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FEDERAL AGENCY TREATMENT OF SMALL BUSINESS

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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FEDERAL AGENCY TREATMENT OF SMALL BUSINESS

THURSDAY, MAY 15, 2003

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

The Subcommittee met, pursuant to call, at 10:10 a.m. in Room 2360, Rayburn House Office Building, Hon. Shelley Moore Capito [acting chairwoman of the Subcommittee] presiding.

Present: Representatives Capito, Gonzalez, Bartlett, King.

Chairwoman CAPITO. Good morning. I apologize for being late. I was out with a school group on the Capitol. If anybody has been out there, it is mass chaos out there today. Good morning. I would like to thank all of you for participating in today's hearing on Federal Agency Treatment of Small Business.

I am honored to have the opportunity to chair this hearing today. It is, however, unfortunate circumstances. Ed Schrock, who is the Chairman of this Subcommittee, could not be with us here today, because his mother is ill and he is tending to her needs. So our thoughts and prayers are with Ed and his family.

This hearing seeks to examine the federal government's treatment of small business when it comes to regulatory compliance. Our small business sector is heavily burdened with extra paperwork and additional costs because of regulation. When you add the cost of a possible enforcement action, the burden increases dramatically.

In 2000, a report put out by the Small Business Administration's Office of Advocacy calculated the cost of regulations to our economy at $843 billion per year or $8,164 for every household. That number rivals our massive federal budget this year.

Even more troubling than that was statistics gathered on the impact of these regulations on small business. Small businesses face a regulatory burden that is 60 percent higher per employee than larger businesses. The authors estimate in their report that the average small business is burdened with almost 7,000 per employee in regulatory compliance costs. Now the costs further increase when you are unable to comply with the federal regulation, either because of lack of knowledge or just plain confusion.

In the year 2000, the National Federation of Independent Business released a survey of their members which described some 82 percent of their respondents as saying discovering regulations in the normal course of business or when an enforcement action is begun. "Gotcha" regulations on an unsuspecting small business are

not a good representation of attempts at compliance assistance by agencies.

Dealing with the government once a penalty or fine is imposed, can be extremely onerous and can throw a typical small business owner's life and livelihood if it's not already in chaos throw it into chaos.

I am pleased to welcome our first two panels of our warriors in this fight to ensure fairness for small business. The National Ombudsman for small business and the National Taxpayer Advocate. They work everyday to help small businesses navigate the maze of regulations and help them deal with the multitude of regulators.

In a time when our economy relies so greatly on small businesses to keep our country moving, we cannot afford to stifle that progress by continuing piling on costly regulations that disadvantage these groups. Half of our national work force is employed by small business and two-thirds or three-fourths of net new jobs are created by small business.

Now is the time to do everything in our power to limit the reach of the regulators and lower the burden of regulation on small business.

[Ms. Capito's statement may be found in the appendix.]

Chairwoman CAPITO. I look forward to the testimony and to that of our other small business experts on our second panel. We now have time for additional opening statements and I would like to yield to Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Madam Chair. Again, it is a privilege to be part of what we are trying to do here and that is to bring a little bit of sanity when it comes to conducting business for small businesses in our economy.

I was noting in my opening statement, which I am not going to read because I am going to try to keep this very brief, if you really think in terms of the federal regulatory scheme and the paperwork and its impact on small business, I think you can come to the conclusion that it is small business, but a bigger burden. Kind of an inverse relationship. It may be small, but nevertheless the impact of the regulatory scheme, compliance, understanding and such is greater for small business for many reasons which we will delve into today.

So what are we doing to address that? Is it working? We are going to hear from individuals who are charged with that particular responsibility of assisting small business and then we will hear from individuals who are out there in what we refer to as the real world.

We are hoping that in time, when small business entrepreneurs hear that knock on the door and someone is there to say, we are from the federal government and we are here to help you, that they actually will understand that we will be helping them. That is the whole goal that we convene and we have these hearings. With that, I will go ahead and yield back, Madam Chair, and look forward to the testimony.

Chairwoman CAPITO. Thank you, Mr. Gonzalez. I would like to now yield to Mr. Bartlett for an opening statement.

Mr. BARTLETT. Thank you very much. In a former life, I was a small business person. I did land development and homebuilding,

among other things. I am probably one of maybe 35 members of the House that belonged to NFIB before we came here.

When I think about our regulations, they are almost all based on one of two premises, both of which I reject and I think that most Americans when they think about it reject these premises. The first premise is that every employer, every provider, every manufacturer is evil and greedy and they are going to screw the public or screw their employees and so the government has to make sure they don't do that.

The other premise is that every consumer is incredibly gullible and stupid and they are going to make very bad choices and they are going to hurt themselves if big brother doesn't look after them.

Now if you think about our regulations, just about every one of them are based on one or the other of those two premises and I think that the average American, as I do, rejects both of those premises. I hope that during this hearing we can understand how many of the regulations that bedevil small business are regulations prompted by other than these two premises.

If we got rid of all of the regulations that were based on those two premises, I think that small business would be freed from most of the regulations that are consistently moving more jobs from this country overseas. I look forward to your testimony. Thank you.

Chairwoman CAPITO. Thank you, Mr. Bartlett. I think we are ready to proceed. Before we begin receiving testimony from the witnesses, I want to remind everyone that we would like to keep the oral testimony to five minutes.

In front of you on the table you will see a box that will let you know when your time is running out. Isn't that convenient of us? When it lights yellow, you have one minute remaining and when five minutes have expired, a red light will appear. Once the red light is on, the Committee would like you to wrap up testimony as soon as you are comfortable.

Let us move to the first panel. Our first two witnesses are Michael Barrera, who is the Small Business and Agriculture Regulatory Enforcement Ombudsman with the U.S. Small Business Administration. Welcome. We would like to welcome also Nina Olson, who is the National Taxpayer Advocate—I am sure you are not busy at all—with the Internal Revenue Service. Mr. Barrera.

STATEMENT OF MICHAEL BARRERA, NATIONAL OMBUDSMAN, SMALL BUSINESS ADMINISTRATION

Mr. BARRERA. Good morning. Congresswoman Capito, Congressman Gonzalez and Congressman Bartlett, and other members of the Subcommittee, thank you for the opportunity to appear before you today to discuss federal agency treatment of small business.

President George W. Bush, Administrator Hector Barreto and I, as the National Ombudsman, share your concern on the federal regulatory impact on America's small businesses. A fair and common sense approach to regulatory enforcement helps save businesses time, money and jobs.

The Office of the National Ombudsman plays a critical role in this process by evaluating how federal agencies treat small businesses during federal regulatory enforcement or compliance actions. Decrease in excessive and arbitrary actions by federal agen-

cies, while increasing compliance assistance are the primary objectives of our office.

While the law requires our office to be a neutral party, we still seek to ensure that high level federal officials hear and address complaints and concerns made by small businesses. In other words, the ONO seeks to act as a troubleshooter for small business.

Our office relies on the efforts of its ten regulatory fairness boards to conduct outreach to small business. Additionally, the Office along with our Reg-Fair Board conducts public hearings and trade association round tables in order to receive comments and educate small businesses regarding federal regulatory enforcement actions and compliance assistance.

