260
6406	160
Reg. 109704-97	9
Form 8610	13
973	5
Notice 97-64	1,499
Form 4506	27,435
Form T	370
720	15,816
8873	1,670,000
1138	19
RP 97-43	549,000
Form 8453-P	20
926	730
5300, Sched Q	4,200
4804	24,504
945, 945A, 945V	27,016
2290	4,578,560
8594	224,000

6406, 6404	5,000
3520-A	160
RP 97-36	1,935
Form 990PF, 4720	1,396
W-5	7,338
5500, 5500CR	26,928,784
1120-PC	5,434
1120-RIC	14,386
5074	1
940, 940PR	21,978
1040-C	20
1042, 1042-S, 1042-T	8,640
8839	135
941, 941PR, 941SS, Sched B for 941 and 941PR	400,000
Form 8863	70,000
8825	7,050
9513	2,000
Self-select PIN Focus Group	95
RP 98-51	72,509
RP 98-50	2,273,932
Form 1001	684,000
2119	34,100
4224	22,275
8279	41,350
8709	42,600
EFTPS on-line, phase II	281
ETA interviews to improve understanding of the impact of e-services on tax practitioners	270
LMSB 1120 e-file marketing design team interviews	51
Electronic tax payment systems focus group	84
Measuring impact of IRS tax rebate communications campaign	380
Form 1040PC	1,875,681
Reg. 10704700	95,000
Form 8453-E	45,500
RP 98-15	3,300
Notice 98-17	250
IA-146-81	50,000
IA-141-83	500,000
CO 8-90	20
Tax and Wage Reporting Survey	

(STAWRS)	**335**
Notice 98-23	**25,000**
Form 12040	**50**
RP 99-27	**20,000**
Form 8482	**700**

b. The General Accounting Office's (GAO's) written statement say that most of the increases that IRS identified in the ICB submission involved changes made at the initiation of the agency, i.e., they were not required by statute. Why did IRS decide to increase burden hours on the public for each of the following non-statutorily-required increases:

+75 million hours, Form 1065, US Return of Partnership Income
+11 million hours, Form 1120S, US Income Tax Return of an S Corporation
+11 million hours, Schedules for Form 1120S
+ 7 million hours, Form 1120, US Corporation Income Tax Return
+ 4 million hours, Schedule N for Form 1120

Answer:

The following burden hour increases were needed to address compliance issues involving offshore tax shelters and other tax evasion schemes:

75 million hours, Form 1065
11 million hours, Form 1120S
4 million hours, Schedule N for Form 1120
90 million Total

For example, we required taxpayers to attach lists of their partnership holdings and also provide more information on the type of income for which the foreign tax credit was claimed. For Forms 1065 and 1120S (flow-through entities) this required line changes to Schedules K and K-1 as well as instruction changes.

- **The following changes were statutory due to legislation that passed in a prior year but became effective for 2001:**

11 million hours (Schedules for Form 1120S)
7 million hours (Form 1120 - Additional burden computed due to references to underlying code sections in Form 1120 instructions.)

c. Appendix C in OMB's Fiscal Year (FY) 2002 ICB, entitled "Significant Paperwork Reductions and Increases - FY 2001 & 2002," fails to identify most of the specific increases and decreases in IRS paperwork, which produce a net increase of over 200 million hours on the public. What specific decreases and increases of 100,000 hours or

more did IRS submit to OMB in its proposed ICB? Please submit a full accounting for the hearing record.

Answer:

2001 – 2002 Burden Reductions and Increases Submitted to OMB
Burden Reduction per Initiative: 100,000 hours or more

5471	985,855
Form SS-8	185,791
Form 940, 940PR	347,345
2220	203,580
2758	839,077
4626	317,400
RP 98-50	2,273,932
1120W	1,274,498
1040ES	1,103,992
Form 1120-H	1,661,985
Reg. 251703-96	249,896
8873	1,670,000
RP 97-43	549,000
Form 2290	4,578,560
8594	224,000
5500, 5500CR	26,928,784
941, 941PR, 941SS, Sched B for 941 and 941PR	400,000
RP 98-50	2,273,932
Form 1001	684,000
IA-141-83	500,000

Burden Increases per Initiative: 100,000 hours or more

Form 1098-T	1,053,933 hours
1040ES	120,000
1065	74,804,120
990, Sched A and B	1,130,492
8867	167,369
1116	113,152
1041, Sched D, J, K-1	1,570,085
1099-MISC	3,865,898
1099-R	1,749,081
1099-PATR	137,280
990T	135,426
1120W	396,000
8868	1,373,335
1120	1,094,526
8812	6,185,000
1120, Sched. D, H, N, and PH	4,441,164
1065, Sched. D and K-1	15,444,451
4136	127,220
940, 940PR	1,258,365

6406	218,750
1040EZ	3,897,582
5307	3,819,430
5300, Sched Q	2,621,900
943, 943PR, 943A, 943A-PR	526,961
1041, Sched D, J, K-1	8,372,121
5471	219,060
1041 Sched D, J, K-1	1,013,284
8851	1,540,000
2290	144,500
8275, 8275-R	1,605,000
2290EZ	495,000
Notice 2002-27 - IRA Required Minimum Distribution Reporting	1,170,000
4562	16,835,000
8594	215,600
8038, 8038-G, 8038-GC	532,006
941, 941PR, 941SS, 941 Sched B, 941PR Sched B	22,097,698
RP 2002-XX	7,371,000
990 Sched A, B	727,100
8606	242,085
Form 8050	348,600
720X	109,560
720	406,046
8879	5,440,000
RP 2001-56 Demonstration Auto Use	100,000
8878	610,000
1040-SS, 1040PR	2,656,120
1040 Sched A, B, C, C-EZ, D, D-1, E, EIC, F	19,011,704
1040A Sched 1, 2, 3 and EIC	8,689,904
941, 941PR, 941SS, Sched B	928,570
RP 2001-VCAP *	346,500
Form 720-TO *	2,285,280
720-CS *	148,485
8865	285,875
Reg. 107186-00 Electronic Payee Statements *	2,844,950
Form 8582-CR	1,787,850
8873 *	27,640,000
RP 2000-XX – 940 e-file program	207,125
TRAC for use in food and beverage industry *	296,916
Form 990-PF	367,885
5227	733,940
8862	330,000
8844	128,400
1045	165,660
1120 Sched D, H, N, PH	3,891,413
1042, 1042-S	143,780
Publication 1345	2,924,627
Form 1120-S	11,275,350

* New form

Q2. Treasury's Burden Reduction Effort. How many people are working inside IRS or elsewhere in the Treasury Department to simplify tax forms and recordkeeping? What recommendations have the IRS-Treasury team produced and what is the status of these recommendations?

Answer:

In general, all employees of the IRS try to help taxpayers comply with the tax law in the least burdensome manner possible. Specifically, both the offices of Tax Forms and Publications and Taxpayer Burden Reduction try hard to develop and revise forms and publications that impose the least amount of burden possible while still collecting enough information to enforce our nation's tax laws. These two offices contain over 100 employees. The most significant accomplishments in the IRS's burden reduction efforts were outlined in the testimony delivered to your committee on April 11, 2002.

In the Treasury Department, the Office of Tax Policy is working on projects to simplify the Federal tax system. The Office of Tax Policy consists of approximately 50 economists and 35 lawyers.

On April 15, the Treasury Department released the first in a series of proposals to simplify the tax code. The proposals will focus first on individuals and then on businesses. More specifically, the first group of proposals will address the treatment of families and children. Topics will include:

- **Uniform definition of a qualifying child (released April 15, 2002),**
- **Determining taxpayer's filing status (e.g., head of household),**
- **Earned income tax credit, and**
- **Taxation of dependents.**

The proposals we will be releasing in the near future focus on immediately achievable reforms of the tax system.

In addition to the on-going simplification project, the Office of Tax Policy has worked with the IRS to release administrative guidance to reduce disputes over capitalization and deduction of costs by:

- **Clarifying the capitalization of intangible assets**
- **Permitting service providers with gross receipts under $10 million to use the cash method of accounting**
- **Allowing restaurants a current deduction for "smallwares" (flatware, dishes, etc.)**
- **Simplifying the LIFO method (i.e., the inventory price index computation method),**
- **Allowing the use of replacement cost LIFE for auto dealer's parts inventories,**
- **Simplifying the application of the unit livestock method,**

- **Allowing small banks to use a simplified method of determining bad debts (bad debt conformity election)**

Q 3. Burden Reduction for Small Businesses. Small businesses face more than 200 IRS forms, including more than 8,000 lines, boxes, and data requirements. In the Subcommittee's paperwork hearings in April of 1999, 2000, and 2001, you acknowledged that there is much duplication in IRS' reporting requirements for small businesses. What specific paperwork reduction candidates did IRS pursue in 2001 and 2002 to date and will IRS pursue in the rest of 2002 to actually reduce the paperwork burden on small businesses, i.e., not new websites, CD-ROMS, training, etc.? What is IRS' estimate for the burden reduction hours associated with these initiatives?

Answer:

The paperwork reduction candidates for 2001 and 2002 that will reduce the paperwork burden on small businesses and their associated burden reduction hours (under our current method of calculating burden) are as follows:

Capital Gains Schedule D

The Form 1040 and Form 1041 Schedule D, which millions of taxpayers use to calculate their capital gains and losses, was redesigned for the 2002 tax-filing season. The goal of the revision, which cut 14 lines from the schedule in the 1040 and 15 lines in the 1041, was to reduce the difficulty of the form.

More than 21 million Schedule D (1040) filers will benefit from the new version, reducing burden by 5 million hours. We also expect that in 2002, only 800,000 of those filers will have to complete an additional worksheet, which was developed for those taxpayers who would otherwise have to complete the lines deleted from the old Schedule D.

We estimate that 1.4 million estates and trusts will benefit from the similar Schedule D (Form 1041) changes, producing 4.5 million hours in burden reduction.

Cash vs. Accrual Accounting Method:

In December 2001, the IRS proposed rules that will allow certain small businesses with gross receipts of $10 million or less to use the cash method of accounting for their income and expenses. Notice 2001-76 contains details of the proposed rules and asks for comments before we formally issue them. In the meantime, taxpayers may rely on the proposed rules as early as the 2001 tax year. We estimate 2.84 million taxpayers can take advantage of this relief.

The proposed rules should benefit service businesses that also sell related products, such as a plumber who also sells plumbing supplies. The new rules generally exclude manufacturers, wholesalers, retailers, miners, certain publishers, and sound

recorders unless they are principally a service business or perform certain kinds of custom manufacturing.

The proposed rules do not apply to certain businesses that the tax law requires to use an accrual method. For example, corporations and partnerships with corporate partners generally must use an accrual method if their gross receipts are more than $5 million.

Burden Relief for Smaller Corporations: Exempting Some From Filing Schedules L, M-1, & M-2

For tax years beginning in 2002, we will exempt corporations with less than $250,000 of gross receipts and assets from completing Schedules L, M-1, & M-2 of Form 1120; Parts III and IV of Form 1120-A; and Schedules L and M-1 of Form 1120S. These changes will establish a more reasonable threshold for these businesses. This will allow them to use recordkeeping based on their checkbook or cash receipts and disbursements journal, for example, instead of a double-entry system until they grow to the point where more internal controls would be needed.

Schedule L (Part III of Form 1120-A) provides beginning and end of the year balance sheets based on the corporation's books. Typically, corporations with less than $250,000 of gross receipts and assets prepare a formal balance sheet only because it is required for income tax purposes. Relieving them of this step will not cause undue hardship in an audit situation. However, taxpayers will still be required to maintain records detailing their assets, liabilities, and shareholders' equity accounts.

Schedule M-1 (Part IV of Form 1120-A) provides a reconciliation of income (loss) per accounting records with the income (loss) reflected on the tax return. Since generally accepted accounting principles (GAAP) do not always mirror the tax reporting requirements, Schedule M-1 provides a bridge between book accounting and tax reporting.

Typically, the Schedule M-1 is completed as the first step in preparing the tax return. The preparer will start with the book income (loss) as reflected on the final trial balance. The next step would be an analysis or comparison between the tax treatment of specific items and how they are reflected on the books.

For example, while a capital loss is fully deductible per GAAP, for tax purposes it can only be used to offset capital gains. Therefore, if a net capital loss were deducted for book purposes, it would have to be added back in arriving at taxable income.

An analysis of Schedule M-1 is recognized as an integral step in the audit process. However, in the examination of corporate tax returns with less than $250,000 of gross receipts and assets, it generally has limited application. Specifically, most of the corporations falling into this classification show limited activity on the M-1.

Generally, if a net income exists, the M-1 will show entries on line 1 (Net income [loss] per books), line 2 (Federal income tax per books), and line 10 (Income, line 28, page 1).

In reality, most corporations having less than $250,000 in gross receipts and assets do not properly adjust between book accounting and tax reporting. Relieving them of this step will not cause undue hardship in an audit situation. However, taxpayers will still be required to maintain records detailing all adjustments made to book income in arriving at taxable income.

We also examined Schedule M-2, which analyzes unappropriated retained earnings. As with the M-1, for corporations with less than $250,000 in gross receipts and assets, the M-2 reflects little more than the beginning balance affected by the current income (loss) and the ending balance.

Again, for small corporations, relieving them of the obligation to complete the schedule M-2 will not negatively affect an examination. However, as with the M-1, the taxpayer must maintain proper records of changes to retained earnings other than just the current income (loss).

We estimate these changes will affect approximately 2.6 million corporations and reduce their burden by 61 million hours.

Reducing Burden on Form 6251

The National Taxpayer Advocate lists computing the alternative minimum tax as one of the most serious problems encountered by taxpayers. For tax year 2002, we reduced complexity and taxpayer burden by eliminating 11 lines on Form 6251 (Alternative Minimum Tax – Individuals). We accomplished this reduction by eliminating unnecessary subtotal lines and consolidating other lines. We estimate 4.2 million taxpayers will benefit from these changes and reduce burden by over 1 million hours.

Project to Redesign Form 941

We are working with a contractor to redesign the widely used Form 941 (Employer's Quarterly Federal Tax Return) and the accompanying instructions. The purpose is to create a document that will reduce burden for taxpayers, practitioners, and payroll agents; reduce processing and other errors; and provide instructions that are easier to read and understand. This is the first major redesign of a business return form.

Simplification of Determination Letter Procedures

We issued several announcements in 2001 to revise determination application filing procedures that will minimize taxpayer burden. These announcements said:

- **Employers adopting a Master & Prototype (M&P) and Volume Submitter plan do not need to submit an application with the IRS if the plan adopted is identical to the specimen plan.**
- **Employers filing applications are no longer required to complete a Schedule Q and request a ruling for the information provided with this form.**
- **The Form 5300 series applications were simplified based on comments received from external stakeholders.**

This initiative affects the majority of the nearly one million employee plans. Employers adopting a pre-approved plan may rely on the favorable opinion or advisory letter of the M&P or Volume Submitter plan for most qualification requirements.

In addition, those plan sponsors still wishing to file an application for a letter would find the amount of required paperwork reduced considerably if they elect to not complete the Schedule Q.

Q4. Making Paperwork Reduction an IRS Goal. In last year's April 24th hearing, I asked, "Does the current SES [Senior Executive Service] performance standard include paperwork reduction…If it does, is there a way to improve [it] or increase [its] importance?" You replied, "I think it is possible to take your concept and embed [it]." I followed up, asking, "is that a commitment on your part to look at it?" you replied, "Yes, I will."

a. What's the status of your review, i.e., to make paperwork reduction a commitment for your career SES staff in their annual performance appraisals under their executive performance agreements?