One concern I often hear from small businesses is that regulations are confusing and difficult to navigate. Small businesses want to comply with the law, but they need to know when a regulation will affect them and how to comply. In many cases, small businesses just don't know what they don't know.

Federal agencies cannot merely rely on posting a new regulation in the Federal Register and developing a brochure. Federal agencies must provide compliance assistance that is available, accessible and easy to understand.

As public awareness of our office grows, cooperation between small businesses and federal agencies is growing and producing strong, positive relationships that have produced results. For example, the IRS was once feared by small businesses and still not very popular, but today the IRS has a more proactive and responsive approach to the interests and concerns of small business. The IRS now attends every one of our hearings and round tables. In many cases, the small business owner and the IRS representative resolve their problems right there on the spot.

Another example comes from a hearing in Indianapolis, Indiana. The owner of Mickey Finn's Restaurant testified that the Department of Labor Wage and Hour Division informed him that his brewmaster and assistant were not exempt from the Fair Labor Standards Act. After spending $7,000 contesting this particular action, the owner challenged the decision and filed a comment with our office. We then forwarded his comment to the Department of Labor for review and within 30 days, the Department of Labor and this business reached a resolution without further cost to this small business.

During the past year, federal agencies have demonstrated a growing commitment to working with our office to improve the environment for small businesses. They are now making better use of the Internet, including the SBA's businesslaw.com Web site with its Business One Stop Compliance portal. They are conducting additional training seminars and working more closely with trade associations.

Agency attendance at our hearings has improved dramatically, particularly the Department of Labor and the IRS, which have attended each hearing and round table to hear small business concerns and to educate them about the compliance assistance that they offer. Small businesses also received a helping hand with the enactment of the Small Business Paperwork Relief Act of 2002.

Our office is working with OMB to assist federal agencies in complying with this Act. The Act specifically requires that federal agencies designate a small business point of contact within their agency and provide a summary of their compliance assistance program.

The Small Business Paperwork Relief Act will also hold agencies accountable, as they must report on the number of enforcement actions taken against small businesses in which a civil penalty was assessed, the number of actions in which penalties were reduced or waived and the total monetary amount of reductions or waivers. The first report is due in December, 2003.

While we are seeing improvement, challenges still exist. Many businesses hesitate to tell us their story, because they fear retaliation. In order to address this fear, whether real or perceived, our office now rates agencies on whether they have small business non-retaliation policies. As a result, several agencies have adopted formal, written non-retaliation policies. As a result, we have seen businesses feel more comfortable testifying, particularly since they know their government will now hear from them without reprisal.

As stated by President George Bush, the role of government is to create an environment that encourages risk taking, an environment that facilitates the flow of capital and an environment in which people can realize their dreams. By removing the strangulation of regulation, federal agencies can help America's entrepreneur's turn their dreams into successes.

It is the mission of the Ombudsman's Office to encourage federal agencies to adopt a "help you" attitude versus a "got you" attitude. I am grateful for the opportunity to testify this morning on behalf of the SBA and Administrator Barreto. I will be happy to answer any questions for you and other Subcommittee members. Thank you.

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

Chairwoman CAPITO. Thank you, Mr. Barrera. Now we will go to Ms. Olson for her statement. Thank you.

STATEMENT OF NINA OLSON, NATIONAL TAXPAYER ADVOCATE, INTERNAL REVENUE SERVICE

Ms. OLSON. Thank you. Madam Chairman, thank you for inviting me here today. As you know, the Office of the Taxpayer Advocate has two goals: To help taxpayers solve their problems with the IRS and to identify and propose both administrative and legislative solutions to those problems.

Our 74 local taxpayer advocates are on the front lines overseeing our work on specific taxpayer cases and listening to taxpayers and their representatives about IRS problems and successes. They are able to identify systemic problems often before they are acknowledged or discovered by the rest of the IRS.

This year we are conducting an extensive outreach campaign to small business groups, including truckers, restauranteurs, small business forums and the SBA Reg-Fair Hearings. Last year the IRS was one of three agencies to receive an A rating from the SBA Ombudsman's Office. The IRS received this rating because of its attention to small business concerns in general and because of our interest in attendance at SBA Reg-Fair Hearings.

TAS contributed to this rating by having our personnel attend those hearings and try to assist taxpayers in solving their business tax problems as well as listen for areas where systemic problems are identified.

In addition, my staff works on problem cases identified by the SBA and drafts correspondence explaining either a solution or a reason why a solution is not possible. These letters are personally reviewed and edited by me and go out over my signature.

TAS recently conducted a market research study about its underserved population. We learned that small business owners accounted for 25 percent of the Taxpayer Advocate Services' underserved population. Here is some of what we learned: Nearly all of the participants said they use a paid prepared for at least some part of their taxes for their businesses. Many small businesses first try to solve their IRS problems themselves and seek professional tax help only as a last resort. Those who called IRS customer service directly were frustrated with the hot line menus and at having to re-explain their situation to a different employee each time.

Overall, however, about one-third of those who dealt with IRS customer service reported that they were satisfied with the treatment they received. They noted that when the representative was not mechanical, is knowledgeable and is able to transfer them to the appropriate person, their experience becomes far more positive.

Most of the small business owners describe themselves as IRS intimidated. While they generally trust the IRS, they feel it is not always competent in solving problems. Some small business owners were concerned that the services of the Taxpayer Advocate Service are not available to businesses that it is designed mainly for individual taxpayers. Our case inventories, of course, show that this latter point is most emphatically not correct.

For fiscal year 2002, small business cases accounted for 35 percent of our total case closures. Of these cases, 89 percent came into TAS because of systemic delays, not because of economic hardship. Approximately 80 percent of the cases involving the four most common reasons small business owners sought our help. TAS obtained a different result from the IRS.

In my 2002 annual report to Congress, I identified a number of issues and made administrative recommendations impacting small business. Small business taxpayers have problems with the processing of offer-in-compromise cases, federal tax deposits and obtaining employer identification numbers. Along with other taxpayers and even IRS employees, they have difficulty navigating the IRS in finding the right person to talk with.

In my 2001 and 2002 reports, we recommended several legislative proposals of interest to small business. This year we propose that a husband and wife who jointly own an unincorporated business and who file a joint federal income tax return should not be entitled to elect out of the codes complex partnership provisions and instead file a joint sole proprietorship or farm schedule and report each spouses share of the business's self-employment income. This proposal would clarify and simplify the status of husband and wife co-owned businesses and ensures appropriate Social Security and Medicare coverage for both spouses.

We have also proposed a de minimis exception to passive loss and credit limitations, revisions to the S corporation election process, a first time waiver of certain penalties, what I call the one-time stupid act waiver, a reduction of the failure to deposit penalty, where the correct federal tax deposit amount was paid, but the wrong payment method was used, a health insurance deduction for purposes of calculating the self-employment tax and extending the current income averaging provisions for farmers to commercial fishermen. We have also proposed the repeal of the individual alternative minimum tax.

As you can see, we have been very busy. We are very much aware of the tax problems of small business. We speak with an independent and impartial voice in specific cases and on larger issues, we try to ensure that taxpayer rights are respected and taxpayer burdens are minimized. Thank you for the opportunity to appear before your Committee.

[Ms. Olson's statement may be found in the appendix.]

Chairwoman CAPITO. Thank you very much for both of your testimonies. I have a couple questions and then we will move to my colleagues. Mr. Barrera, you mentioned that you had ten regulatory boards that are regionalized; is that correct?

Mr. BARRERA. Correct.

Chairwoman CAPITO. Then you also mentioned that in each agency there is a small business contact.

Mr. BARRERA. According to the Small Business Paperwork Relief Act that is going to be a requirement that they each have a small business contact where a small business person can actually contact the agency with their question and that person should be able to put them with the right person within their agency. We are getting that information from a lot of the agencies and it is due I think at the end of July when it is actually supposed to be posted in the Federal Register.

Chairwoman CAPITO. To me I think part of the challenge for small business owners and individuals in general is trying to find those people. What kind of efforts do you plan to make and do you have an outreach effort with your regulatory boards across the nation where people know that you are there and are you approachable in terms of can small businesses come in to your offices around the country and talk to a regulator or find out who the contact is? Is a web-based information going to be your primary source of information?

Mr. BARRERA. It is really a combination of all of those. Our regulatory fairness boards have been great advocates on behalf of our office, but also we use them as far as doing the outreach because many times, as we stated earlier, we can say I am from the government and I am here to help, but that doesn't always register with the small business person. These Reg-Fair Boards being individual business people themselves, they have a lot more credibility with some of these small businesses. So, they are very, very helpful.

We also use our actual hearings, our Reg-Fair hearings. According to the statute, we are only required to have one hearing per region, but with the backing of the Administrator we are now having two hearings per region per year. Over the next couple of years we will reach at least 40 different states. We work the trade asso-

ciations. When we go into a town, we let them know we are there. So we are doing a lot of outreach.

Also, our businesslaw.gov Web site is an excellent tool where they can now go to there and find out who these particular people will be.

Chairwoman CAPITO. I would like to ask both of you what kind of relationship your offices have. Are you working in conjunction with one another? I am assuming this is not the first time you have met.

Mr. BARRERA. It is actually an interesting story. When I first got started, I got a call from the IRS and they wanted me to come over to visit them for like a two-hour meeting. If I had known that before I had started, I would have gone to Mexico and not come back, but we actually had an excellent meeting.

The IRS has actually been a great partner of ours. In fact, at one of our hearings they had like six people show up and they weren't enforcement people, but a lot of people were afraid that there were so many IRS folks there, but they have been great as far as coming to all our hearings and they really want to know how they can help and improve the environment for small businesses.

Chairwoman CAPITO. Ms. Olson, you mentioned some legislative changes. Have you had any success?

Ms. OLSON. Several of our proposals have been introduced as bills. The husband and wife co-owned business proposal has been introduced as a bill by the House Oversight Ways and Means Committee and I think that there is a provision in the Senate.

Last year the House passed the one-time stupid proposed act and our reduction of the federal tax deposit penalty for the wrong payment method from ten percent to two percent, a significant change. We are just looking for answering legislation that has been introduced again this year and we are looking for answering legislation on the Senate side. So we are seeing attention to these things.

Chairwoman CAPITO. Just one final question. I think you mentioned in your statement that in your survey one-third of your respondents were satisfied. I am assuming——.

Ms. OLSON. Well, that is one-third were satisfied with the IRS. With TAS employees, we have about a 68 to a 70 percent satisfaction rate. Interestingly, in 59 percent of the cases that are satisfied, taxpayers say that they feel better about the IRS after they have worked with my office.

I would like to make one point about something that my colleague here spoke about—fear of retaliation. Congress passed, in 1998, a provision that said that when taxpayers come into my office, the Office of the Taxpayer Advocate, to discuss a problem the local taxpayer advocate has the discretion to not tell the rest of the IRS that the taxpayer has called us or any information the taxpayer has given us.

The rationale for that was so that taxpayers in fact could come in and whether they wanted to talk about the impact of a regulation on them or specifics about a case and they just wanted to get another ear that was knowledgeable, that protection is there and we take that very seriously. We have a whole procedure for protecting the confidentiality of our information from the rest of the IRS.

Chairwoman CAPITO. Well, that is certainly good to know at least from my aspect on constituent service. We get in our district offices quite a bit of interest in help and so that is a good thing to know. That concludes my questions. Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much. The question will be to both of the witnesses and I will preface it with an observation and that is: In any regulatory scheme, I think there is a valid reason that we have it. It is accountability. It is responsibility. It is how we execute it and what we do and don't turn it into something that is a real burden and that is the answer that we really are trying and are seeking to find and not necessarily doing away with the responsible and efficient regulatory scheme, because that is necessary. That is the first observation.

But the other thing is, I do believe that there is a bureaucratic culture out there in every agency and every department and despite all of your best intentions and whatever we do here, you still have to cope with that.

So my question is really going to delve into a little different area than your own organizations, your own entities and that is: When you are working with a department or an agency, whether it is IRS or anyone else, what incentive is there for that department or agency to cooperate, to listen and to act?

We already know, as you have indicated, once you take it out of the mechanical mode and bring in a human being and a person, suddenly a third of the individuals are pretty satisfied with what is going on as far as the service rendered by IRS, which is pretty incredible even a third. So we know that there is some real basic things: The human element, the personal touch, do not act like a bureaucrat, don't make it more difficult.

But how do we replace something that really is contrary in that particular culture to that kind of behavior? What do you all see? What would assist you? I mean in other words, I know that even in diversity in seeking more employment of minorities in departments and agencies, we never succeed. We don't succeed unless those individuals in those departments or agencies actually promulgate within their own agencies and departments those kind of policies.

What we try to do is we reward them. There is positive incentives for these things to happen. Not enough. But how do we get into that type of bureaucratic culture to make them more receptive to your requests of course and to your intervention on behalf of the small business person? Mr. Barrera?

Mr. BARRERA. I think you said it best. It is culture and changing an environment. I think what we found what has really helped us is the fact that I actually go out to different parts of the country.

If we try to do it strictly from here, that particular agent in different parts of the country is not going to be so concerned, but now they know if I may be coming to their area and a small business may be complaining about them, nobody wants to have anything negative said about them.

I mentioned many times, I think the agencies here in D.C. really do get it and a lot of it has been the education that small businesses are different from a large business. You can't do a one-size-fits-all.

We often say that even though they get it here, there are still thousands upon thousands upon thousands of federal agencies out across America. So anything run by humans will never be perfect, but as long as we go out there and they know that we are coming and that the small business can come and talk to us confidentially, I think that has helped a lot.

Ms. OLSON. I have 2,200 people in my organization and the IRS has 100,000. I think that many of those employees actually do have that personal touch. They do know the problems that small businesses face day-to-day and I am not sure that they feel permission from the rest of the organization, which goes to the culture, that they can show that compassion on a day-to-day basis. So I think it has to start from the top.

To go to Mr. Bartlett's point about people starting regs from the assumption that businesses are trying to rob, beg, borrow and steal what I see is folks designing regs for one specific perceived abuse and they have to stamp that one out.

The voice that I try to bring at the top level, because before I became the National Taxpayer Advocate I represented small businesses as a tax attorney, because of a tiny perceived abuse you cannot impose a burden on all the others. Is there some other way that we can get at that perceived abuse?