Answer:

Burden Reduction is part of our Small Business and Self-Employed Division's strategic plan for 2003-2004, which all executives must support. But rather than making paperwork reduction a specific commitment for all SES staff for their annual performance plan appraisals, we decided to establish an office devoted to burden reduction to ensure a more focused effort and real accountability throughout the IRS. We established the Office of Taxpayer Burden Reduction (OTBR) in January of 2002. It is part of our Small Business and Self-Employed Operating Division (SBSE). The OTBR is focusing its efforts in four major areas:

(1) Informing and educating customers about their tax responsibilities
(2) Simplifying forms, publications and communications
(3) Streamlining internal policies, processes and procedures (including audit plans)
(4) Promoting less burdensome rulings, regulations, and laws.

b. Did you also make paperwork reduction a Government Performance and Results (GPRA) goal and target in IRS' annual performance plan? If not, will you do so?

Answer:

Paperwork Reduction is incorporated into the following GPRA goal:

Improve the quality of the service provided to taxpayers in filing their tax returns. **The IRS is modernizing its work processes and expanding its partnership with individuals and organizations by providing help filing returns, increasing electronic filing options, ensuring that notices and letters are more understandable, expanding our assistance into different languages, and paying refunds faster.**

Q5. Efforts to Reduce Top IRS Paperwork. OMB's March 2002 inventory reveals that IRS has 41 information collections which each impose over 10 million hours of burden on the public. 10 of these each levy from 95 million to 1.5 billion hours of burden. What plans do you have to address burden reduction opportunities in each of them:

individuals (form 1040)	1.5 billion hours
partnerships (form 1065)	1.2 billion hours
US corporations (form 1120)	495 million hours
US S corporations (form 1120S)	489 million hours
estates & trusts (form 1041)	398 million hours
employer's quarterly Federal tax (form 941)	338 million hours
individuals (form 1040A)	304 million hours
depreciation & amortization (form 4562)	298 million hours
employee's withholding (form W-4)	116 million hours
individuals estimated taxes (form 1040-ES)	95 million hours

Answer:

The IRS is always trying to minimize taxpayer burden and reviews annually each of the top ten tax forms and related schedules. Our objective is to balance taxpayer burden as fairly as possible against the need to ensure compliance with the tax laws. As explained in the answer to question 3, we are reducing by 61 million hours the burden on Forms 1120, 1120-A, and 1120S for the 2003 filing season by exempting small corporations from having to complete certain schedules on those forms. We also are working with a contractor to redesign Form 941 and the accompanying instructions.

Q6. Burden Reduction for Farmers. In last year's April 24, 2001 hearing, a witness who is a farmer in California added up all of IRS's estimates for the tax forms that he is required to complete each year. The total was 542 hours 38 minutes. Vice Chairman Otter asked you if IRS had spoken to the "victims." You replied, "I have a list of nine groups here we go to on a regular basis. Most of these are practitioner groups that represent business."

Since the hearing, has IRS met with the American Farm Bureau Federation or other groups representing farmers for their recommendations for statutory and regulatory changes to reduce paperwork burden? If so, what recommendations did they offer?

Answer:

We meet with the Farm Tax Advisory Committee (agricultural economics and law professors at land grant universities) in May each year to review Publication 225, Farmer's Tax Guide. The group did not offer any recommendations for statutory or regulatory changes at the 2001 meeting. However, we have asked the committee to bring recommendations to the 2002 meeting. We will forward all recommendations received to the appropriate offices for consideration and action.

The Office of Taxpayer Burden Reduction is planning a study in fiscal year 2003 of the burden placed on farmers.

The IRS web site provides guidance that is focused on the tax needs of farmers. The Small Business web site includes an Agriculture page that provides information on the farming community's special tax needs and includes valuable links to other resources.

Q7. Alternative Minimum Tax Reporting. IRS's 12/31/01 report entitled, "National Taxpayer Advocate: FY 2001 Annual Report to Congress," identifies 23 of the most serious problems encountered by taxpayers. Two are:

#12: computing income tax using Schedule D (Capital Gains and Losses), and
#18: computing the Alternative Minimum Tax (AMT).

IRS estimates that Form 6251, "Alternative Minimum Tax - Individuals," requires over **6 hours** for each affected taxpayer to complete. Apparently, in 1998, more than 3.4 million taxpayers included Form 6251 "just to demonstrate that they did not owe AMT" *(p. 58)*. The report states, "the number of taxpayers affected by AMT is expected to increase significantly over the next 10 years, from approximately 1.4 million to approximately 35.5 million" *(p. 59)*. According to IRS records, during the 1999 filing year, paid preparers completed 93% of all returns with AMT.

What plans does IRS have to simplify the applicable law and/or Form 6251?

Answer:

For tax year 2002, we reduced complexity and taxpayer burden by eliminating 11 lines on Form 6251. We accomplished this by eliminating unnecessary subtotal lines and consolidating other lines. We estimate that 4.2 million taxpayers will benefit from these changes and paperwork burden will be reduced by more than 1 million hours.

Q8. Capital Gains Reporting. IRS estimates that Schedule D, Capital Gains and Losses, required **7 hours 36 minutes** for each affected taxpayer to complete. Currently, IRS

requires transaction level reporting of capital gains. Some believe that capital gains reporting can be greatly simplified by either allowing the tax filer to attach a broker's statement or by requiring reporting of net capital gains and losses instead of detailed information on each transaction. Is this a good idea?

Answer:

The IRS requires transaction-level reporting to match sales reported by brokers on Forms 1099-B with those reported by the taxpayer on Schedule D. The information also is used to make revenue estimates of proposed tax law changes involving capital gains and losses (e.g., changes in tax rates and holding periods). For these reasons, we do not permit the netting of transactions on Schedule D. We also cannot allow the attachment of brokers' statements as a substitute for providing transaction-level detail on Schedule D because:

- **Brokers' statements generally do not report the property's basis (generally, its cost) and the date of acquisition.**
- **Even if brokers were required to report basis information, taxpayers often use multiple brokers and basis information is not shared among brokers. Brokers also do not have access to the basis of property acquired by gift or bequest.**
- **The attachment of brokers' statements would prevent taxpayers from filing electronically and also prevent the IRS from achieving its long-term goal of having 80% of all returns filed electronically.**

However, a few brokers are now allowing taxpayers to electronically import the transactions from their brokerage account directly to Schedule D using tax preparation software. As this practice becomes more widespread, the burden and time needed to complete Schedule D will be reduced significantly.

Q9. Duplicative Reporting

a. Has IRS made a crosscutting analysis to identify any duplication of identical information required to be provided in more than one tax form? If not, why not?

Answer:

The development process for tax forms and publications generally assures no duplication exists. Therefore, we believe a crosscutting analysis is not necessary.

b. Please explain why taxpayers are asked to provide identical information in multiple places, e.g., on capital gains and losses (Schedule D. etc., and supplemental income and losses from rental real estate (Schedule E & Form 8582, Passive Activity Loss Limitations). Is IRS planning to simplify any of this reporting or any other duplicative reporting in the rest of 2002 and, if not, why not?

Answer:

We are not aware of any duplicative reporting requirements on the forms mentioned. However, taxpayers must often carry amounts from one form (such as

Form 4797) to another form (such as Schedule D). We do this to ensure each transaction reported on the tax return receives the correct tax treatment.

For example, the sale of a business asset may result in an ordinary gain, ordinary loss, or a capital gain. If the taxpayer entered such a transaction directly on Schedule D, instead of on Form 4797, a net loss would incorrectly be subject to the capital loss limit of $3,000 or incorrectly be used to offset capital gains that are entitled to a more favorable capital gains tax rate. However, if the transaction when combined with all other business sales results in a net gain, the transaction is treated as a capital gain and must be transferred to Schedule D to get the correct tax treatment.

Q10. Depreciation of Farm Equipment. The Subcommittee asked the Farm Bureau to identify key paperwork problems. In response, the Farm Bureau identified a recent IRS change-Notice 2004-4- which changed the rules for depreciating farm equipment, thus creating a new paperwork burden for farmers and ranchers. Many farmers trade-in used equipment when purchasing a new or pre-owned piece of equipment. Under the old rules, the new equipment was added to the depreciation schedule and the old equipment was taken off the depreciation schedule. The new rules add the new equipment but also leave on the old equipment, resulting in lengthy depreciation schedules. Taxes owed are the same under the new and old method. Will IRS return to the less burdensome approach? If not, why not?

Answer:

Notice 2000-4 requires taxpayers to use a "step-in-the-shoes" rule for Modified Accelerated Cost Recovery System (MACRS) property (generally, property placed in service after 1986) acquired in a § 1031 like-kind exchange or as a result of an § 1033 involuntary conversion. As a result, the acquired MACRS property is depreciated over the remaining recovery period, using the same depreciation method and convention, as that of the exchanged or involuntarily converted MACRS property. Any excess of the basis in the acquired MACRS property over the adjusted basis in the exchanged or involuntarily converted MACRS property is treated as newly purchased property. The Notice only applies to acquired MACRS property (not land or other non-depreciable property) placed in service on or after January 3, 2000.

However, for acquired MACRS property placed in service before January 3, 2000, a taxpayer may choose to depreciate the acquired property in accordance with the principles in Notice 2000-4, but must treat this change in its depreciation method as a change in method of accounting. Prior to Notice 2000-4, many taxpayers treated the acquired MACRS property as newly placed in service with a basis generally equal to the adjusted basis of the exchanged or involuntarily converted MACRS property plus any additional amounts paid.

Notice 2000-4 generally benefits taxpayers by providing accelerated depreciation deductions for MACRS property acquired in a like-kind exchange or as a result of

an involuntary conversion. Although the notice may require additional record keeping, many taxpayers believe the tax benefits outweigh the additional paperwork. An example showing the depreciation deductions under Notice 2000-4 and without the notice is attached.

Notice 2000-4 also invited comments from the public to aid in developing regulations to address the depreciation of MACRS property acquired in a like-kind exchange or as a result of an involuntary conversion. We received several comments that compliance with the notice was burdensome for farmers and small businesses. We are considering these comments as we prepare proposed regulations that will address the depreciation of assets acquired in the transactions.

Attachment (1):

<u>Depreciation Example:</u> (Taken from page 68 of Pub. 225, Farmer's Tax Guide)

Jeff Free paid $120,000 for a tractor in 1999. He depreciated it using the 150% declining balance method. The tractor is 7-year property. In February 2001, he traded it for a chopper and paid and additional $30,000. The first table (and the example in the Farmer's Tax Guide) shows how to depreciate the equipment in conjunction with Notice 2000-4. The second table shows how depreciation for the equipment would be calculated in the absence of Notice 2000-4, that is, the replacement property is treated as newly placed in service. In the tables below, A is the tractor and B is the chopper.

Depreciation Under Notice 2000-4

Year	Dep. Rate A (%)	Dep. A	Yr. End Adj. Basis A	Dep. Rate B (%)	Dep. B	Yr. End Adj. Basis B		Total Dep.
			[120,000]					
1999	10.71	12,852	107,148					12,852
2000	19.13	22,956	84,192			[30,000]		22,956
2001	15.03	18,036	66,156	10.71	3,213	26,787		21,249
2002	12.25	14,700	51,456	19.13	5,739	21,048		20,439
2003	12.25	14,700	36,756	15.03	4,509	16,539		19,209
2004	12.25	14,700	22,056	12.25	3,675	12,864		18,375
2005	12.25	14,700	7,356	12.25	3,675	9,189		18,375
2006	6.13	7,356	0	12.25	3,675	5,514		11,031
2007				12.25	3,675	1,839		3,675
2008				6.13	1,839	0		1,839

Depreciation in the Absence of Notice 2000-4

Year	Dep. Rate A (%)	Dep. A	Yr. End Adj. Basis A	Dep. Rate B (%)	Dep. B	Yr. End Adj. Basis B		Total Dep.
			[120,000]					
1999	10.71	12,852	107,148					12,852
2000	19.13	22,956	84,192			[75,174+ 30,000]		22,956
2001	15.03	9,018	75,174	10.71	11,264	93,910		20,282
2002	12.25			19.13	20,120	73,790		20,120
2003	12.25			15.03	15,808	57,982		15,808
2004	12.25			12.25	12,884	45,099		12,884
2005	12.25			12.25	12,884	32,215		12,884
2006	6.13			12.25	12,884	19,331		12,884
2007				12.25	12,884	6,447		12,884
2008				6.13	6,447	0		6,447

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April 17, 2002

BY FACSIMILE
Mr. Thomas Hunt Shipman
Deputy Under Secretary for Farm and
Foreign Agricultural Services
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Mr. Shipman:

This letter follows up on the April 11, 2002 hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "Paperwork Inflation - The Growing Burden on America." As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Thursday, May 9, 2002. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc: The Honorable Dan Burton
The Honorable John Tierney

Q1. Paperwork Reduction. The Office of Management and Budget's (OMB's) new Information Collection Budget reveals that Agriculture had a 5.8 million net increase in paperwork from Fiscal Years (FYs) 2000 to 2001 due to program changes. Were there any significant program decreases - of 100,000 hours or more - made by affirmative agency action (instead of a change in law) during this period? If so, please elaborate. If not, why not? And, what plans does Agriculture have in the remainder of 2002 to reduce paperwork?

Q2. Farmer Paperwork. Your written testimony stated, "while the customers of each agency [Agriculture and Interior's Bureau of Reclamation] may overlap, the information collected by each is not duplicative" (p. 7). Since my request last May to OMB Director Daniels and Interior Secretary Norton, are there any results of the joint Agriculture-Interior-OMB effort? If the effort is ongoing, when do you expect to have results to share with the Subcommittee?

Q3. PRA Violations. Your written testimony stated that there were 33 Agriculture Paperwork Reduction Act (PRA) violations in OMB's August 2001 Information Collection Budget document (p. 8). In fact, OMB listed 96 Agriculture PRA violations. At the hearing, the General Accounting Office (GAO) revealed 67 PRA violations by Agriculture during FY 2001; 96 in FY 2000; and 116 in FY 1999. Also, GAO reported that, during FY 2001, Agriculture had 13 collections in violation for more than 2 years and 10 of these were in violation more than 3 years.

When will Agriculture resolve each of the extant violations of law? And, what steps has Agriculture taken to ensure no further violations of the PRA law?

Q4. Farm Bill. What are Agriculture's estimates of the paperwork implications in the House and Senate versions of the farm bill?

Q5. Report of Acreage PRA Violation. The FirstGov website includes information about two Agriculture information collection with the same OMB approval number: 0560-0004. One is the Farm Services Agency's "Report of Acreage" (FSA-578); the other is the Commodity Credit Corporation's "Highly Erodible Land and Wetland Conservation." In fact, the latter is approved under 0560-0185 even though Agriculture's printed form erroneously shows 0560-0004. And, the former was disapproved by OMB in November 1997 and September 1998 but, we are told, remains in continuous use by Agriculture in violation of law. Two of the several reasons OMB gave for its disapproved were the absence of practical utility for the information requested and duplication with other Agriculture information collections.

Is Agriculture continuing to use the Report of Acreage - with 2,854,710 hours of burden - in violation of law? If not, when and how did Agriculture notify the affected public of its discontinuance?

Rec'd 5/13/02

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

MAY 9 2002

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources
and Regulatory Affairs
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of April 17, 2002, regarding questions raised by the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs following the April 11, 2002 hearing entitled "Paperwork Inflation – The Growing Burden on America."

Attached are answers to the five questions submitted to the Department of Agriculture that were raised by the Subcommittee following the hearing. We appreciate the opportunity to respond to your questions. Please do not hesitate to contact me anytime I may be of assistance to you or the Subcommittee.

Sincerely,

Thomas Hunt Shipman
Deputy Under Secretary for Farm and
Foreign Agricultural Services

Attachment

Q1. Paperwork Reduction. The Office of Management and Budget's (OMB's) new Information Collection Budget reveals that Agriculture had a 5.8 million net increase in paperwork from Fiscal Years (FY) 2000 to 2001 due to program changes. Were there any significant program decreases – of 100,000 hours or more – made by affirmative agency action (instead of a change in law) during this period? If so, please elaborate. If not, why not? And, what plans does Agriculture have in the remainder of 2002 to reduce paperwork?

Response. USDA did not report any significant program decreases of the magnitude specified – 100,000 hours or more – from FY 2000 to 2001. During that time period, USDA was charged with implementing a variety of disaster programs and other programs supporting agricultural producers that drove the burden inventory increases. Additionally, the Department's continuous efforts to resolve outstanding violations also contributed to the increase in paperwork burden.

Currently in FY 2002, USDA has a number of "affirmative agency actions" underway that will result in burden reductions on the public. The largest of these efforts is the implementation of the Freedom to E-File Act.

The Freedom to E-File Act (PL 106-222), signed into law on June 20, 2000, required USDA to provide Internet access to all forms for the three Service Center Agencies (SCA) -- Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and Rural Development (RD) -- within 180 days of enactment (December 18, 2000). By June 20, 2002, USDA is to expand the Internet-based system to enable producers and other rural citizens to access and file all forms and selected records, and to access USDA farm related information. In addition, the Act required that not later than December 1, 2000, the Federal Crop Insurance Corporation (FCIC) and Risk Management Agency (RMA) submit a plan to allow agricultural producers to use the Internet to obtain all forms and other information concerning the program from approved insurance providers, and file electronically all paperwork required for participation. RMA has implemented this plan.

On December 18, 2000, in accordance with the 180-day deadline for initial implementation of Freedom to E-File, USDA service center agencies made many forms and user instructions available to agricultural producers over the Internet. The Office of the Chief Information Officer (OCIO) and the service center agencies worked with OMB to define a standard for developing form instructions. This standard led to a "common format" for all forms and contributed to a quicker clearance process when obtaining approval from OMB to post forms to the Internet. FSA, NRCS, and RD deployed a shared web farm infrastructure and a common searchable Internet web site to host eGovernment services. By March 31, 2000, 198 of the most frequently used forms were available to customers at www.sc.egov.usda.gov.

The SCAs are in the final stages of their project plan to meet the fundamental requirements of the Act by the June 2002 deadline. The agriculture producers of the SCAs will have the option of accessing, through a common Internet-based service, the

forms needed to participate in the SCA's respective programs and services. With the exception of forms defined as "contracts" by the SCAs, agriculture producers will be able to electronically submit the forms to the appropriate SCA servicing office. (Note: Forms defined as "contracts" will still require varying levels of personal interaction between the SCAs and their customers.) Through these electronic capabilities, the SCAs intend to minimize trips to their offices to complete these documents. For customers who do not choose the electronic option, standard mail and facsimile services will be available to the extent it is practical. The elimination of travel time and other associated efficiencies resulting from the addition of new business transaction options will yield, when considered in aggregate, a significant burden reduction for the Department.

Rising from the efforts to comply with the Freedom to E-File, the Farm Service Agency has implemented a new electronic option for obtaining a Loan Deficiency Payment (LDP). LDPs are payments made to eligible producers who, although eligible to obtain a marketing assistance loan, agree to forgo the loan in return for an LDP.

The new eLDP process will allow producers to use the Internet to request and compute LDP transactions online. eLDP will serve as an alternative delivery system. The expected results include:

- prompt issuance of the LDP,
- improved services due to 24 hour accessibility,
- decreases in Agency prompt payment expenditures, and
- reduced paperwork burden.

The electronic submission of LDPs will significantly reduce the paperwork burden. Producers who participate in the eLDP program will make one initial visit to the local USDA Service Center to obtain user credentials (user ID and password) and to complete the "Request for Electronic Loan Deficiency Payment Services" form. Once the producers receive their unique ID and access to eLDP services, they can access and complete the transaction online. eLDP services will be accessible 24 hours a day from any PC with Internet access.

Eliminating travel to the county office and the time the producer spends waiting in the local FSA county office will greatly reduce burden. In addition to the producer's travel and wait time, the estimated annual cost to the Federal government will also be reduced. LDP calculations and payment disbursements will be completed automatically. This alleviates the need for manual LDP rate determinations or payment calculations.

Another agency of USDA that has efforts underway to improve program performance and minimize paperwork burden is the Food and Nutrition Service (FNS). FNS is conducting a comprehensive review of the Special Nutrition Programs – including the school meals programs, the food distribution programs, and the special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The review will examine the data elements currently collected from the State and tribal agencies that operate the Special Nutrition Programs, and the local organizations that deliver benefits. The agency

will also closely scrutinize the collection instruments and processes used to assemble and finalize program data. While it is not clear what the exact burden reduction estimate will be, it is clear that elimination of any unnecessary data elements and improvements in the process of collection, cleaning, and reporting of data will result in a less burdensome and more efficient information collection system.

USDA also has many initiatives underway within the Department's eGovernment Program. These initiatives, referred to as smart choices, focus on creating single electronic service delivery methods from cross-agency collaboration. While these efforts may not yield immediate burden reductions during FY 2002, taking a coordinated approach to developing new service delivery processes such as eLoans, will ultimately streamline information collection activities and ensure customer-friendly operations.

Q2. Farmer Paperwork. Your written testimony stated, "while the customers of each agency [Agriculture and Bureau of Reclamation] may overlap, the information collected by each is not duplicative" (p.7). Since my request last May to OMB Director Daniels and Interior Secretary Norton, are there any results of the joint Agriculture-Interior-OMB effort? If the effort is ongoing, when do you expect to have results to share with the Subcommittee?

Response USDA is committed to working collaboratively, internally and across the Federal government, to reduce redundant data collections, promote greater sharing of information collected, and leverage information technology to improve the efficiency and effectiveness of program delivery. USDA and the Department of Interior (DOI) have a history of partnership in many different program areas.

Certain field offices of the Forest Service have co-located with field offices of the Bureau of Land Management in connection with the Service First initiative. At these locations, common policies have been implemented to give a seamless appearance to the customer. Additionally, there has been work on consolidating certain information collections maintained by each agency to reduce customer confusion and paperwork burden.

USDA currently has approval for an application for volunteer programs that is also used by agencies in DOI. Efforts are underway to revise the information collection to expand usage of the form to five different agencies within DOI and two agencies from USDA. The collaboration among these agencies has also resulted in a government-wide portal - volunteer.gov – for obtaining information about and applying for volunteer opportunities.

With respect to efforts between USDA and the Bureau of Reclamation (BOR) to analyze potential redundancy among several specific information collections, both organizations involved concluded that information collected by each agency is not duplicative. However, the possibility of collaborating in ways that foster greater internal efficiencies or facilitate our customers' ability to do business with us are the basis for ongoing discussions.

DOI is already leading a Presidential eGovernment Initiative called Geospatial Information One-Stop. The objective of this effort is to make Geospatial data more accessible and usable for all agencies. USDA is a significant partner agency in this effort. It is envisioned that over time as the various "layers" of spatial data are populated in a central repository, agencies such as BOR and the Farm Service Agency (FSA) would be able to require less reporting of information by customers and rely more on technology to determine eligibility and ensure compliance. While this type of change in business process is still several years away, the discussions that are occurring in support of the Geospatial Information One Stop initiative are critical for agencies to be able to plan for the future.

USDA and BOR are also examining other opportunities that would make doing business with the Federal government less cumbersome. Some of the ideas being discussed include more co-location to reduce the number of physical locations customers must travel to and further data sharing. A report outlining the pros and cons of each proposal will be developed and should be available by mid-summer.

Q3. PRA Violations. Your written testimony stated that there were 33 Agriculture Paperwork Reduction Act (PRA) violations in OMB's August 2001 Information Collection budget document (p. 8). In fact, OMB listed 96 Agriculture PRA violations. At the hearing, the General Accounting Office (GAO) revealed 67 PRA violations by Agriculture during FY 2001; 96 in FY 2000; and 116 in FY 1999. Also, GAO reported that, during FY 2001, Agriculture had 13 collections in violation for more than 2 years and 10 of these were in violation more than 3 years.

When will Agriculture resolve each of the extant violations of law? And, what steps has Agriculture taken to ensure no further violations of the PRA law?

Response. As it pertains to USDA's written testimony, the *Information Collection Budget (ICB) for FY 2001* did document 96 violations of the Paperwork Reduction Act (PRA) across 3 tables. Sixty-three (66 %) of the total number of violations were included in table B.1 which described violations of the PRA during fiscal year (FY) 2000 that had already been resolved. USDA chose to discuss in its written testimony the 33 violations (highlighted in tables B.2 and B.3) that remained outstanding at the time the FY 2001 ICB was published. In summary, USDA did complete FY 2000 with 96 violations (63 + 33) of the PRA.

USDA takes very seriously its compliance with the Paperwork Reduction Act. The violation statistics cited by GAO during the hearing are evidence of our commitment as they reflect a downward trend in the number of violations. Over the past several years, USDA has taken several steps to ensure a minimum of violations including:

- Increasing the number of staff at the Departmental level to support PRA compliance activities,
- Preparing a monthly report of violations for the Chief Information Officer to highlight agencies with compliance issues,

- Conducting quarterly "roundtables" of Agency PRA Coordinators to discuss PRA issues such as violations, and
- Updating and distributing educational materials about the PRA and the information collection approval process to assist program staff in obtaining and maintaining OMB approvals for information collections.

As stated by GAO during the hearing, USDA incurred 67 PRA violations during FY 2001. Forty of the violations were resolved by March 12, 2002. Of the remaining twenty-seven, 5 have since been resolved, 3 are at OMB pending reinstatement, and 13 remain outstanding.

A letter from USDA's Acting CIO was recently sent to each Agency Head in the organizations with outstanding violations. These letters requested that the agency submit a remediation plan for each violation. OCIO will compile the information received from each agency into a comprehensive plan that will be used to manage agency progress toward resolving the existing violations.

To avoid further violations, USDA plans to update its internal directive that provides guidance on information collection activities. The revised directive will incorporate suggested timelines for managing the renewal of information collection approvals as well as step-by-step instructions and templates for accomplishing each milestone in the process.

Q4. Farm Bill. What are Agriculture's estimates of the paperwork implication in the House and Senate versions of the farm bill?

Response: Once the Farm Bill becomes law, programs must be assigned and implementation operations must be developed by the various USDA agencies. At this time it is impossible to estimate paperwork implications for implementing all the programs that will be included in the new legislation. It could take several months for USDA to fully realize paperwork implications of the Farm Bill.

Q5. Report of Acreage PRA Violation. The FirstGov website includes information about two Agriculture information collections with the same OMB approval number: 0560-0004. One is the Farm Service Agency's "Report of Acreage" (FSA-578); the other is the Commodity Credit Corporation's "Highly Erodible Land and Wetland Conservation." In fact, the latter is approved under 0560-0185 even though Agriculture's printed form erroneously shows 0560-0004. And, OMB disapproved the former in November 1997 and September 1998 but, we were told, remains in continuous use by Agriculture in violation of law. Two of the several reasons OMB gave for its disapproval were the absence of practical utility for the information requested and duplication with other Agriculture information collections.

Is Agriculture continuing to use the Report of Acreage – with 2,854,710 hours of burden- in violation of law? If not, when and how did Agriculture notify the affected public of is discontinuance?

Response The most likely explanation for the concern regarding the same OMB control number on both forms is that the Subcommittee had an older version of the CCC-21. Prior to the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), the Farm Service Agency had OMB approval to collect information using the FSA-578, CCC-21, and a variety of other forms under OMB control number 0560-0004. After enactment of the 1996 Act, FSA chose to reorganize many of its information collection activities — some new collections were created, others were eliminated. The FSA-578, Report of Acreage, continued to be approved under OMB control number 0560-0004 through June 30, 1997. In May, 1999, OMB approved form CCC-21 as a part of a new information collection package for the Highly Erodible Land Conservation and Wetland Conservation Programs and assigned control number 0560-0185. The current version of form CCC-21 reflects this OMB control number and is approved through March 31, 2003.

Crop acreage information is collected. USDA continues to collect information without OMB approval while simultaneously trying to resolve the violation, because we have to address other statutory program delivery requirements that are based on the data. Further, we plan to take appropriate steps to address the violation as soon as the 2002 Farm Bill is enacted which may include new statutory requirements for collecting the data. It is not practical at this juncture to initiate the approval requesting process recognizing that the new legislation may be only days away.

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House of Representatives

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BERNARD SANDERS, VERMONT,
INDEPENDENT

April 17, 2002

BY FACSIMILE
Mr. Scott Cameron
Deputy Assistant Secretary for Performance
and Management
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Mr. Cameron:

This letter follows up on the April 11, 2002 hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "Paperwork Inflation - The Growing Burden on America." As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Thursday, May 9, 2002. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc: The Honorable Dan Burton
The Honorable John Tierney

Q1. Paperwork Reduction. The Office of Management and Budget's (OMB's) new Information Collection Budget (ICB) reveals that Interior had a 1.9 million net increase in paperwork from Fiscal Years (FYs) 2000 to 2001 due to program changes. Were there any significant program decreases - of 100,000 hours or more - made by affirmative agency action (instead of a change in law) during this period? If so, please elaborate. If not, why not? And, what plans does Interior have in the remainder of 2002 to reduce paperwork?

Q2. Farmer Paperwork. Your written testimony stated, "While both USDA and BOR collect detailed data, the data collected by BOR are not sufficient for USDA's purposes, and USDA does not collect data with the type of detail required by BOR in order to administer and enforce the acreage limitation provisions" (p. 9). Since my request last May to OMB Director Daniels and Interior Secretary Norton, are there any results of the joint Agriculture-Interior-OMB effort? If the effort is ongoing, when do you expect to have results to share with the Subcommittee?

Q3. PRA Violations. The General Accounting Office's (GAO's) testimony last year revealed 16 violations of the Paperwork Reduction Act (PRA) by Interior during FY 2001; 25 in FY 2000; and 43 in FY 1999. Also, GAO reported during the hearing that Interior had 9 collections in violation for more than 2 years and 4 of these were in violation for more than 7 years. OMB's ICB shows one Interior violation since 1994 that was unresolved as of March 12, 2002 (p. 134). The Subcommittee's investigation of Bureau of Reclamation paperwork revealed that Interior let OMB approval for six information collections expire, i.e., without even requesting extension approval from OMB. This mis-management occurred as many as four times for OMB #1006-0001.

What steps has Interior taken to ensure no further violations of the PRA law?

Q4. Unauthorized Paperwork. In November, OMB sent the Subcommittee a chart of 28 FY 2000 violations "without OMB approval or modified without OMB approval," i.e., not the more usual violations ("lapses") where agencies allowed paperwork approval to expire. Nine of the 28 or 32 percent were Interior's violations of law. What internal controls does Interior now have in place to avoid such violations in the future?