That persistent voice at the top levels of the organization and changing minds of the top levels and then getting permission down to the people who know it already at the mid and lower levels is what you have to do for culture change. You have to evaluate people at the top levels of the organization on their performance according to these goals.

Mr. GONZALEZ. Thank you very much and hopefully we will come up with something. I think sometimes we just really neglect to see what the problem may be. Like I said, despite our best efforts and whatever we are trying to do, if we don't have a receptive ear, if we don't have an environment or a culture that will accommodate it, all our efforts will be for naught. So thank you for what you do and I appreciate your comments.

Chairwoman CAPITO. Thank you. Mr. Bartlett, do you have any questions?

Mr. BARTLETT. Thank you very much, Madam Chairwoman. I would like to return for just a moment to some of the statistics in your opening statement, because we read these numbers and they are a whole lot bigger than our savings account or our paycheck and so they may not register.

You mentioned $843 billion per year as the cost of regulations to our economy. That is more money than our whole discretionary budget in the federal government. We don't have discretionary authority over that much money in our federal budget. That is over $8,000 for every household.

So the average American household for the first $8,000 that they earn, that just goes to cover the cost of regulations, and this is a very cruel and regressive tax, because the poorest of the poor have to pay that tax.

There is no way by the way that businesses bear this burden. If they do not pass it on to their customers, to their consumers, then they are out of business. So when you have a regulation, you are

not burdening industry. You are not burdening a company with that regulation. What you are doing though is burdening all of the people that have to buy the product or the service of that company.

I say it is a very regressive tax because the rich, Warren Buffet can afford that. That is not going to bother him, but the poorest of the poor pay that tax and it is a tax for which they get no deduction and there is no exemption for that tax.

It is about $7,000 for every employee in small business. Now this is a major reason that this year we will have a $430 billion trade deficit. You know as smart as we are, as hard working as we are, we cannot compete with the rest of the world. When we have a $7,000 per employee regulatory burden, the fact that we can't compete just means that more and more of these jobs go overseas so more and more of the things that we need to buy in this country aren't made here.

Just go into the store and try and find something which is made in the United States and you want to be patriotic and buy things. You will have not very many clothes in your cart. No clothes. I don't know of any clothes that are made in this country. Now that has all moved overseas. They may distribute them here. They may have a warehouse here, but they don't make them here.

Just five days ago, if this year is like last year, we passed tax freedom day. It was May 10 last year. But today you are not working for yourself, to pay the mortgage on your house, to put your kids through school, to buy that car or to save for your retirement, because from May 10 through July 6, if this year is like last year, every American will work full-time to pay for the things that we are talking about here today, unfunded federal mandates.

You know I am a fan of the Constitution. I carry one with me and I know that the Lord was here when our country was established and I know that for a number of reasons, but one of them is because our Constitution is so prophetic.

This is not the Constitution, but it is written by the same people. This is the Declaration of Independence and they are giving all of these reasons why they should separate themselves from England and one of them sounds just so prophetic, it says, "He has erected a multitude of new offices and sent hither swarms of officers to harass our people and eat out their substance".

Now they certainly were talking about a regulatory agency, weren't they? "He has erected a multitude of new offices and sent hither swarms of officers to harass our people and eat out their substance". There could be no better description of our regulatory agencies.

When are we going to do a cost benefit analysis? You mentioned the perceived abuse that now results in a new regulation that burdens everybody. When are we going to do a cost benefit analysis and do away with all of those regulations, which is going to be about 80, 90 percent of them whose cost is certainly not justified by the benefit? Do we have to have law that requires these agencies to do that?

I suspect that most of their regulations are based on a perceived abuse that then results in a regulation that burdens everybody and if you did a cost benefit analysis, you would certainly conclude that the cure is worse than the disease. How can we do that?

Mr. BARRERA. I will compliment our Office of Advocacy, who works with a lot of the federal agencies before they even pass the regulation and they do a cost benefit analysis to see how it will affect a small business industry. For instance——.

Mr. BARTLETT. But how about all those that are out there now?

Mr. BARRERA. There are still a lot of them out there.

Mr. BARTLETT. We are working through July 6 this year, if this year is like last year, to pay the cost of those things. We have to look back as well as forward.

Mr. BARRERA. Well, I know the President issued an executive order with OMB to start working with a lot of the agencies to really check out their regulations to see which ones just don't work. We need to get them off the books. I know they had an open where a small business can actually comment on some of the regulations that were affecting them and as a result of that, I believe over 200 were rescinded. So I know that the government and the OMB is working with a lot of the agencies to try to reduce the cost.

You make an interesting point, Congressman. We talked just about federal regulations, but there are still state regulations out there and city regulations that small businesses have to deal with. Also, again I want to compliment the Office of Advocacy. They have actually come up with model legislation so states can pass similar types of laws that created my office. So it is an attack on many fronts, not just the federal but the state and the cities that we have a need to work with also.

Mr. BARTLETT. I don't know the cost of state and local regulations, because this July 6 is federal regulations. It may be some time in September before you can start working for yourself. That is just too darn much government, isn't it?

Mr. BARRERA. Exactly.

Mr. BARTLETT. Thank you. Thank you, Madam Chairman.

Chairwoman CAPITO. Thank you. That concludes our questions. I would like to say just as another statement that the realization that small business has to hire an accountant, an

torney, an insurance specialist you know drives not only the cost of business, but they lose control over their own destiny in a lot of ways.

I think that is a result of a lot of the regulations and I would like to say we, as members of Congress, certainly ought to bear our responsibility in the way sometimes we micromanage in our legislative priorities that places further burdens on a lot of our small businesses and large businesses throughout the country. So thank you all very much.

Mr. BARRERA. Thank you.

Ms. OLSON. Thank you.

Chairwoman CAPITO. Panel two. Very good. We had originally scheduled three panelists for panel two, but our second gentleman was unable to come, so we will submit his statement for the record.

On panel two, the Subcommittee will hear from Dorothy Wood, a small business owner from Virginia Beach, Virginia. It is Mr. Schrock's district. So welcome on behalf of him. She is the president of JD&W Incorporated, a past president of her local chapter of the National Association of Women Business Owners and a founding member of Women Impacting Public Policy.

The second member is Kristie Darien, the director of government relations at the National Association for the Self-Employed. So Ms. Wood, if you would like to begin.

STATEMENT OF DOROTHY WOOD, PRESIDENT AND CEO, JD&W INC., VIRGINIA BEACH, VIRGINIA

Ms. WOOD. Thank you. Good morning. Thank you for inviting me today to testify. My name is Dorothy Wood. I am president of JD&W Incorporated, located in Virginia Beach, Virginia.

I want to begin by congratulating the Subcommittee on its continued emphasis on reducing the regulatory burden on small businesses. Passage of the Regulatory Flexibility Act and the Truth in Regulating Act and the Small Business Administration's Office of Advocacy vigilance in carrying out the law have been a significant force in development of a more business friendly regulatory environment for small businesses. I am grateful to this Subcommittee for your continuing efforts to fulfill the promise of these laws and look beyond the way federal rules are written to how they are enforced.

As the Chairman mentioned, I am a founding member of the Women Impacting Public Policy. This is a bipartisan group of 500,000 women. My testimony today is based not only on my experiences, but the experiences of some of my fellow business owners.