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240
MAY - 9 2002

Honorable Doug Ose
Chairman, Subcommittee on Energy Policy
Natural Resources and Regulatory Affairs
Committee on Government Reform
B-377 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Ose:

Enclosed you will find the Department of the Interior's responses to the questions for the record from the April 11, 2002, hearing on Paperwork Reduction Act issues. A copy is also being provided to the minority staff.

Please feel free to contact me with any questions.

Sincerely,

Scott J. Cameron
Deputy Assistant Secretary for
Performance and Management

Enclosure

cc: Honorable John Tierney

House Committee on Government Reform
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Paperwork Reduction Act Hearing
April 11, 2002

Responses to Questions from Mr. Ose

Question 1. Paperwork Reduction. The Office of Management and Budget's (OMB's) new Information Collection Budget (ICB) reveals that Interior had a 1.9 million net increase in paperwork from Fiscal Years (FYs) 2000 to 2001 due to program changes. Were there any significant program decreases - of 100,000 hours or more - made by affirmative agency action (instead of a change in a law) during this period? If so, please elaborate. If not, why not? And, what plans does Interior have in the remainder of 2002 to reduce paperwork?

Answer 1. As noted in my testimony, the increase in burden hours mentioned in this question was largely the result of major revisions to the regulations governing handling of individual Indian money (IIM) accounts, to implement the provisions of the American Indian Trust Fund Management Reform Act of 1994. In one new collection alone (OMB control number 1076-0154), about 1.6 million hours of burden were added to provide additional fiduciary protection to Indian allottees and tribes.

During this period, the Department instituted a program change for collection number 1076-0101, which covers forms for applying for Bureau of Indian Affairs (BIA) grants for post-secondary institutions, that resulted in a decrease of over 100,000 hours. This collection had previously been approved by OMB for 126,712 hours. In 2001, this collection was reapproved by OMB for 14,922 hours — a reduction of 111,750 hours resulting from a BIA review and restructuring of this program activity that significantly reduced the information required from individual Indian applicants.

During this same period, the Department also had two collections for which program changes resulted in reductions of over 50,000 hours each: one for OMB control number 1076-0136 (Indian Self-Determination and Education Assistance Act Programs) and one for control number 1010-0140 (Report of Sales and Royalty Remittance).

The Department has a number of initiatives, which are described in my written testimony, currently underway to further reduce paperwork burdens in FY 2002. These include, for example, moving more of our collections online to take advantage of web-enabled technologies and reorganizing and redesigning some of our business processes.

Question 2. Farmer Paperwork. Your written testimony stated, "While both USDA and BOR collect detailed data, the data collected by BOR are not sufficient for USDA's purposes, and USDA does not collect data with the type of detail required by BOR in order to administer and enforce the acreage limitation provisions" (p.9.). Since my request last May to OMB Director Daniels and Interior Secretary Norton, are there any results of the joint Agriculture-Interior-OMB effort? If the effort is ongoing, when do you expect to have results to share with the Subcommittee?

Answer 2. We have completed the joint effort with Agriculture (USDA) and the Office of Management and Budget. Our findings with regard to the data collected for the Reclamation Reform Act of 1982 (RRA) program and the data collected by USDA are as follows. There is an overlap between respondents to USDA and Bureau of Reclamation information collections. However, not all of Reclamation's customers participate in USDA programs and most of USDA's customers do not receive Reclamation irrigation water.

Due to statutory and regulatory program requirements, Reclamation and USDA do not use the same categories of program respondents. For example, whether a Reclamation irrigation water user must file a form depends on how much land that individual or entity directly or indirectly owns or leases westwide (e.g., in those irrigation projects that are subject to the acreage limitation provisions of Federal reclamation law). If a Reclamation irrigation water user must complete a form, then what form is completed is dependent on whether the respondent is an individual, entity, charitable organization, trust, or public entity and if the respondent is subject to the new law or the old law. USDA does not require separate forms for these classes of respondents, nor do they always require respondents to identify themselves. The difference between the data collections are due primarily to statutory requirements.

In terms of data elements, it appears at first blush that USDA and Reclamation collect similar information. However, the level and nature of detail in the collections differs in such ways that it is clear that the data USDA collects would not be sufficient to allow Reclamation to properly administer and enforce the acreage limitation provisions of Federal reclamation law and visa versa. For example, Reclamation collects information based on irrigable and irrigation land located in certain water districts that have a contract with Reclamation. Lease and acreage information is required to meet statutory requirements. USDA collects some acreage and lease information, but they collect this information based on who will receive benefits. Information on the location of the acreage has no relationship to irrigable and irrigation land in water districts that contract with Reclamation and specifics of leases are not necessary to administer the USDA programs. Therefore, such data are not collected by USDA.

Even if USDA collected the data Reclamation needs in order to administer the acreage limitation provisions of Federal reclamation law, there are also longstanding institutional barriers to Reclamation being able to substitute USDA data for its own. The delivery of Reclamation irrigation water, in general, is controlled at the local level by the water districts, which are not Federal entities. These districts determine if the acreage limitation program requirements have

been met by their customers and, therefore, Reclamation irrigation water can be delivered. USDA forms are filed at county offices, with little centralization of that data. While technological barriers could be overcome, both USDA and Reclamation would have to change longstanding business practices that would impact many more Reclamation irrigation water users and USDA customers than may benefit from such changes.

These findings are the result of efforts undertaken by USDA, Reclamation, and OMB to examine the issue. Included was an initial letter that Reclamation sent to USDA and OMB that detailed RRA data collection requirements and why that data was needed to fulfill statutory and regulatory provisions. In addition, obstacles to being able to substitute USDA data for Reclamation's data collection that have been identified in the past were highlighted in the hope that subsequent changes in the USDA program had eliminated the barriers. This letter was followed by various conference calls involving representatives from all three agencies and between USDA and Reclamation.

As reported in my April 11, 2002, testimony, Reclamation has identified a data collection that may provide a realistic opportunity to substitute USDA data for its own and visa versa. This data collection is not related to the RRA forms, but does impact Reclamation customers in not only those districts that are subject to the acreage limitation provisions of Federal reclamation law, but all districts that have a contract with Reclamation. Starting in May 2002, Reclamation will begin working with USDA staff to determine if one information collection effort could be used to collect data needed by both USDA and Reclamation. This effort will be accomplished under the "Bridging-the-Headgate" initiative.

Question 3. PRA Violations. The General Accounting Office's (GAO's) testimony last year revealed 16 violations of the Paperwork Reduction Act (PRA) by Interior during FY 2001; 25 in FY 2000; and 43 in FY 1999. Also, GAO reported during the hearing that Interior had 9 collections in violation for more than 2 years and 4 of these were in violation for more than 7 years. OMB's ICB shows one Interior violation since 1994 that was unresolved as of March 12, 2002 (p.134). The subcommittee's investigation of Bureau of Reclamation paperwork revealed that Interior let OMB approval for six information collections expire, i.e., without even requesting extension approval from OMB. This mis-management occurred as many as four times for OMB #1006-0001.

What steps has Interior taken to ensure no further violations of the PRA law?

Answer 3. The Department notes that the GAOs testimony documents the agency's dramatic improvement in compliance with the PRA over the years. All the long-term violations noted in Question 3 have since been resolved. In particular, the one collection that was in violation since 1994 was only discovered to be in violation during FY 2002, the result of a concerted effort to ferret out and resolve old and previously ignored problems.

In 1995 the Department significantly upgraded its Department-wide coordination and oversight of information collection activities. Information collection clearance officers were also established within each bureau at a grade level capable of managing this important task. The Department drafted new guidelines for the information collection approval process. The OMB thought highly enough of these guidelines to distribute them to other federal (non-DOI) agencies. As discussed in my testimony, the Department now has a good internal management structure in place to ensure compliance with the PRA.

Question 4. Unauthorized Paperwork. In November, OMB sent the Subcommittee a chart of 28 FY 2000 violations "without OMB approval or modified without OMB approval," i.e., not the more usual violations ("lapses") where agencies allowed paperwork approval to expire. Nine of the 28 or 32 percent were Interior's violations of law. What internal controls does Interior now have in place to avoid such violations in the future?

Answer 4. The Interior Department violations on the list referenced in Question 4 were virtually all existing, but unknown, violations that were discovered by the Department as a result of internal program reviews or rulemakings. They were all quickly rectified after being discovered. The Department views this as evidence of our recent management diligence, rather than management failure, in oversight of information collection activities. We are succeeding in our efforts to fix, rather than ignore, longstanding problems. As noted in the response to Question 3, the Department now has a internal good management structure in place that will ensure compliance with the PRA.

ADDITIONAL INFORMATION FOR THE SUBCOMMITTEE

Schedule for Reclamation Reform Act of 1982 (RRA) forms to be placed on the Internet:

RRA forms will be made available on the Internet in a "pdf" format for downloading starting in June 2002. By October 2003, districts and landholders (direct or indirect landowners or lessees) will be able to electronically complete certain RRA forms and submit such forms electronically to the Bureau of Reclamation and participating districts, as applicable. By October 2004, districts and landholders will be able to electronically complete all RRA forms and submit such forms electronically to the Bureau of Reclamation and participating districts, as applicable.

Traditionally, RRA forms for an upcoming water year are distributed in the fall. This has eliminated the confusion and other problems Reclamation encountered in the mid-1980's when Reclamation tried to distribute RRA forms during other times of the year.

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BERNARD SANDERS, VERMONT,
INDEPENDENT

April 17, 2002

BY FACSIMILE

The Honorable Elaine L. Chao
Secretary
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The Honorable John D. Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Secretary Chao and Administrator Graham:

This letter follows up on exceptional testimony provided during the April 11, 2002, hearing of the Energy Policy, Natural Resources and Regulatory Affairs Subcommittee on the Paperwork Reduction Act (PRA). Two public witnesses, representing the U.S. Chamber of Commerce and the Society for Human Resource Management (SHRM), raised concerns about the burdensome and complex paperwork imposed by the Department of Labor. Enclosed are copies of their written statements with excellent accompanying charts.

The first chart (prepared by the U.S. Chamber of Commerce) identifies 61 Federal requirements imposed by 11 Federal agencies, 41 State requirements imposed by eight State agencies, and 10 local requirements imposed by five local agencies, each of which regulates restaurants in Fairfax County, Virginia. This situation is incredible. I request that the Department and the Office of Management and Budget (OMB) jointly review these 112 requirements to identify duplication and unnecessary paperwork.

The second chart (SHRM Chart A) identifies 27 Federal and State paperwork and recordkeeping requirements with different record retention periods for a health care provider in California. This situation is also unacceptable. I request that the Department and OMB jointly review the 27 to coordinate recordkeeping requirements and retention time periods.

The third chart (SHRM Chart B) outlines the unnecessarily complicated process for businesses to comply with the Family and Medical Leave Act (FMLA). Apparently, the Department's implementing rules call for employers to record employee FMLA leave in minutes instead of full or half days. Congress never intended this complexity or micro-management.

DAN BU
CHAIRM
BENJAMIN A. G

OMB's February 28, 2002 Inventory of Approved Information Collections shows that the Department imposes 189 million burden hours on the public. The Occupational Safety and Health Administration (OSHA) comprises 74 percent of this burden. The rest is spread across the Department and includes 19 information collection of 500,000 hours or more, including FMLA. This huge paperwork burden adds to business costs and decreases capital available for investment. The bottom line is that more people could be employed or receive higher wages if paperwork burden could be reduced substantially.

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittee for the hearing record with a joint report identifying the approach and timetable which the Department and OMB will pursue to achieve paperwork burden reduction. Please initially focus on the Department's 38 information collections each imposing 500,000 hours or more. A listing of these 38 is also enclosed.

If you have any questions about this request, please contact Deputy Staff Director Barbara Kahlow at 226-3058. Please provide the requested information by May 9, 2002, to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building.

Thank you in advance for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosures

cc: The Honorable Dan Burton
The Honorable John Tierney

Top 38 Department of Labor Paperwork Requirements (each over 500,000 hours)

OMB #	Title	Paperwork Burden (hours)
1205-0420	ETA-9090 & ETA-9091 - WIA Management Information & Reporting System	758,236
1210-0039	PWBA - Summary Plan Description Requirements under ERISA	710,134
1210-0140	PWBA - ERISA Summary Annual Report Requirement	1,404,924
1210-0110	PWBA - Form-5500 Annual Return/Report of Employee Benefit Plan	1,847,163
1210-0113	PWBA - National Medical Support Notice - Part B	785,000
1215-0017	ESA - Records To Be Kept By Employers - FLSA	926,156
1215-0072	ESA - OFCCP Recordkeeping & Reporting Requirements - Supply & Service	10,895,679
1215-0148	ESA - WH-501 & WH-501S - Wage Statement	566,667
1215-0149	ESA - WH-347 - Optional Use Payroll form Under the Davis-Bacon Act	9,200,000
1215-0163	ESA - CC-41 - Recordkeeping & Reporting Requirements, Construction	4,841,475
1215-0181	ESA - WH-380 & WH-381 - The Family & Medical Leave Act of 1993 - 29 CFR 825	645,625
1215-0196	ESA - Equal Opportunity Survey	1,050,000
1218-0048	OSHA - Noise - 29 CFR 1910.95	5,175,645
1218-0065	OSHA - Access to Employee Exposure & Medical Records - 29 CFR 1910.1020	613,127
1218-0072	OSHA - Hazard Communication - 29 CFR 1200, 1915, 1917, 1918, 1926, 1928	7,560,232
1218-0092	OSHA - Lead in General Industry	1,280,916
1218-0099	OSHA - Respiratory Protection	6,685,348

OMB #	Title	Paperwork Burden (hours)
1218-0134	OSHA - Asbestos in Construction - 29 CFR 1926.1101	5,569,659
1218-0145	OSHA - Formaldehyde - 29 CFR 1910.1048	591,079
1218-0150	OSHA - Control of Hazardous Energy Sources (Lockout/ Tagout)	1,236,149
1218-0176	OSHA-300, OSHA-300A & OSHA-301- Recording & Reporting Occupational Injuries & Illnesses - 29 CFR 1904	4,425,351
1218-0180	OSHA - Bloodborne Pathogens Standard - 29 CFR 1910.1030	12,719,062
1218-0189	OSHA - Lead in Construction 1926.62	1,697,383
1218-0197	OSHA - Construction Fall Protection Plans & Records	771,166
1218-0200	OSHA - Process Safety Management of Highly Hazardous Chemicals (PSM) - 1910.119	79,045,232
1218-0202	OSHA - Hazardous Waste Operations & Emergency Response (HAZWOPER) - 29 CFR 1910.120	1,412,915
1218-0203	OSHA - Permit-Required Confined Spaces - 29 CFR 1910.146	1,634,663
1218-0205	OSHA - Personal Protection Equipment for General Industry - 29 CFR 1910.132	1,834,279
1218-0229	OSHA - Mechanical Power Presses, Inspection Certification Records - 29 CFR 1910.217(e)(1)(i) & (e)(1)(ii)	1,372,930
1218-0242	OSHA - Powered Industrial Trucks - 29 CFR 1910.178	822,191
1218-0246	OSHA - Bloodborne Pathogens Standard - Needlestick Safety & Prevention Act	1,236,764
1219-0067	MSHA - Examinations & Tests of Electrical Equipment - 30 CFR 75.512, 75.703(d)(11), 77.502, 75.800, 77.900, 75.1001-1(c), 75.342(a)(4) & 75.351	985,344
1219-0083	MSHA - Record of Examinations for Hazardous Conditions - 30 CFR 77.1713	617,828
1219-0088	MSHA - Ventilation Plans, Tests, & Examinations in Underground Coal Mines - 30 CFR 7 70.205(a); 70.211(b); 212(b); .216(a); 75.310; 312; 342; 351; 360; 361; 362; 363;	2,725,770

OMB #	Title	Paperwork Burden (hours)
	364; 370; & 382	
1219-0089	MSHA - Safety Defects; Examination, Correction & Records - 30 CFR 56/57.13015; 13030; 14100; & 56/57.18002	1,224,406
1219-0133	MSHA - Hazard Communication - 30 CFR 47 (interim final rule	511,721
1220-0011	BLS-790 - Report on Employment, Payroll, & Hours	508,180
1220-0012	BLS - Employment, Wages, & Contributions Program - ES-202	954,720

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SECRETARY OF LABOR
WASHINGTON

JUN 20 2002

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your letter raising the issue of paperwork requirements imposed by the Department of Labor (DOL). I share your concerns about burdensome and complex paperwork requirements.