With me today is my grandson, Jim Wood, who is a student at First Colonial High School in Virginia Beach. He is in the legal studies academy. As president of the freshman class and president-elect of the sophomore class, I am sure he will be occupying a seat in this Chamber one day.

My company is a commercial construction company. It is a small business. We employ around 23 people. We do work throughout Virginia in office, retail, industrial, institutional and government. Federal regulations cause several areas of concern to me and I will attempt to briefly summarize some of my experiences and those of others with whom I do business.

First, the implementation of the Federal Privacy Rules issued under the Health Insurance Portability and Accountability Act of 1996 has had a huge impact on small businesses. Compliance may be burdensome for large companies with extensive human resource staffs, but is nearly impossible for a small company of my size. I have no human resources department, no personnel manager and no compliance team, yet I am held to the same standards as to a multi-national corporation.

When an employee is out sick, my business is impacted far more significantly than a large business. However, I cannot ask the employee if he has had a heart attack or if he has the flu. So I will have no idea of how long he will be out from work. On a personal note, I would like to know if he is critically ill so that I might do things to help his family.

It is my understanding from the health insurance brokers that under COBRA the federal government makes no distinction between a company like mine with 23 employees and a conglomerate that employs 21,000 employees. This doesn't seem to be equitable. I believe that the initial compliance with HIPAA will cost my com-

pany several thousand dollars in attorneys fees and probably about $500 a year after that for the training necessary for my employees.

I urge this Committee to continue its pursuit of delaying enforcement of HIPAA and to supplement these regulations with plain-English guidelines. I thank the leadership of this Committee for the letter to Secretary Thompson on this issue.

On a persona level, I went to my doctor the other day and was amazed that I had to stand behind a white line taped to his nice, new carpet, even as an established patient I had to sign a stack of privacy forms and then I watched with amazement as the nurse called out the patients, only using their first names. She is not allowed now to call out both names.

The doctor told me he would have to spend thousands to renovate his office, but then consider the plight of the small pharmacy who is trying to compete against the big box. Often their physical space does not allow room for the distance required between customers. What alternatives do they have?

HIPAA stands in the way of what many health care providers have tried to establish for a long time, shared patient files among appropriate care givers to provide the best possible care for patients.

I would also like to speak about a charity very close to my heart. I started Meals-on-Wheels in Virginia Beach about 30 years ago. We are a very different Meals-on-Wheels than many that you see throughout the country. We accept no federal, state or local government funds. We accept no United Way funds. We feed 200 people a day with just citizens helping each other.

It is very difficult now with our 900 volunteers, because we have to train each volunteer on what they can do. We need time to implement this with our volunteers. We have one client who is deaf. We always put on the charts, Mr. Jones is deaf, please knock and walk in. We can no longer say that Mr. Jones is deaf.

Last week we had a client who had passed out and they had to call the rescue squad. The volunteers came back and relaying that story to other volunteers, but that is against the federal law for them to come back and repeat this. This is an example of how a well-intentioned law can cause hardships for those who want to help the elderly and the disabled.

Also, my business falls primarily under the Virginia Department of Labor and Industry. We have had a few experiences though with the federal OSHA. I run a $10 million a year commercial construction company. My company has not had a serious work place injury or death in my 25 years of operation. Nonetheless, my company was recently in jeopardy of being cited for an OSHA violation when I could not produce our log book for injuries within four hours as required by federal law.

The person on my staff who maintains the log book was out of the office because of illness. I did not have immediate access to the secure location, even though I am president of the company and very honestly I didn't know where the log book was kept.

Although we were able to work things out with the enforcement officials, it seems more than a little ironic that my company's exemplary compliance record might be marred by our inability to

produce a report that shows nothing in less than half a business day.

I would be interested in knowing how many inspections of OSHA performs each year on small businesses. How many of those result in fines? I would like to know if small businesses are given the opportunity to correct the problem and then be re-inspected. It seems logical to me that small businesses should be allowed to correct problems without harsh penalties. After all, that is the point of compliance.

Finally, I urge your Subcommittee to continue its mission of overseeing and demanding that the federal agencies take a measured and reasonable approach towards small businesses. Clearly then regulatory flexibility for small business continues to be important as we seek to reinvigorate our economy.

We are Americans pursuing the American dream. We do not shy away from following the rules. However, to many of us our greatest fear is inadvertently missing a form or a payment or failing to properly document something the way a bureaucrat in Washington wants it done. Small businesses simply do not have the resources to effectively comply with these regulations. We need your help. Thank you.

[Ms. Wood's statement may be found in the appendix.]

Chairwoman CAPITO. Thank you, Ms. Wood. Ms. Darien.

STATEMENT OF KRISTIE DARIEN, DIRECTOR OF GOVERNMENT AFFAIRS, NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED

Ms. DARIEN. Thank you. First off, I would like to thank the Committee for allowing me to participate in today's hearing. I am here to testify on behalf of the National Association for the Self-Employed and our 250,000 member businesses, representing over 600,000 owners and employees nationwide.

The NASE is the nation's leading resource for the self-employed and microbusinesses, businesses with ten or less employees. Often a chief speed bump faced by microbusiness owners on their road to success is federal government regulation. This burden imposed on microbusiness is disproportionate to that of larger businesses, because smaller firms cannot spread the overhead costs associated with hiring accountants and attorneys and the general costs of paperwork burdens and staff needed to try and comply with the maze of federal regulations.

The NASE strongly feels that federal agencies must take into consideration the fact that a microbusiness owner, due to his or her size of business, is responsible for every aspect of business management, thus their time is very precious.

Regulations and compliance assistance materials must be readily accessible and available to the small business community in plain English in order to minimize the time and mental energy needed for compliance by the microbusiness owner, whose time is best spent running their business.

The NASE membership is from a diverse array of industry sectors, from consultants to manufacturers to farmers, yet with each of these industries we represent, the chief agency they interact with on a continuous basis is the Internal Revenue Service. The

NASE is very pleased with the recent efforts made by the IRS to become small business friendly. In fact, I can personally attest to their efforts to reach out to groups like the NASE in order to better serve their small business taxpayers. Yet outreach and education are only reactive measures to the ever looming problems caused by a complex tax code.

The IRS must take proactive measures to better determine the effect of their regulations on the microbusiness taxpayer. The NASE agrees with the SBA Office of Advocacy's comments that the IRS should seek to identify costs and hardships imposed by their regulatory approaches and look for alternatives to achieve their objective with fewer burdens prior to publishing rules and regulations.

A large percentage of the self-employed and microbusiness owners prepare their own taxes. This, the IRS' ambiguous and complex rules can ultimately mean the demise of their business. One specific IRS regulation that is exceedingly burdensome to the microbusiness and self-employed communities is the employee versus independent contractor classification issue.

Many NASE members either utilize independent contractors or are themselves independent contractors. Disputes about worker classification have cost small businesses more than three-quarters of a billion dollars in IRS penalties and back taxes during the past ten years.

The IRS has a complicated 20-point checklist that can be used as a guideline in determining whether or not an individuals is an employee or an independent contractor, yet using this checklist does not guarantee that the person is correctly classified. Other IRS materials published to assist in classification are equally as convoluted.