I want to assure you that the Department is taking and will continue to take steps to limit paperwork requirements to those necessary to administer our laws and regulations. The Department's Chief Information Officer (CIO) directs our paperwork reduction efforts. Since the Office of Management and Budget (OMB) generally approves paperwork collections for three year periods, each year the Department reviews roughly one-third of our information collections. This review includes a determination of whether the collection is still necessary and, if so, whether revisions would be useful. DOL agencies review both the content of the information and the scope of the collection -- the entities required to maintain and/or submit information to the agency. Through this process, agencies are reminded of the need to minimize paperwork while at the same time meeting their statutory obligations in the most efficient way possible.

As you know, there is a continual tension between the need for information and the imposition of burdens on the public and on business in particular. Both Congress and agencies are subject to this tension. Many statutes require agencies to collect information; on the other hand, the Paperwork Reduction Act directs agencies to reduce the paperwork burden.

Your letter raises several specific issues. As John Graham, OMB's Administrator of the Office of Information and Regulatory Affairs, noted in his response to you regarding the large number of regulations affecting the restaurant industry in Virginia and a

health care provider in California, OMB has no authority over State and local governments. However, he indicated that OMB will examine the concerns you raised during its normal reviews of federal regulations under the Paperwork Reduction Act.

You also raise two issues regarding the Department of Labor: "the unnecessarily complicated process for businesses to comply with the Family and Medical Leave Act (FMLA)," and the need to reduce the Department's paperwork burden, beginning with the "38 information collections imposing 500,000 hours or more." The Department's Employment Standards Administration (ESA) is currently reviewing the FMLA regulations to determine if revisions are necessary. The CIO, as part of its ongoing effort to reduce paperwork burdens, will work with the agencies to evaluate the 38 information collections imposing 500,000 hours or more. The Department will report the results of the review to OMB for incorporation in next year's Report to Congress on Managing Information Collection and Dissemination.

Thank you for your interest in reducing the paperwork burden imposed by the Department.

Sincerely,

Elaine L. Chao

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MAY 20 2002

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
B-377 Rayburn Building
Washington, DC 20515-6143

Dear Chairman Ose:

I am responding to your letter of April 17, 2002 regarding following up on the April 11, 2002 hearing before your subcommittee on the Paperwork Reduction Act (PRA). In your letter to Secretary Chao and me, you request that we examine a number of examples of excessive burdens imposed by Federal agencies, specifically the Department of Labor (DOL).

As a general matter, the Office of Information and Regulatory Affairs carefully scrutinizes regulatory monitoring and reporting requirements when they are first issued and when they are subsequently submitted to the Office of Management and Budget (OMB) for renewal of approval under the PRA. OMB's review of regulatory paperwork focuses on minimizing paperwork burden and ensuring that agencies obtain the information they need to enforce compliance with applicable standards. Even in cases where OMB decides not to pursue an initiative with an agency to address the reporting burdens in a particular rule, the PRA process provides an opportunity to regularly assess burdens.

With that in mind, we have examined the three examples of excessive burden that you provided and the 38 collections from DOL that result in more than 500,000 hours of burden on the public. The first example you asked about involves 112 requirements imposed on restaurants in Fairfax County, Virginia. As the President noted in his speech on March 19, 2002, the Administration is very concerned about excessive burdens imposed upon small businesses. In our Draft Report to Congress on the Costs and Benefits of Federal Regulations issued on March 28th, we have asked for examples of specific regulations imposing an undue or duplicative burden on small businesses. We intend to address the comments received in reaction to the draft report in our final report later this year.

As for the specific requirements noted in your letter, as you point out nearly half of them are from State or local governments. While we are concerned about excessive requirements on small businesses, we have no authority over State or local governments nor would we presume to violate the principles of federalism. Many of the Federal requirements you noted are designed to

achieve statutory goals such as requirements to pay taxes, requirements to provide equal opportunity, and restrictions on child labor. Some of the requirements may be excessive, and as we review information collections from the agencies covered, we will continue to work to remove requirements that impose burden without generating utility.

Similarly, for the 27 requirements on health care providers in California, most of the requirements cited by the Society for Human Resource Management (SHRM) are either statutory or imposed by the State of California. In the second column of their exhibit, only six of the 27 entries cite Federal regulations as the source of the burden imposed. As discussed above, we will examine the types of concerns raised by SHRM in the course of our normal reviews under the PRA.

Your letter then goes on to specifically cite the Family and Medical Leave Act (FMLA) as a source of confusion and burden for businesses. In our 2001 Report to Congress on the Costs and Benefits of Federal Regulations, we received comments on the burdens of the FMLA recordkeeping regulations. We rated this a "priority one" candidate for reform. We have met with DOL and understand that they are considering the appropriateness of changes to the regulations. We look forward to working with DOL on this important issue.

We also look forward to working with DOL on reducing the overall burden imposed by their agency. DOL has indicated an interest in examining in greater detail the 38 collections that impose more than 500,000 hours. The Department will report to us in next year's submission for the annual Report to Congress on Managing Information Collection and Dissemination their plans to reduce the burden of these 38 collections. We should note that many of these collections are associated with statutory requirements and reducing them would require legislative action. The collections required by the Occupational Safety and Health Administration and the Mine Safety and Health Administration, however, are largely regulatory, and we will encourage DOL to focus on these collections in doing its assessment.

Thank you for your letter and your continued interest in this matter.

Sincerely,

John D. Graham, Ph.D.
Administrator

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Congress of the United States
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INDEPENDENT

May 15, 2002

BY FACSIMILE

The Honorable Thomas A. Scully
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

The Honorable John D. Graham
Administrator
Office of Information & Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Administrators Scully and Graham:

This letter follows up on documents submitted to the Energy Policy, Natural Resources and Regulatory Affairs Subcommittee after its April 11, 2002, hearing on the Paperwork Reduction Act (PRA). Specifically, the Power Mobility Coalition (PMC) submitted a post-hearing letter alleging several violations of the PRA relating to administration of the Medicare program. For example, they include nonapproved questionnaires and required additional documentation, both of which supplement the standard form known as the Certificate of Medical Necessity (CMN). The PMC believes that these requirements are being imposed for all or most users of powered wheelchairs or scooters instead of for specific cases being investigated or audited for possible improper payments. None of these violations were included in the Office of Management and Budget's (OMB's) Information Collection Budget (ICB) report for Fiscal Year 2002.

In addition, the PMC submitted copies of seven letters, sent to OMB from August 3, 2001 to March 26, 2002, alleging specific PRA violations relating to Medicare claims processing. This week, the PMC received an answer from OMB to its six letters sent in 2001. OMB attached December 2001 and February 2002 explanations from the Centers for Medicare and Medicaid Services (CMS), including a December commitment to rescind certain improperly issued requirements. Why were none of these CMS PRA violations included in OMB's recent ICB report?

The PMC also provided the Subcommittee with copies of related documents. CMS's accompanying PRA Supporting Statement for its proposed use of the CMN (61 FR 56963) states, "The use of standard forms facilitates review by HCFA [which became CMS] and is more efficient for the suppliers because necessary documentation and information is specifically spelled out -- eliminating the possibility of submitting unnecessary documentation" (p. 3) and

"Without the [standard] forms, small businesses would be required to submit more individualized documentation to support their claims" (p. 4). The PMC does not oppose necessary paperwork but, understandably, desires certainty about what paperwork is approved for use.

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittee for the hearing record with (a) a copy of each rescission notice, (b) a timetable for resolution of any remaining PRA violations, and (c) a revised internal control process to ensure no further PRA violations by CMS or its representatives.

If you have any questions about this request, please contact Deputy Staff Director Barbara Kahlow at 226-3058. Please provide the requested information by May 31, 2002, to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building.

Thank you in advance for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

PM 6/21
SH 7/31

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

JUN 20 2002

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
B-377 Rayburn Building
Washington, DC 20515-6143

Dear Chairman Ose:

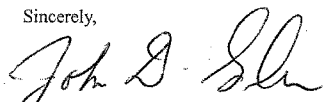
I am responding to your letter of May 15, 2002, following up on documents submitted to the Energy Policy, Natural Resources and Regulatory Affairs Subcommittee by the Power Mobility Coalition (PMC). This post-hearing letter alleged several violations of the Paperwork Reduction Act (PRA) relating to the administration of the Medicare Program. In your letter to Administrator Scully and me, you request information on why these items were not listed as PRA violations in the Fiscal Year 2002 Information Collection Budget (ICB).

These items concerned additional questionnaires and documentation used by the Centers for Medicare and Medicaid Services (CMS) to supplement the Certificate of Medical Necessity (CMN) in overseeing Medicare reimbursement of powered wheelchairs. As we discussed in our May 2002 letter to the PMC, these items were clarified and revised by CMS, and were not listed in the ICB because we were still investigating them at the time the ICB was written. The Fiscal Year 2002 ICB does cite CMS with a PRA violation for allowing the information collection entitled, Durable Medicare Equipment Regional Carrier, Certificates of Medical Necessity (OMB number 0938-0679) to expire. We are continuing to work with CMS to address the concerns raised by the PMC, and to ensure compliance with the Paperwork Reduction Act (PRA). We expect that CMS will soon submit collection 0938-0679 for the Office of Management and Budget (OMB) review. In the course of this review, we will examine these concerns very closely.

I understand that Administrator Scully is responding separately to your request for, "(a) a copy of each recission notice, (b) a timetable for resolution of any remaining PRA violations, and (c) a revised internal control process to ensure no further PRA violations by CMS or its representatives."

Thank you for your letter and your continued interest in this matter.

Sincerely,



John D. Graham, Ph.D.
Administrator

cc: The Honorable Thomas A. Scully
Administrator
Centers for Medicare and Medicaid Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

JUN 18 2002

The Honorable Doug Ose
House of Representatives
Washington, DC 20515-6143

Dear Mr. Ose:

Thank you for your letter requesting certain information about the Centers for Medicare & Medicaid Service's (CMS) documentation collection requirements.

The Durable Medical Equipment Regional Carriers' (DMERC) beneficiary questionnaires are used during an audit or investigation of particular claims in order to corroborate the information provided on the Certificate of Medical Necessity (CMN). In fact, the questionnaires are used very sparingly by the DMERCs and only in cases where the DMERCs believe that the beneficiary may not have received the equipment for which the supplier submitted a bill. These forms are not used at random, nor are they requested for "all or most" claims for scooters and power wheelchairs, as suggested by Power Mobility Coalition (PMC).

On December 7, 2001, CMS responded to the PMC's allegations of CMS Paperwork Reduction violations. We do not believe we violated the Paperwork Reduction Act (PRA), which is why we did not include the violations in our 2002 Information Collection Budget.

While we do not believe we violated the PRA, some DMERC activities did concern us. For that reason, on April 1, we instructed DMERCs to cease requiring power wheelchair suppliers to provide documentation in addition to the CMN unless the DMERC is conducting an audit or investigation. This instruction, which is enclosed, became effective on May 1. We understand that the PMC believes that this Program Memorandum is responsive to many of their concerns.

As noted above we have acted to eliminate questionable activities. Therefore, developing a timetable for resolving violations that we believe did not occur is not necessary.

We believe that CMS has adequate controls in place to insure that the PRA is not violated in the future and these controls include: PRA education of CMS and DMERC staff; DMERC newsletter articles; and proposed on-site continuing education of DMERC staff and management. These controls have resulted in increased communication between the DMERCs and CMS on issues that may implicate the PRA.

Page 2 – The Honorable Doug Ose

Thank you for your interest in the Medicare program. If you have any further questions on our Program Integrity activities or our PRA procedures, please contact Timothy Hill, Director Program Integrity Group at (410) 786-3633 or Richard Lyman, Director, Security and Standards Group at (410) 786-1934.

I understand that The Honorable John D. Graham, Administrator, Office of Information & Regulatory Affairs, Office of Management and Budget will respond to you under separate cover.

Sincerely,

Tom Scully

Thomas A. Scully

Enclosure

TOTAL P.03

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850

DEC 2 2002

Ms. Barbara Kahlow
Deputy Staff Director
United States House of Representatives
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Ms. Kahlow:

I am writing in response to your November 12, 2002 request for information related to recent Centers for Medicare & Medicaid Services (CMS) activities surrounding CMS's Certificates of Medical Necessity (CMN). You requested copies of specific notices rescinding certain questionable information collection requirements. I have attached the information you request as follows:

1. CMS instruction to all Durable Medical Equipment Regional Carriers (DMERC) to rescind certain questionable information collection requirements.
2. DMERC Region B Supplier Bulletin rescinding certain Power Operated Vehicle (POV) documentation requirements.
3. DMERC Region D Supplier Bulletin rescinding certain POV documentation requirements.
4. DMERC Region C Supplier Bulletin rescinding requirement for extra documentation for higher level equipment.

A 60-day Federal Register notice renewing the Office of Management and Budget clearance of the CMNs was published on November 18, 2002. While requesting comments on the CMNs themselves, this notice will also appropriately indicate that CMS retains the authority to collect additional information, when needed to verify the medical necessity of items, beyond that collected by the CMN.

If you need further information on this issue, I suggest that you contact the OMB specialist assigned to CMS's CMN renewals.

Sincerely,

Timothy Hill
Director
Program Integrity Group

cc: Brenda Aguilar, OMB

Program Memorandum Carriers

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal B-02-031 | **Date: MAY 1, 2002**

CHANGE REQUEST 2101

SUBJECT: Cessation of Certain DMERC Activities

This Program Memorandum (PM) informs the durable medical equipment regional carriers (DMERC) of situations that may be in conflict with the Paperwork Reduction Act (PRA) of 1995 §44 USC 3500, et seq. This PM is addressed to each DMERC, although these specific situations may not have occurred at each DMERC.

The PRA requires that the Director of the Office of Management and Budget must approve any collections of information performed by or for the Federal Government unless the collection fits within exceptions for audits and investigations. Absent such approval, the collection violates the PRA and agencies may not hold the public to the requirement.

1. Power operated vehicles additional documentation requirements

A Certificate of Medical Necessity (CMN) must accompany initial claims for power operated vehicles (POV). Except during the course of audits and investigations, DMERCs must not require that additional documentation accompany all POV claims. DMERCs may continue requesting information during the course of audits and investigations and when developing individual claims on either a pre- or a post-payment basis. If you choose to conduct such investigations, you must follow the guidelines in the Program Integrity Manual, Chapter 3, §2.

2. Power wheelchair additional documentation requirements re: make and model name/number

There must be no requirement that all claims for power wheelchairs include the make and model name/number of the wheelchair separate from the claim or the CMN.

The CMN, an OMB approved information collection form, can be used to collect this information. Specifically, DMERCs can require that the make and model name/ number of the power wheelchair be included in Section C of the CMN. Section C requires the supplier to include a narrative description of the items, options and accessories ordered.

3. Power wheelchair additional documentation requirements re: functional abilities

There must be no requirement for suppliers to submit additional documentation to describe a beneficiary's medical condition and functional abilities when the supplier bills for a higher level of equipment than previously supplied.

While it is appropriate to avoid paying for duplicate equipment, it is inappropriate to require this documentation for all claims for "higher level equipment." You may choose to perform pre- or post-payment probe samples to review these types of claims individually in order to determine medical necessity. If you choose to conduct such investigations, you must follow the guidelines in the Program Integrity Manual, Chapter 3, §2.

The DMERCs that are still enforcing any of the above documentation requirements must immediately cease that activity. In addition, if you have not already done so, you must publish a notice that this is no longer a requirement in your next DMERC bulletin and post the same notice on your Web site. This notice should also formally rescind any previously published bulletin articles on this subject if you have published such articles. Contractors who have already published a notice rescinding these requirements do not have to re-publish that notification. Similarly, contractors who never implemented these requirements do not have to take any action.

You should not research or adjust previously adjudicated claims.

The *effective date* for this PM is May 1, 2002.

The *implementation date* for this PM is May 1, 2002.

These instructions should be implemented within your current operating budget.

This PM may be discarded after April 1, 2003.

If you have any questions, contact John Warren at (410) 786-3633.

SUPPLIER BULLETIN

GLUCOSE MONITORS

Effective for dates of service on or after January 1, 2002, the paragraph and table in the Coding Guidelines section of the Home Blood Glucose Monitors policy dealing with bundling of accessories and supplies (Column I and Column II) is being deleted. After that date, suppliers may bill for medically necessary supplies and accessories provided at the time of initial issue as long as they incurred a cost in purchasing them. Suppliers must not bill for accessories or supplies that they obtained free of charge from the manufacturer in exchange for buying the manufacturer's monitor.

POWER OPERATED VEHICLES – DOCUMENTATION REQUIREMENTS

An article in the March 1998 DMERC Supplier Bulletin stated that all claims for Power Operated Vehicles (POVs) must be accompanied by both a CMN and additional information documenting the patient's functional capabilities and limitations and explaining the medical necessity for the POV. The Region B DMERC continues to find that a high percentage of claims do not have documentation indicating that all the coverage criteria specified in the Power Operated Vehicles medical policy have been met. For example, the POV may not have been ordered by a physician in one of the four specialties that are required; or there may be no indication of impaired arm function that would preclude the use of a manual wheelchair within the home; or there may be information that the patient can manage to walk within the home and needs the POV just to go distances outside the home. In these situations, the claims are denied. However, claim review has indicated that when a POV is ordered for a patient with a significant neuromuscular disorder (e.g., multiple sclerosis, muscular dystrophy, stroke, etc.) coverage criteria are usually met and that asking for additional information in this group of patients is not needed. Therefore, effective immediately, suppliers are not required to submit additional documentation with every claim. If the DMERC decides that it needs more information than is present on the CMN to assure that all the coverage criteria in the medical policy are met, it will develop the claim to the supplier indicating what additional information is needed. Failure of the supplier to provide the requested information will result in denial of the claim.

OXYGEN COVERAGE FOR BENEFICIARIES PREVIOUSLY ENROLLED IN MANAGED CARE WHO TRANSITION TO FEE FOR SERVICE

When a beneficiary who was on oxygen in a Medicare HMO transitions to traditional fee for service (FFS) Medicare, an Initial Certificate of Medical Necessity (CMN) must be completed and submitted to the DMERC in order for FFS coverage to begin. Effective for claims processed on or after July 1, 2002, for these patients the blood gas study reported on the CMN does not have to be obtained within 30 days prior to the Initial Certification date (as required of other patients). Instead, the blood gas study must be the most recent test the patient obtained while in the HMO under the guidelines specified in the DMERC Oxygen policy. This applies to all initial determinations and appeals processed on or after 7/1/02 regardless of the date of service on the claim.

L0430 – PREFABRICATED TLSO BODY JACKET

In the December 2000 DMERC Supplier Bulletin, an article was published announcing that the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) was developing a product classification list for code L0430 [TLSO, anterior-posterior-lateral control (body jacket), with interface material, custom fitted]. Manufacturers were instructed to contact the SADMERC for a coding determination if they believed their product met the definition of code L0430. To date, the following products have been reviewed by the SADMERC and coded L0430:

- Johnson's Orthopedic Design T.L.S.O.
- Camp Healthcare TLSO Jacket (Model 8262S and 8262F)

Region D MERC DIALOGUE
A Medicare Newsletter for Region D DMEPOS Suppliers
A Service of CIGNA HealthCare Medicare Administration

GR 02-2, Summer 2002, Page 1.

Previous Article | Next Article

From the Region D DMERC Medical Director...

Documentation Requirements For Power Operated Vehicles (POVs) - Region D Change

In 1997, a *DMERC Dialogue* article was published instructing suppliers that additional documentation must be submitted with all POV claims (*DMERC Dialogue*, July 1997, page 1). Effective for claims received on or after May 1, 2002, those instructions are rescinded and CIGNA Medicare will no longer require additional documentation to be submitted with every POV claim.

Suppliers are reminded that a POV is covered when all of the following criteria are met:

1. The patients condition is such that without the use of a wheelchair the patient would not be able to move around in their residence; and
2. The patient is unable to operate a manual wheelchair; and
3. The patient is capable of safely operating the controls for the POV; and
4. The patient can transfer safely in and out of the POV and has adequate trunk stability to be able to safely ride in the POV; and
5. It is ordered by a physician who is one of the following specialties: Physical Medicine, Orthopedic Surgery, Neurology, or Rheumatology. Exceptions: When such a specialist is not reasonably accessible (e.g., more than one days round trip from the beneficiarys home or the patients condition precludes such travel), an order from the beneficiarys' physician may be acceptable.

A POV will be denied as not medically necessary when it is needed only for use outside the home. A POV that is beneficial primarily in allowing the patient to perform leisure or recreational activities will be denied as not medically necessary.

Effective for claims received on or after May 1, 2002, CIGNA Medicare will focus additional documentation requests, based on data analysis, on those claims where information indicates that coverage criteria for a POV may not have been met. Suppliers receiving additional documentation development letters should respond by forwarding the information requested in the letter. Suppliers are responsible for providing additional documentation requested by the

DMERC, even if the claim is billed unassigned. If the additional documentation requested is not provided, the claim will be denied as not medically necessary.

- Robert Hoover, Jr., MD

Back to the Top of the Page

Overview | Anti-Fraud | DMERC | Part B | EDI | Events/Workshops | HIPAA
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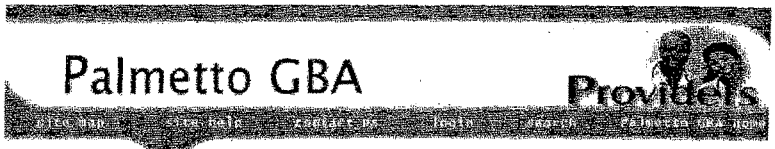

DMERC

2002
2001
2000
1999
1993-1998
DMERC Home
Providers Home

Advisories 2002

<<BACK

Extra Documentation for Higher Level or Similar Equipment

In the *DMERC Medicare Advisory* Summer 1998 Supplement (page 53), Region C informed suppliers of extra documentation requirements when filing claims for higher level or similar equipment. In addition to the CMN, we requested documentation explaining the changes in the beneficiary's condition that would necessitate higher level or similar equipment to that which the beneficiary was already using (an example would be issuance of a power wheelchair following recent issuance of a manual wheelchair).

This requirement is now rescinded for powered mobility items (power wheelchairs and POVs). Region C now requires only the documentation described in the local medical review policies when billing for these items.

<<BACK

Issue 41, Summer 2002 DMERC Medicare Advisory
....2002 Second Quarter Drug Fee Update
....2002 Second Quarter Oral Anti-Cancer Drug Fees
....Billing for Glucose Test Strips and Supplies: Correction
....Billing Miscellaneous HCPCS Codes
....Claims Status Inquiry: New Password Requirements
....Coding and Reimbursement for DMEPOS
....Coming Soon: Region C Publications on CD-ROM
....Consolidated Billing for Skilled Nursing Facility (SNF) Residents Reminder
....Customer Service Hours
....E-Code and TLSO Fee Corrections
....Emergency Home Dialysis Supplies for Method II Beneficiaries
....Medical Affairs Bulletin
.....Abdominal Binders (A4462) vs. Abdominal Supports (L0900-L0960)
.....Beneficiaries Previously Enrolled in Managed Care Who Return to Traditional Fee for Service
.....Extra Documentation for Higher Level or Similar Equipment
.....Glucose Monitors
.....Intrapulmonary Percussive Ventilation System (E0481): New Policy
.....Methotrexate: New NDC Numbers
.....Non-Contact Normothermic Wound Therapy (NNWT): Coverage Issues Manual Update

.....Supplier Manual Policy Revisions
.....Use of KX Modifier with HCPCS Code L0430
....Medicare Secondary Payer (MSP) Claims and Inquiries
....Nebulizer Drugs; Correct Submission of Dispensing Fee
....New Ostomy Fees
....New Web-Based Training: Completing the CMS-1500
....Non-Covered Items List
....Ombudsman Address Change: Dana Causey, South Texas
....Ombudsman In-services
....Palmetto GBA Web Site; New Registration Process
....Physician Responsibility in Completing CMNs
....Publications on the Internet
....Puerto Rico/Virgin Islands Interim Ombudsman
....Region C DMERC Voice Response Unit Instructions
....Revised Timelines for HIPAA Requirement
....Team Tips
....Using the X12N 837V4010 When Submitting MSP Claims

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THE POWER MOBILITY COALITION

April 19, 2002

Barbara Kahlow, Deputy Staff Director
Subcommittee on Energy Policy, Natural Resources,
And Regulatory Affairs
Committee on Government Reform
B-377, Rayburn House Office Building
Washington, DC 20515

Dear Ms. Kahlow:

On behalf of The Power Mobility Coalition, we appreciate the recent hearing conducted by your Committee entitled "Paperwork Inflation — The Growing Burden on America." The issues raised during the hearing are the exact issues faced by our industry. Please accept these comments as part of the formal record.

Our members serve the needs of the mobility-challenged population nationwide by developing, selling and servicing power mobility products such as power wheelchairs and scooters. We are proud that our members continue to provide independence and freedom to the citizens of this country. For this reason, we are perplexed that this industry continues to be subject to new arbitrary paperwork and record-keeping requirements by the Medicare Durable Medical Equipment Regional Carriers ("DMERCs").

Suppliers of power mobility equipment (as well as suppliers of other types of medical products) are required to submit an OMB approved Certificate of Medical Necessity ("CMN") form with each claim. In fact, the treating physician certifies on the CMN that any falsification, omission, or concealment of material fact with regard to medical necessity information on the form may result in civil or criminal penalty.

We are concerned that the DMERCs continue to disregard the OMB approved CMN and instead impose arbitrary and confusing medical necessity requirements on the power mobility industry. Examples of DMERC action include general investigations of our industry in the form of new unapproved paperwork requirements as well as newly created unapproved paperwork requirements (e.g., supplier and beneficiary questionnaires). We have submitted several formal paperwork violations to the OMB and are currently awaiting a response from the Agency.

1667 K Street, NW Suite 700 Washington, D.C. 20006-1608 830.608.0672
www.pmcoalition.com

The PMC has had a productive ongoing dialogue with the OMB and CMS on these issues. We recently met with Dr. Graham regarding our paperwork violations and will continue to work with OIRA on these important paperwork and documentation concerns.

Once again, we appreciate your work and look forward to meeting with you. The goal of clarity and consistency will be beneficial to all parties that participate in the Medicare program.

Very truly yours,

Stephen Azia
Counsel
Power Mobility Coalition

SMA:rlb

THE POWER MOBILITY COALITION

Paperwork Requirements in the Medicare Program Run Contrary to Procedural Safeguards Established by Congress

The Power Mobility Coalition ("PMC"), a coalition of suppliers and manufacturers who provide power mobility equipment and services to beneficiaries nationwide, seeks clarity and consistency in the Medicare paperwork process. Individuals and entities that comply with the rules should not be unfairly penalized by being subject to arbitrary and often retroactive paperwork requirements that undermine the well developed Medicare paperwork process.

Congress Enacted Procedural Safeguards in the Paperwork Reduction Act

Congress enacted the Paperwork Reduction Act ("PRA") in part to "minimize the paperwork burden for individuals [and] small businesses" "resulting from the collection of information by or for the Federal Government." In addition, Congress sought to "improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society."

In enacting the PRA, Congress established procedural requirements (*e.g.*, 60-day public comment period) that must be adhered to when a government agency develops a paperwork "collection of information" request from the public. The PRA defines a "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions, by or for an agency, regardless of form or format calling for...answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons."

The Certificate of Medical Necessity Form Was Approved In Accordance With the PRA

The Medicare Part B program requires in written policy that claims submitted for power mobility equipment include a Certificate of Medical Necessity ("CMN") that is completed and signed by the beneficiary's treating physician. A CMN is defined by Congress in the Medicare law ("Social Security Act") as "a form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury to improve the functioning of a malformed body member."

The current CMNs were developed by the CMS, formerly known as the Health Care Financing Administration ("HCFA"), with the input by the Medicare Part B carriers and groups such as the American Medical Association and the Practicing Physicians Advisory Council. The physician signs and completes the CMN form with the express understanding that any falsification,

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omission, or concealment of material fact with regard to the medical necessity information in Section B may result in civil or criminal liability.

CMS submitted the current CMNs to the Office of Management and Budget ("OMB") for approval pursuant to the PRA. In their PRA submission, CMS declared that a CMN is a standardized form "used by carriers to determine the medical necessity of an item or service covered by the Medicare program and being used for the treatment of the Medicare beneficiaries condition." The current CMN forms were approved by the OMB in 1996.

The Medicare Program Has Imposed Several Additional Paperwork Burdens That Run Contrary to the PRA

Despite the explicit guidance from Congress, CMS and the OMB concerning the medical necessity and legal significance of the CMN, the Medicare Part B carriers have often treated this form as if it was merely a piece of paper to be included in the file. This has led to the following results:

- Medicare policies that require beneficiaries, suppliers and physicians to submit additional documentation for claims. Examples include a randomly developed beneficiary questionnaire as well as a requirement that suppliers submit newly created paperwork for each Power Operated Vehicle ("POV") claim.

- Pre-payment and post-payment reviews on a class of suppliers that establish arbitrary and confusing medical necessity requirements. For example, a Medicare Part B carrier representing the entire Western Part of the United States is regularly requiring suppliers to submit additional paperwork for power mobility claims after payment has been made to such suppliers.

The above highlighted Medicare paperwork requirements represent "collections of information" that were developed without undergoing any formal process as set forth by Congress in the PRA. In each instance, the Medicare program has developed new paperwork submissions that go beyond what is expressly required by the program in written policy. These requests for additional documentation place an unfair burden on physicians, beneficiaries and suppliers that participate in the Medicare program.