N.A.S.E. members have indicated when utilizing the IRS' tax assistance help line on this issue they have gotten different answers from different agents on the same issue. There is no clear and concise manner for a self-employed individual or a microbusiness owner to easily determine when a worker should be classified as an independent contractor or an employee, thus putting them at risk to be penalized if audited.

If a microbusiness owner has been selected for an audit, the IRS is supposed to provide employers with relief from potential IRS reclassification, if the employer has met various relief requirements. Section 530 requires small business owners to prove that they had a reasonable basis for treating the workers as independent contractors rather than employees. A reasonable basis includes reliance on judicial precedent, IRS rulings, a past IRS audit and a longstanding industry practice.

A microbusiness owner is typically an owner whose office occupies the corner of their bedroom, whose warehouse is their garage, whose CFO, CEO and janitorial staff share the same desk and business card. Is it reasonable to believe that after making a good faith effort to classify an employee utilizing the IRS' unclear 20-point checklist that they would have the time and understanding to research IRS rulings and judicial precedent to make certain they have a reasonable basis for their worker classification?

Due to the regulation's vagueness and complexity, it is very easy for the IRS to arbitrarily reclassify workers and thus require microbusiness owners to pay enormous sums of back taxes and penalties, which ultimately force them out of business.

The worker classification issue of employer versus independent contractor is one of those issues that Congress can easily help small business with. The NASE strongly feels that the IRS regulation must be updated to provide straightforward rules for classifying workers and relief from reclassification.

We strongly support the reintroduction of last year's Independent Contractor Determination Act, which clearly defined the rules for classification of workers, provided certainty for businesses that enter into the independent contractor relationships and minimize the risk of huge tax bills for back taxes, interest and penalties, if a worker is misclassified.

The NASE also feels that a continued push towards tax simplification and paperwork reduction would greatly alleviate the IRS regulatory burden on small business. We very much appreciate all the work that the Subcommittee has done.

One last final remark is, we feel strongly that a microbusiness owner should not be penalized with an unfair regulatory burden just simply because they are small. Thank you very much.

[Ms. Darien's statement may be found in the appendix.]

Chairwoman CAPITO. Thank you both for your great testimony. I appreciate it. I have a couple questions. Ms. Wood, you have been in the business for how long?

Ms. WOOD. Twenty-five years.

Chairwoman CAPITO. Twenty-five years. I am sure you have seen a lot of changes.

Ms. WOOD. Yes, I have.

Chairwoman CAPITO. In this particular area of regulatory overburden, what is your perspective of it over the years? Increasing?

Ms. WOOD. It does seem to be increasing, particularly with the two rules that I talked about. Particularly the HIPAA rules. It certainly is expensive for me.

Chairwoman CAPITO. Have you seen any results of any regulations or regulatory oversight that has decreased?

Ms. WOOD. Well I have certainly seen where the federal government has given more opportunities for work for women and minor businesses. I don't happen to choose to work in the government arena, but I do see my fellow business owners with more opportunities to do federal contracts.

Chairwoman CAPITO. Okay. We have heard from the Ombudsman and the National Taxpayer Advocate. Have either of you, A, heard of them before and B, have you used their services?

Ms. WOOD. I have not used their services, but I have heard of them and I applied to be one last year.

Chairwoman CAPITO. Did you?

Ms. WOOD. I was not selected, but I did apply.

Chairwoman CAPITO. Okay.

Ms. DARIEN. We actively advocate those two programs with our members. I think one of the biggest problems is that we feel that agencies need to be more proactive in reaching out to the small business community. Again, despite the complex tax code, the IRS

has done a really great job in reaching out to small business associations, to other groups and organizations that have direct contact with small business, but that is not the case with a lot of the other federal agencies.

They need to get out there. You know reach out to associations that work directly with our members in order to get out the information about how to better comply with federal regulations.

Chairwoman CAPITO. I certainly think at least from my perspective that a lot of the times when we become involved it has reached a crisis point where the business is on the point of having to close because of citing from a violation that had it been put in proper perspective or had they had the proper help, the small business owner had the proper help, could have been easily acquitted.

Like every American, at least in small business, it is a day-to-day life for many small business people and it is difficult to anticipate what the future will bring. So I applaud your hard work and certainly your work in advocacy for a lot of small business.

My sister is a self-employed small business owner and I feel her pain everyday. So I hope that some of our efforts and some of the results of the testimony will result in easing that burden. I would like to yield to Mr. Gonzalez for any questions.

Mr. GONZALEZ. Thank you very much, Madam Chair. The first question would be to Ms. Wood. First of all, I want you to know that that experience you had with the OSHA review and the missing log, which wasn't missing at all, that was recounted to me over lunch by Chairman Schrock. Anybody at lunch there was just absolutely shocked and I do want to delve into that just for a second.

That individual basically that came for the inspection and you indicated the person in charge was out, was sick, how was that resolved? I mean there on the spot? Did they finally believe you?

Ms. WOOD. We called the person who was out and found out where it was located. It was in her office. I cannot run the business and take care of everything, plus know where the log book is and very honestly, I didn't know that we had a log book.

Mr. GONZALEZ. Sure.

Ms. WOOD. We do have people that do it. We have never had an accident so our log book is empty. But, we did find it and we went back and found it. We were able to produce it. One of the few times we had done a government job was this job and he had gone to the job site and everything was perfect, no fines, nothing. He said it was very safe. But since I could not find the book, he was quite unhappy with me and he kept saying, you know it is the law. You have to have it. That is very intimidating to a small business woman or man.

Mr. GONZALEZ. Did that representative indicate to you that there would be some sort of immediate noncompliance finding? That that is the way it would be reported?

Ms. WOOD. Well, he was very serious that I had to have the book, but I did find it within the four hours. But if my employee had been unconscious or in the hospital, of course I could not have asked why she was there, but I would not have——

Mr. GONZALEZ. You have got to remember that.

Ms. WOOD [continuing]. Been able to have found that and then I would have been fined I am sure.

Mr. GONZALEZ. I am just real curious and I think I speak for each member, I think the small business person out there when you have that type of unreasonableness by someone representing any agency or department, you do pick up the phone and you do call your Congressman. Obviously, Ed knew about the problem and he was outraged by it and I think all of us would be, but they do listen to us believe it or not once in a while they do respond, don't they? It does mean quite a bit. They understand what it means at the end of the process.

My question to you though is: How does a small businessman or woman acquaint themselves with the new regulations and what is required? Let us just start off with what is new. I know we all run campaigns and sometimes we will get notices and such and we don't try to understand them. We hire somebody for that. But what do you do?

Ms. WOOD. Well, recently I was just faced with the prospect of training every employee that I have in CPR and first aid. While I am sure we should probably all know first aid, I spent about $4,000 and two full work days in training my employees. I hired some off-duty firemen to come in and now in my industry everyone is required to be trained each year.

This seems to be a severe burden. It is just a lot of money for us to have to pay. I am sure that it is necessary. They are considering and I am not sure it has passed yet, requiring me to have a defibrillator on each job site. I am required to have a first aid kit. But wouldn't you hate to have a heart attack and one of my foreman or my electrician come up there with a defibrillator, even though they have had two hours of training? That is one of the recent that I didn't know. As I said, I didn't know about the log book, although my office did know.

Mr. GONZALEZ. Yes.

Ms. WOOD. That is a law that you have to produce it in four hours, because I looked at the OSHA Web site to find that out.