Conclusion

The PMC would suggest that the Medicare program undergo the proper procedural channels, as set forth by Congress, to modify any current paperwork requirement rather than develop ad hoc confusing policies to capture such information.

"PAPERWORK INFLATION: THE GROWING BURDEN ON AMERICA"

STATEMENT

BY

LPA

SUBMITTED TO
THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS
HOUSE COMMITTEE ON GOVERNMENT REFORM

WASHINGTON, DC

APRIL 11, 2002
(02-49)

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Dear Mr. Chairman and Members of the Subcommittee:

LPA applauds the Subcommittee's initiative in exploring the burdens and costs of federal regulations on employers and their employees. Regulations and the laws that implement them are usually implemented for laudable purposes. However, too often, the regulations exceed the scope of the statute that created them, are overly complex and difficult for employers to implement, or a combination of the two. Although there are many regulations that meet these criteria in the labor and employment arena, we wish to focus on the regulations implementing the Family and Medical Leave Act of 1993 because they impose excessive, unwarranted and unintended costs on employers and their employees.

The Family and Medical Leave Act of 1993 (FMLA) allows employees to take up to 12 weeks of annual unpaid leave for the birth or adoption of a child or for the employee's serious health condition or the serious health condition of a close relative. LPA members appreciate and support the goal of the FMLA, which is to give unpaid time off to employees who have a medical event that requires them to be away from work. However, in practice, it has become all too clear that the regulations implementing the FMLA go beyond the authority of the statute or the congressional intent of the statute. The result is that the regulations render the process of providing and tracking FMLA leave overly burdensome, often because employees are able to abuse the regulations.

An excellent example is the recent U.S. Supreme Court decision in *Ragsdale v. Wolverine Worldwide Inc.*, No. 00-6029 (March 19, 2002). In *Ragsdale*, the U.S. Supreme Court determined that the regulations governing failure of an employer to provide notice regarding FMLA leave constituted an "impermissible alteration of the statutory framework...."[1] Unfortunately, there are many other aspects of the Department's FMLA regulations which similarly contradict the statutory language and intent. We believe the *Ragsdale* decision sends a strong signal that these provisions need to be revisited. The purpose of our testimony is to revisit these provisions and provide examples as to how the regulations are undermining the main goal and purpose of the FMLA and making compliance difficult for employers.

LPA is a public policy advocacy organization representing senior human resource executives of over 200 leading employers doing business in the United States. LPA provides in-depth information, analysis, and opinion regarding current situations and emerging trends in labor and employment policy among its member companies, policy makers, and the general public. Collectively, LPA members employ over 19 million people worldwide and over 12 percent of the U.S. private sector workforce. LPA member companies have revenue exceeding $4.3 trillion annually.

LPA member companies are strongly committed to helping their employees balance work, family, and personal needs. Indeed, LPA member companies have adopted wide ranging policies providing insurance and disability programs, paid and unpaid time off from work, flexible scheduling and telecommuting, and other creative alternatives so that employees may address such personal needs as caring for illness to themselves or loved ones, participating in volunteer activities, or spending time with their children.

LPA members also support the general goals of the FMLA. Today, perhaps more than ever, employers are cognizant of the importance of family and personal

commitments to their employees and recognize that it is critical that these commitments be taken into account in crafting responsible workplace policies. Workplace policies that take such commitments into account in an appropriate manner can not only serve to boost employee morale, but also serve to create a more efficient workplace.

Unfortunately, the existing regulations implementing the FMLA often stand in the way of implementing workplace policies that address the personal needs of employees in a responsible manner. In fact, existing regulations have had a substantial adverse impact on both employee morale and responsible family-friendly workplace policy. While the majority of employees seek to use the FMLA and other workplace policies offered by employers in a responsible manner, there is simply too much room in the existing regulations for abuse by unscrupulous employees. This is clearly not what Congress intended in passing the FMLA. For example, many employers have observed employees covering for attendance problems by using FMLA leave as a supplemental vacation program. This, in turn, causes resentment by fellow employees and morale problems in many workplaces. In some companies' experience, employees have even been known to encourage others to also take FMLA leave in an abusive manner. As one LPA member described it, FMLA abuse "spreads like wildfire."

Survey data illustrate this point. According to the *2001 CCH Unscheduled Absence Survey*,[2] in 2001, nearly 10 percent of all unscheduled absences in private sector workplaces were attributed to an entitlement mentality.[3]

The survey data also demonstrate the negative impact that employee absence abuse is having on the work place. The CCH study indicated that between 2000 and 2001, the per-employee cost associated with unscheduled absences increased 24 percent, from $610 to $755. In addition, the amount of corporate budgets set aside for absenteeism increased in 2001 from 2.6 percent to 4.2 percent. These results were confirmed by a joint, informal survey of LPA and Equal Employment Advisory Counsel members this spring, in which respondents reported costs per employer as high as $1.3 million.

LPA members agree that several aspects of the FMLA either explicitly exceed the authority in the FMLA or contradict the legislative intent of the Act. While not to be construed as an exhaustive list of problems with the FMLA, LPA is particularly concerned about regulations interpreting the FMLA's definition of "serious health condition," intermittent leave, notice, and the interaction of FMLA leave with employer attendance policies.

Serious Health Condition

The regulations defining "serious health condition" go well beyond the congressional intent and compromise that underlies the FMLA. Yet, employers seeking to apply the FMLA must determine whether to extend FMLA benefits to employees based upon the regulatory definition of serious health condition. The exceedingly broad definition of the term, along with the substantial investigation required to determine whether an employee's absence was truly serious, enables employees to abuse the Act in a way contrary to the statute. It also adds substantially to employer compliance costs.

The FMLA permits an employee to take unpaid leave to care for his or her own "serious health condition" as well as to care for the "serious health condition" of certain relatives. The FMLA defines a "serious health condition" as meaning:

> an illness, injury, impairment, or physical or mental condition that involves—
>
> (A) inpatient care in a hospital, hospice, or resident medical care facility; or
>
> (B) continuing treatment by a health care provider.[4]

This language was first adopted by both the Senate and House when Congress considered enacting the FMLA in 1991. At that time, the definition of a serious health condition not only included "continuing treatment by a health care provider" but "continuing supervision" by a health care provider. However, the Senate, by a vote of 65 to 32,[5] and the House, by a vote of 287 to 143,[6] both adopted substitute amendments that, among other things, eliminated the "continuing supervision" language from the definition, thus indicating that the types of conditions qualifying as a serious health condition should not be read expansively.

The legislative history of the FMLA further clarifies the types of conditions that the Act considers serious health conditions. These conditions include:

> heart attacks, heart conditions requiring heart bypass of valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth, and recovery from childbirth[7]

The legislative history also provides guidance as to the types of conditions that do not qualify:

> The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within even the most modest sick leave policies. Conditions or procedures that would not normally be covered by the legislation include minor illnesses which last only a few days and surgical procedures which typically do not involve hospitalization and require only a brief recovery time.[8]

Definition Is Overly Broad. LPA members agree that the types of illnesses or conditions enumerated in the above list are the types of illnesses or conditions that should be addressed in responsible leave policies. LPA members also agree that minor illnesses, such as those normally covered by sick leave policies, should not meet the FMLA's definition of a "serious health condition."

Unfortunately, the regulations implementing the FMLA and the interpretation of those regulations by the Labor Department stretch the definition of "serious health condition" beyond and ignore the intent of Congress that the FMLA not be available for

minor illnesses. Thus, despite this intent, the reality is that a minor illness, such as a migraine headache, cold, or flu can be categorized as a serious health condition for which FMLA leave is available with just a single doctor's visit, if it includes a prescription or other indicia of continued care, and lasts for three days or more. This interpretation of the FMLA clearly is contrary to the intent of the FMLA and ignores the legislative history of the Act and the bipartisan amendments that narrowed the scope of "serious health condition."

A few examples help to demonstrate the problems with the current definition of "serious health condition." In many cases, employees use the definition of serious health condition to obtain more vacation time. In one LPA member company, the human resources staff labels employees who abuse the definition of serious health condition as "players." Certain of these employees boast about staying home for three days or more, seeing a doctor or other health care provider, and convincing the provider to give them a prescription so that the time off is protected under the FMLA. Other employees at the same employer who are out sick for legitimate reasons have confessed that they stayed out of work for an additional day or two so their sickness would qualify as a serious health condition. In looking at the statistics, the employer found that roughly one-third of the absences that technically qualified for FMLA, such as muscular pain or viruses, were not truly serious conditions. The vast majority of these absences were for four days.

There are many other instances of employees gaming the FMLA system to secure additional time off. One employee had the following litany of conditions within a year that the employer suspected were often used to cover for other absences:

- seven days for root canal and recuperation (antibiotics and pain medication prescribed);
- seven days for bruise suffered while moving furniture (pain medication prescribed);
- 10 days for "irreversible pulpitis" (inflammation of the root) with root canal (prescribed pain medication and ice);
- three days (by another doctor immediately following the 10-day absence) for infection secondary to root canal (prescribed antibiotics and medication); and
- six days for "abdominal pain" and referred to a gastroenterologist.

Another employee took all of her FMLA leave time during a year for various conditions, including sinusitis, depression, anxiety, and heel spurs. Upon returning to work after one absence for depression and anxiety, she indicated that she had remodeled her house while on leave. While LPA believes that depression and anxiety are serious illnesses, employees' activities while on leave may indicate the extent to which their conditions were truly serious.

Chronic Conditions. The problems caused by the overbroad definition of "serious health condition" are further complicated by the regulatory requirement involving chronic illnesses – those that involve a need for sporadic treatment. In those cases, the regulations provide that employers permit leave for short periods of time without a physician's consultation. As noted above, LPA members believe that workplace policy

should appropriately provide for the needs of chronically ill employees. However, in the experience of many LPA members, the FMLA regulations on chronic illnesses are particularly susceptible to abuse.

While most employees would not seek to abuse regulations designed to provide treatment time to those who are chronically ill, a disturbing increasing minority of employees have abused the existing regulations. These employees find it extremely easy to obtain a certification of their chronic condition from a physician; at the same time, employers have found the procedures available to challenge the certification or to require a new certification to be inadequate. Many companies reported predictable instances of intermittent leave use by employees they believed to be abusing FMLA leave evidenced by regular, periodic absences, such as on Monday mornings. Our members report that this type of FMLA abuse is particularly harmful to employee morale, especially among those who must pick up the work for the employee on leave.

For example, a customer service representative who had a history of attendance problems asked whether she could come in later in the morning but still work a full 8-hour day. The employer rejected the request because customer service representatives were needed to cover core business hours. Following the rejection of flexible hours, the employee suddenly came down with migraine headaches. She provided a single doctor's note, and then started calling in once or twice a week stating she had a migraine headache and would come into work by mid-morning. The employer was skeptical and required the employee to provide a doctor's note with each absence, but the resourceful employee worked out a system where the doctor's office would fax a certification to the employer for each day she was absent. The employer felt it was clear that the employee never saw the doctor, but it had little recourse to prevent her from abusing the system.

Thanks to cost-effective medical technology, asthma is another chronic condition for which treatments are particularly difficult to verify. One employer has employees that arrive anywhere from 15 minutes to two hours late and claim that it was due to asthma treatments administered at home. Most employees have in-home machines that eliminate the need for frequent visits to the doctor. However, this also means that employers have no way of determining whether employees or their families had a legitimate asthma attack or whether asthma is merely a convenient excuse to be late. In this particular employer's case, asthma absences occur frequently on Mondays and Fridays.

Another asthma case involved an employee with a poor attendance record. On a regular basis, the employee's husband would call a supervisor about an hour before work and indicate that the employee was having trouble breathing and would call in when she could speak. A half an hour later she would call in and indicate that she would not be able to work due to asthma. The employee used all 12 weeks of FMLA leave in two consecutive years that way.

Yet another type of abuse involving chronic conditions involves those conditions for which an absence is not really necessary. One employer had an employee who had used seven weeks of intermittent FMLA leave with "epitaxis" or nose bleeds with mild sinusitis. The employee qualified for FMLA because he had seen a nose specialist and received prescription medication. However, he typically left work after receiving a nosebleed, even though the employer did not believe that the condition was that serious.

The company nurse noted that there were several ways to stop nosebleeds at the office, and the employee was under a doctor's order to have his nose cauterized if the bleeding did not stop after a short time. Yet, over a six-month period, the employee had only had one cauterization procedure. This led the employer to conclude that the employee was using his physical condition to leave work early.

Need to Clarify Medical Certification Increases Regulatory Burden. As a general rule, most employers require employees who request FMLA leave due to a serious health condition to submit an FMLA medical certification form. The form enables the employer to determine whether the employee's condition meets the FMLA definitions. However, the form is often incomplete, and the employer is forced to ask the employee for permission to talk directly with the health care provider and to seek clarification of the information. This process increases exponentially the amount of time and effort employers must spend in order to determine whether the condition meets the regulatory criteria.

Are Health Care Providers Part of the Problem? When health care providers fill out the medical certification form, employers voice concerns that health care providers are either knowingly or negligently certifying conditions as serious health conditions when they are not. Often this involves the number of days the employee must be off of work to convalesce. For example, in certain facilities, employees work two 12-hour days and then are off for two days. One employer reported that often, physicians note on the FMLA certification form that employees must be away from work for a four-day period, even though the four-day period includes two scheduled days off. Under the regulations, even days off count toward the three-day minimum and allow the employees to be certified for FMLA leave for the two work days.

In another case, an employee provided documentation showing that she needed five days off of work to recuperate from a root canal procedure. Upon further investigation, it was discovered that the employee, unbeknownst to the dentist, had instructed the office receptionist to fill out the form with five days' absence. In this case, the dentist clarified that the employee should be excused only for one day, but in other cases, employees are able to take advantage of health care providers who are overloaded with paperwork.

In sum, Mr. Chairman, the excessively broad definition of serious health condition in the FMLA regulations promotes employee abuse by effectively encouraging an employee to seek FMLA certification for a variety of ordinary maladies. The difficulty employers face in obtaining a complete medical certification form adds to the time required to comply.

Intermittent Leave

The FMLA permits employees to take leave intermittently in certain circumstances. When the leave is to care for the employee's own or a family member's serious health condition, then intermittent leave may be taken "when medically necessary."[9]

Although the concept of intermittent leave was introduced to help employees and employers cope with short, regularly recurring or sporadic medical absences, the regulations have imposed excessive administrative burdens on employers in tracking intermittent leave. Employers want to accommodate those employees with legitimate

health conditions requiring periodic time off from work, such as for dialysis. Unfortunately, the current regulations also allow abuse to cover otherwise poor attendance that is not a result of the chronic health condition that is being claimed as the reason.

The regulations require tracking intermittent leave in the smallest increment of time used by the employer to track time, provided the unit of time is no more than one hour.[10] For employers who track time in small increments, such as defense contractors, this can mean tracking time in 6 minute intervals. As one LPA member asked, "The FMLA is supposed to provide leave for those who are incapacitated from their jobs. How can someone be incapacitated from their job for 6 minutes?"

In addition, the Department of Labor has taken the position that an employee may take intermittent leave whenever he or she wants *without additional notice*, once the employee notifies the employer of the condition and provides certification that leave is needed on an intermittent basis.[11] Some practical illustrations of this problem include:

- employees who show up for work between 15 minutes and 2 hours late due to in-home asthma treatments;
- the alleged migraine headache sufferer who came into work late once or twice per week;
- the nose bleed sufferer who repeatedly missed two to three hours at the end of the day;
- an employee who requested two hours FMLA leave to pick up prescriptions for her father, who was cared for by her mother; and
- an employee who requested intermittent leave to take his wife to cancer treatments but who never actually accompanied her.