Mr. GONZALEZ. I am sure there is always going to be some mitigating circumstance that if you don't meet the four hours that anything within reason in the practical world needs to be in consideration.

I don't believe in the arbitrary rules, but I venture to guess after hearing your story that most small businesses, as they receive notices of a new regulation and new order of whatever it is, they probably put it aside, because they can't afford an expert, either an accountant, lawyer or whatever and then they just hope that they are going to be in compliance to the extent that they understand it and hope that nothing ever happens, which is no way to do business, but it really imposes on us a real burden and a responsibility that as we promulgate in the agencies and the departments that have that authority that it is made very simple, very clear so that you do not require some sort of expert assistance that you can probably not afford.

You may be able to afford it. You have been very successful, but there are so many other businesses obviously as when you started, what you could do then as what you can do now is two different things, but I do thank you.

Ms. WOOD. Thank you.

Mr. GONZALEZ. I want you to know that you were the topic of conversation at lunch.

Ms. WOOD. Thank you very much.

Mr. GONZALEZ. Real quick to Ms. Darien. You pointed out an IRS reg on defining independent contracts and believe me, in the law that has always been a problem. I used to be a Judge so we always had, was that an employee, was that an independent contractor, because of the liability issues.

I think we see something here that something we could do with the code that would address it, but when it comes to those individuals within the department, within IRS, it seems to me that you have been somewhat pleased with the cooperation and the personnel. How would you characterize the relationship in your experiences with individuals from different departments and agencies?

Ms. DARIEN. Well, we have worked quite a bit with the taxpayer education and outreach department, as well as the small business self-employed division and they have really been phenomenal in trying to assist us. I think with this issue, the problem lies with the regulation and its complexity. I mean they try to give us information and assistance and guidance, because this actually is one of the top three issues that our members complain about quite often.

They give us this brochure and I try to read it. You know I think that I am somewhat of an intelligent person and it really did not help me at all. So I can't imagine an even more educated small business person running their business that this would assist either. In terms of their effort and the extent that they have gone to try and be more small business friendly, they have really done a great job.

In reference to your comment about where does small business people go to find out about regulations, I think obviously it is our job as an association to do our best to help our members.

So I think associations have a responsibility to help educate our members on regulations, but I think that responsibility should lie with the federal agency. They are the ones actually releasing these regulations and rules and they want people to comply to them. So, shouldn't they make them easy to understand? It only seems like common sense to me. I really do feel like more of the onerous should be on federal agencies to make their regulations clear and concise and in plain English.

If they have to be in bureaucratic speak for the record, fine, but let us have some translation for the purposes of small business so they are easy to read and easy to understand. Most small business owners, as Congressman Bartlett said, they want to do the right thing. They want to follow the rules and they want to run their business successfully, effectively and the way they are supposed to. They are not trying to get away with anything, but we need to make it simple and clear for them.

Mr. GONZALEZ. I think we all agree with you that we need to make it understandable. The other thing is thank you very much for your testimony. When I think someone is doing a good job, Mr. Barrera, Ms. Olson, we really need to hear that it is working.

Ms. DARIEN. They have been doing a great job.

Mr. GONZALEZ. Thank you very much.

Chairwoman CAPITO. Thank you. Mr. Bartlett, do you have any questions?

Mr. BARTLETT. Thank you very much. As I mentioned, I was a small business owner, and when you have people working for you for eight, ten years they become almost like family. The idea that you can't know why they are in the hospital is just preposterous. You know that goes beyond silly.

I noted with interest that the two witnesses in this Small Business Committee hearing are women and that is of interest because, as many people don't know, women-owned small businesses are growing at twice the rate of male-owned small businesses. They are on average better employers. That doesn't surprise me. Men are different than women. Our military is having some trouble figuring that out, by the way, but they are different.

Women are more compassionate, more empathetic than men and that doesn't surprise me they are better employers. They are also better corporate citizens for exactly those same reasons I think. Women-owned small businesses also have a lower bankruptcy failure rate. Our bankers need to listen up, because access to capital is still a big problem for women-owned small businesses.

You mentioned the independent contractor rule and this 20-point checklist that the IRS has. They are now telling my small business people that a drywall finisher is an employee. Now, I ran a home construction business. There is no more independent person on earth than the drywall finisher. First of all, he can carry all of his tools in his back pocket. So he doesn't have a lot of capital. He is about as independent as a hog on ice. To list them as an employee just goes beyond silly.

I will tell you the silliest one is saying that the subcontractor who owns his school bus is really an employee, because he has to follow a schedule and that is one of their 20 points on their checklist. If they have to follow a schedule, they are an employee. You know that is when the kids go to school and that is why he picks them up then, but because he has to follow a schedule, the IRS says that he is now an employee. He owns his own school bus.

I want to spend just a moment, it will only take a very brief amount of time, because this is really a very small document, to go back to the Constitution. I want you to stop me when I come to that point in Article 1, Section 8, which is all of the permissible functions of the federal government. Stop me when I come to that point in the Constitution that justifies all of these federal regulations.

The government shall be empowered to lay and collect taxes. We sure do that don't we? Borrow money. We are doing a lot of that. To regulate commerce with foreign nations among the several states and with the Indian tribes establish a uniform rule of naturalization and laws on bankruptcy. To coin money. Somehow we gave that way to the Federal Reserve, without a Constitutional amendment. I don't know quite how we did that.

To provide for the punishment of counterfeiting. To establish post offices and post roads. Promote the progress of science and useful arts. That is copyrights and patents. Constitute tribunals inferior to the Supreme Court. That is our lower Federal Courts.

Define and punish piracies. To declare war. To raise and support Armies. To provide and maintain a Navy. To make rules so the government regulation will enable forces to provide for calling forth the militia. To provide for organizing, arming and disciplining the militia. Big confusion to what the militia is. It is not the National Guard.

To exercise exclusive legislation all cases whatsoever over the District of Columbia. I have no idea how you get self-rule without a Constitutional amendment when it says to exercise exclusive legislation all cases whatsoever. Now I am a great supporter of home rule. I just think that we needed a Constitutional amendment before we did that.

To make all the laws that shall be necessary and proper for carrying out the above. Now, you didn't stop me. Where in Article 1, Section 8 is there even a hint that the federal government has a right to all of these regulations? What part of this?

Our founding fathers concerned that we might not understand what they meant, came back four years later, in 1791, with ten amendments. Twelve started to the process. Ten made it and the tenth one, the most violated and ignored amendment in the Constitution says, the power is not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people.

What that says in common everyday English, since this is written in old English and legalese that if you can't find in Article 1, Section 8, the federal government can't do it. Now, our regulatory burdens would be enormously reduced if we just went back to Constitutional government.

Nobody stopped me in reading. That is all there is in Article 1, Section 8, what is between my two thumbs. There isn't even a hint there that most of these regulations are any Constitutional business of the federal government. How come we are doing it if it is none of our business and prohibited by the Constitution? Have you asked that question why we are doing it?

Ms. WOOD. No, I have not. I just assumed that they were allowed the regulations. I did spend last year I think it was $34,000 in professional fees with CPA's and lawyers and different professionals to help me run my business and that is a lot of money.

Mr. BARTLETT. For a small business, that is a lot of money.