The FMLA regulations provide employers with inadequate flexibility in offering intermittent leave. Six-minute time blocks can impose extremely heavy costs on employers without providing a corresponding benefit to employees or employers. The requirement that once certified, an employee must be able to take leave anytime leads to similar abuses as under the definition of serious health condition.

Leave Requests and Notice

When an employee requests leave, the FMLA and its implementing regulations require employers to "inquire further" about the reason for the leave to determine whether it qualifies for FMLA leave. This requires employers to pry into employees' personal lives to find out the precise reason for the leave.

If a supervisor does not ask the necessary probing questions and improperly fails to classify the leave as covered by the FMLA, he or she could be personally liable for the FMLA violation. For example, in an Illinois case, a federal judge ruled that liability for FMLA violations can extend to employees who partially control the ability of another employee to take leave under the FMLA.[12]

The current notice regulations place an undue burden on employers and also hampers employee privacy by requiring disclosure of sensitive personal or family medical matters. In an age where medical privacy is increasingly important, the FMLA regulations should not require employers to hunt employees down regarding why leave is taken.

Attendance Bonus Policies

The FMLA contains strong antidiscrimination provisions to protect employees' rights to FMLA leave. Yet, in protecting FMLA leave, these provisions have undermined the effectiveness of employer attendance incentive programs. These programs usually involve giving employees a bonus if they have perfect attendance over a certain time frame, such as a calendar quarter or a year. However, the Department of Labor has opined that attendance bonus programs that count FMLA leave as an absence may discourage employees from taking leave, and thus violate antidiscrimination provisions.

The effect of the DOL opinion has been absurd. One year, an employee who used all of her available FMLA leave through intermittent leave (allegedly because of asthma) still qualified for the company's attendance bonus in two out of the four quarters. Other employees, who were legitimately sick for one or two days, reported staying out another day or two so that their absence qualified for FMLA leave and they were not penalized in the employer's attendance bonus program.

LPA does not condone the practice of employers denying employees their legitimate right to take FMLA leave. Yet, simply factoring an employee's leave into an attendance bonus program does not result in depriving that employee of any of the protections of the FMLA. With an increasing number of employees gaming the system, it is time that DOL reverse its position and allow employers to count FMLA time against an employee's attendance. This would help rein in the employees who game the system while providing FMLA leave to those who most need it.

Conclusion

Mr. Chairman, the FMLA will continue to serve its intended purposes in the years to come, but many aspects of the regulations exceed the authority provided in the statute or encourage employees to use FMLA leave as additional vacation time. These aspects must be addressed or employers that provide more generous leave to their employees will gradually eliminate it because of the excessive costs that result. We encourage the subcommittee to look carefully into these problems and to urge the Department of Labor to review its regulations.

Endnotes

[1] *Ragsdale v. Wolverine World Wide, Inc.*, No. 00-6029, 2002 U.S. LEXIS 1936, at *28 (Mar. 19, 2002).
[2] *Employee Absenteeism Rises Slightly, While Employers Still Struggle With High Cost of "Sick Time"*, 2001 CCH Unscheduled Absence Survey, Oct. 23, 2001, news release available at http://www.cch.com/press/news/2001/01absencemain.htm>.
[3] *Employee Absenteeism Rises Slightly, While Employers Still Struggle With High Cost of "Sick Time"*, 2001 CCH Unscheduled Absence Survey, Oct. 23, 2001, news release available at http://www.cch.com/press/news/2001/01absencemain.htm>.
[4] 29 U.S.C. § 2611(11).
[5] The vote was on the substitute amendment offered by Sens. Bond and Ford. Results of the vote may be found on page S.14181 of the *Congressional Record* for October 2, 1991.
[6] The vote was on the substitute amendment offered by Reps. Gordon and Hyde. Results of the vote may be found on pages H.9780-81 of the *Congressional Record* for November 13, 1991.
[7] S. Rept. 3, 103rd Cong., 1st Sess. 29 (1993), *reprinted in* 1993 U.S.C.C.A.N. 3, 31. Identical language can be found in the House report as well.
[8] *Id.* at 28.
[9] 29 U.S.C. § 2612(b)(1).
[10] 29 U.S.C. § 825.204(d).
[11] *See* Dep't of Labor Op. Ltr. FMLA-90 (July 3, 1997).
[12] *Freemon v. Foley*, 911 F. Supp. 326 (N.D. Ill. 1995).

The Washington Post

TUESDAY, DECEMBER 4, 2001

Business Lobbyists Asked To Discuss Onerous Rules

GOP Aide Identifies 57 Regulations to Target

By MICHAEL GRUNWALD
Washington Post Staff Writer

Republican congressional aide Barbara Kahlow sent the e-mail to a dozen business lobbyists on Sept. 26: "Here's our nonpublic chart," it said. She underlined "nonpublic" and put it in boldface.

"This was hush-hush, behind-closed-doors stuff," one of the lobbyists recalled.

Kahlow explained in her e-mail that President Bush's new regulatory czar, John D. Graham, had "asked me to convene key lobbyists to identify and rank" regulations that business groups found overly burdensome.

Her chart listed 57 of the most paperwork-intensive rules the business community wants to target. The rules, which deal with health, safety and the environment, govern everything from pesticide use to coal-mine ventilation, to standards for blood-borne pathogens. They cover such areas as air and water quality, food labeling, lead-paint disclosure, truck safety inspections, toxic-release reporting, and family and medical leave.

Graham, who became administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget in July, after a nasty confirmation fight, acknowledged last week that he had invited Kahlow and others to let him know about overly burdensome regulations. But he said he had not seen Kahlow's chart of 57 "sunset review candidates" and pledged not to change any regulations without input from affected agencies and the public.

Still, the chart and other documents from a fledgling anti-paperwork campaign provide another glimpse of behind-the-scenes strategy-setting by business lobbyists and conservative Republicans in government, during the Bush administration. In April, an industry memo urged lobbyists to get "DRESSED DOWN" like "REAL WORKER types" for an event promoting the GOP tax cut's impact on blue-collar families. In May, an energy lobbyist asking people to pay $5,000 to join a corporate coalition to push the president's energy bill warned in a letter that absolute unity was a must: "I have been advised that this White House will 'have a long memory.' "

Now there is Kahlow's e-mail announcing an Oct. 2 meeting with trade-group lobbyists and GOP staffers to discuss the 57 regulations. "We intend to share the group's list with [Graham] confidentially," wrote Kahlow, who served for 25 years as an OIRA official before becoming deputy director of the House subcommittee overseeing federal regulations. Her e-mail went out to the U.S. Chamber of Commerce, the National Federation of Independent Business, the Business Roundtable, the American Farm Bureau, the Associated Builders and Contractors, the Associated General Contractors of America and the Small Business Survival Committee.

The e-mail and the chart were provided to The Washington Post by a lobbyist who attended the meeting, in the House Rayburn Building. The lobbyist said he was disturbed by what he perceived as an "underhanded" campaign to use obscure paperwork guidelines as a back-door mechanism to gut long-established regulations. He said he was told that the campaign had Graham's blessing, if not his fingerprints. The campaign is being run out of the House Government Reform subcommittee on energy policy, natural resources and regulatory affairs, which is chaired by Rep. Doug Ose (R-Calif.), who is Kahlow's boss.

"This was a secret campaign to circumvent the process," said the lobbyist, who asked not to be named. "With Graham in that job, we figured we could get whatever we want."

Graham's background proved controversial when he was named to oversee the federal government's various rules. He founded the Harvard Center for Risk Analysis, a think tank that is funded in large part by industry groups and individual businesses and that has argued that many regulations and policies are misguided.

Graham's nomination as head of OIRA was opposed by liberal groups and Democrats, who declared him an enemy of regulations. He responded that he supported cost-effective, science-based regulations that promoted public health and welfare and was confirmed by a 61-37 vote.

In September, he signaled his intent to take an activist role in a memo to his staff, warning that "if not properly developed, regulations can lead to an enormous burden on the economy."

In an interview, though, Graham said trade groups might be surprised if they think they will get "whatever they want" in his tenure. He said he had invited business lobbyists and congressional aides to approach him to discuss bad regulations, but that he did not remember telling Kahlow to "convene key lobbyists" to pursue candidates for "paperwork & regulatory burden reduction," as her e-mail said. And echoing a point made by his liberal critics, he emphasized that just because a regulation is onerous does not mean it is bad.

"I am happy to meet personally with lobbyists of all stripes to discuss burdensome paperwork and regulatory requirements," Graham said. "However, OMB will not order changes without considering the public benefits of these requirements."

Joan Claybrook, president of the advocacy group Public Citizen, said she wasn't surprised that Graham didn't remember telling Kahlow to convene lobbyists. She said he often replied to questions at his confirmation hearing by saying that he didn't remember. She warned that the Bush administration and its supporters in the business community had launched a campaign to roll back health and safety regulations that protect ordinary people from corporate malfeasance.

"There's no question where all this is headed," she said. "These lobbyists have no shame."

Kahlow declined to comment. But it is no secret that business-friendly Republicans in general and Ose's committee in particular have pushed to rein in regulations and paperwork. In August, Graham's staff gave Kahlow a computer printout of government rules that produced more than 1 million hours of paperwork a year. Ose then asked OMB to evaluate some of them, governing new drugs, sewage sludge disposal and "safety management of highly hazardous chemicals."

Kahlow then whittled the printout down to 57 "candidates for discussion" before the Oct. 2 meeting. The goal, several attendees said, was not just to reduce unnecessary paperwork, but to persuade Graham to use little-known provisions of the Paperwork Reduction Act to try to weaken paperwork-intensive regulations.

Jim Tozzi, Kahlow's former boss at OIRA, said in an interview that he used to do just that, using paperwork technicalities as an excuse to review otherwise untouchable rules. "I have to plead guilty to that," said Tozzi, who is now on the advisory board at the Center for Regulatory Effectiveness. "The paperwork is a way in, you know?"

Another lobbyist who attended the Oct. 2 meeting said that even though Graham was not present, he was almost there in spirit.

"There was the implication that it was something he would want done, if you catch the fine line there," said this lobbyist, who also asked not to be named.

But Bill Kovacs, the U.S. Chamber of Commerce vice president for regulatory affairs, said that even though his group supported the goal of reducing government regulations, it was not impressed with the strategies floated on Oct. 2. He supports a

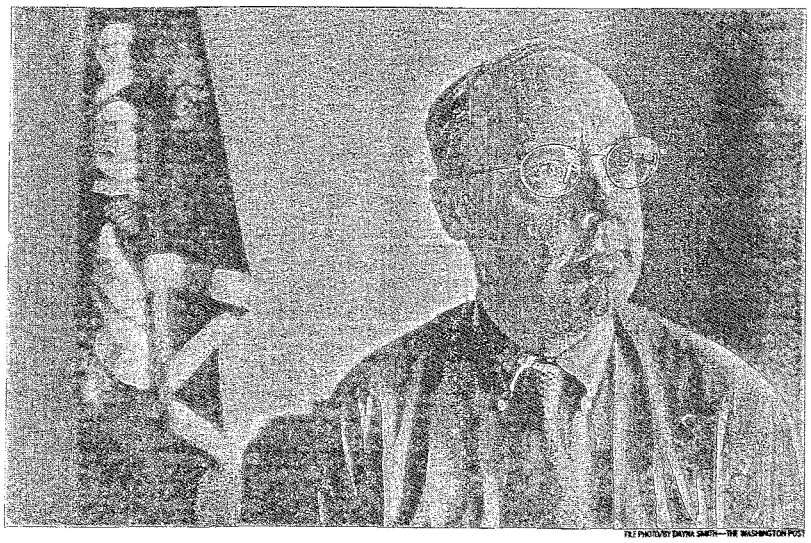
more systematic attack.

"You can't just put 57 regulations on the table and say, 'Go to it,'" said Kovacs, who did not attend the Oct. 2 meeting but sent three staffers. "It would be political suicide."

Some of the 57 regulations, after all, are potentially inflammatory. For example, some business groups would like to reshape the Family and Medical Leave Act to stop parents from taking their leave in small increments, but that could have significant political consequences. Unions would fight any changes to the so-called Davis-Bacon prevailing-wage rules on government construction projects. The Bush administration might be reluctant to tinker with food labeling rules, "needlestick safety" standards for hospital workers and community right-to-know requirements that force industries to disclose their toxic chemicals.

But regardless of the politics, the business community believes that many regulations provide negligible benefits to consumers or workers while inflicting unbearable costs to entrepreneurs. Larry Fineran, a National Association of Manufacturers lobbyist who attended the Oct. 2 meeting, said that paperwork was as good a place to start slimming down as any.

"The cost is just enormous," Fineran said. "And so far, nobody's done much about it."



FILE PHOTO/BY DAYNA SMITH—THE WASHINGTON POST

John D. Graham, head of the Office of Information and Regulatory Affairs, asked a GOP aide and others to alert him to burdensome rules.

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Sunday, April 7, 2002

FRONT

TAX AUDIT RATES HIGHER FOR POOR THAN FOR RICH
By DAVID CAY JOHNSTON The New York Times

THE STATE

The government looks for tax cheating by wage earners far more carefully than it looks for cheating by people whose money comes from their own businesses, investments, partnerships and trusts. This is true despite many warnings by federal tax officials that cheating is becoming far more common among the latter group.

Even as Congress finances a crackdown on tax cheating by the so-called working poor, it is appropriating little money to detect abuses by people, allegedly among the wealthiest Americans, who do not rely entirely on wages for their income.

Executives at the Internal Revenue Service have mentioned this discrepancy in several reports to Congress. They have not focused attention on how little they can do about it. But an examination by The New York Times of IRS statistics including audit rates and staff deployment figures, as well as interviews with current and former IRS officials, shows that the agency can identify at best only a tiny percentage of the cheats and pursue even fewer of them.

That the IRS audits the working poor at a much higher rate than wealthy people has been disclosed before. What has not been discussed is that the agency does not track nonwage income as closely as wage income - and in some cases does not verify it at all, even as the IRS says that cheating on nonwage income is rising.

The greater scrutiny of wage earners begins with their employers, who must report wages in detail to the Internal Revenue Service on W-2 and 1099 forms. Banks report interest earned on savings accounts and paid on home mortgages. Churches and charities must issue receipts on donations of more than $249.99. A Social Security number is required to take a child as an exemption.

IRS computers then compare every one of these 1.4 billion independent

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reports to the entries on each individual income tax return. When the numbers do not match, computers automatically send the taxpayer a notice.

Congress requires even more of the 19 million Americans who apply for the Earned Income Tax Credit, a payment from the government of as much as $4,008 for a low-income working family. Many of them are required to produce marriage licenses, school report cards to prove the existence of a child in the home and other evidence.

But a much smaller group of Americans - almost all of them among the wealthiest 5 percent - are subjected to less rigorous standards. Among them are people who own their own businesses, collect rents from tenants and reap gains on their stocks and other investments, including partnerships.

The government trusts these people to report every dollar of income or profit.

Business owners and landlords can report whatever they want, with no institution to contradict them. For them, there is no third party - like an employer or a bank - to verify what they put on their tax returns.

---- INDEX REFERENCES ----

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