Ms. WOOD. A lot of money.

Mr. BARTLETT. But I am very serious. I don't know and I have looked and looked through this. I carry this Constitution. I read it frequently. I can't even find a hint in Article 1, Section 8 that most of our regulations are any business of the federal government.

Now the states can regulate you to death, as far as this Constitution is concerned, because they are free to do that, but those people are closer to where the rubber hits the road and they are more accountable to you. You know your federal guys are way off there in Washington, particularly if you are in Oklahoma or somewhere and there isn't even a hint here in the Constitution that is any of our business.

Don't you think we need to ask that question: What is the Constitutional basis for this regulation? If there isn't any, then the federal government shouldn't. Does that seem reasonable? I hope peo-

ple, other than Senator Robert Byrd and I start asking that question. Thank you very much. I very much appreciated your testimony.

Chairwoman CAPITO. Thank you, Congressman. I would like to yield to Congressman King and see if he has any questions.

Mr. KING. Thank you, Madam Chair. I haven't even started yet and I am having fun. I am not going to do it, but I am tempted to ask Congressman Bartlett to yield and go down through this conversation. We have had it in the past and it is always instructive and I know the argument. The argument is: The power to regulate interstate commerce. Well, that is an awful stretch to get to some of the things we are talking about here today as a creation out of old cloth.

Just a minute about my background. I started a construction business in 1975, bought a bulldozer and went out and began doing work by the hour. My business was my checkbook in my shirt pocket and throughout those 28 years and meeting payroll for 28 years, I came face-to-face with many of the things that you talked about here this morning and certainly all of you have experienced far more than we would have time to dredge up.

Although I would say this, that throughout those years I made those adjustments day-by-day and week-by-week and at some point, I was doing a seminar at a convention of small contractors and as I did that seminar I really came unprepared that day and so I thought let us find out how many agencies regulate our trade. People with similar business to mine. I put up a chalkboard and sat there with 60 to 70 contractors in the room. I split it into federal, state and local regulations.

That day, the following day with a different group of people cross-reference, we came to the same number. This was about 1991 or 1992. Forty-three different agencies. Now, I don't know how a large corporation can deal with that kind of regulation, let alone a small company, a sole proprietorship or a sole proprietorship that grew into 23 employees.

How do we incent new businesses, the incubator companies, the sole proprietorships? Why in their right mind would anybody step in and start out with their hammer and their saw or their bulldozer and go into a business when they had to face 43 agencies and all their regulation? Is there anybody here in this panel that believes that there is a single moment in time that you have been in compliance with all the agencies that regulate your business? I guess I would direct that first and if you decline to answer it I understand why, Ms. Wood.

Ms. WOOD. We talked about retaliatory action today, but I do try very hard. That is why I spend so much money on professional fees. But getting back to the regulations, I guess I should have listened to my father, who was a good Virginian who told me when I started this business that I shouldn't go into business because I might take a job away from a man. Had I listened to him perhaps I wouldn't be facing these regulations.

Mr. KING. I also appreciate the remarks that Congressman Bartlett made about how efficient women are. You left out one thing. That is the effectiveness in political campaigns as well.

So we can't be in compliance with these regulations and we can't really anticipate that we are going to see the incubator businesses that grow up into the competitive businesses that we need so that we have some kind of economic evolution in all of our industries. When we talk about regulations, what I am hearing is well let us maybe suspend or repeal the last thing that we did to you, but what about all the things that we have done? What about the cumulative effect of this? Is there anyone that has a broad approach?

Ms. WOOD. I do not.

Ms. DARIEN. I think with the amount of regulators regulating certain industries, we will see declines in various industries in terms of small business growth. To be optimistic, I don't think you can sort of quell the entrepreneurial spirit in some people who have a dream and really want to go out and pursue it. What we see happening is they have this dream, but they tailor the dream to fit into a certain niche so that they won't have to deal with certain regulations.

Like, for example, maybe they don't become a full-fledged construction company. Maybe they become the independent drywaller so all they have to do is worry about themselves. What we see happening with a lot of our members is they don't want to hire anyone else. They don't want to grow. They want to grow in profits, but they don't want to grow in size because they don't want to have to deal with the regulatory burden, most specifically the IRS burden in terms of dealing with employment taxes and everything else that they have to deal with, with employees.

So what happens is you have a little bit of a stifling of the economy, in terms of growth of businesses, because there isn't that incentive for a small business to grow into something bigger.

Mr. KING. I will pose the question first to Mrs. Wood and then back to you and that is this: I am a supporter of going to a national consumption tax and eliminating the IRS entirely and eliminating the office. We can do that. It is a very legitimate thing to do. Every time I turn that Rubik's Cube around and look at it, it looks better and better and better. I am not sure I have looked at it from every angle, but I have tried over the last 20 years.

I came to that conclusion from the seat of a bulldozer, independent from anybody else's input. So if we could eliminate the IRS, if we could eliminate the Davis-Bacon wage scale and if we could eliminate affirmative action and go with individual rights, what kind of a dynamic impact would that have on your business, Ms. Wood?

Ms. WOOD. It would have very much of a dynamic. Let me just say one personal thing. What is it, 2011 when the estate tax goes back in? Gee, I hope I am still living at the end of that. I am 65 years old. You know you might think this is funny, but there is going to be a lot of deaths that year, because of people who have worked hard and amassed a nice estate. When they go beyond that year, the estate tax comes back. So maybe with your ideas we could also do away with the estate tax permanently.

This is a real concern if you have worked hard and you know 25 years of being in construction is not easy, as you know and I would like to be able to pass my business on to my children without having them have to sell it in order to continue. Sell portions of it.

I certainly would like any type of tax reform. It certainly is a burden on my business and part of my 25 to $30,000 a year I spent, a great part is in professional fees to help me deal with the IRS and their regulations.

Mr. KING. These goals that you have laid out, I just want to assure you and for the record that we either get that done or I will die trying.

Ms. WOOD. Thank you.

Mr. KING. If you could also answer that same question. How dynamic an impact would that have on the small incubator businesses that you represent, if we eliminated the IRS and the burdens of Davis-Bacon wage scale, affirmative action and that load of government burden which is the core?

Ms. DARIEN. Well obviously a large impact, though you know I am weary to think we can sort of dig ourselves out of the quagmire we have already sort of gotten ourself into. It is hard to sort of turn back after we have gone down a certain path, but again I think this all goes back to Congressman Bartlett's perspective in that why is it that the federal government just assumed that small business owners want to try and get away with something.

In fact, if left to their own devices, they are more likely to do the right thing for their employees, to provide them the benefits they need, to do the right thing for their business, to contribute to the greater good in terms of community work and even taxes for the federal government. So we really need to expel the notion that they are somehow trying to get something for free or get away with something. That is not the case with small business owners.

Mr. KING. I will just conclude with this that in the sum total of all this, our job here in this Congress is to try to contribute to the quality of life in the United States of America and what some of these regulations do, in fact most of them do is it erodes your ability to have that quality of life and that family relationship, whether they are related or not, in these small businesses. I think it is something that we are trimming at the bushes instead of chopping at the roots and also for the record, I agree with Congressman Bartlett on the Constitution. Thank you, Madam Chair.

Ms. DARIEN. Thank you. Mr. Gonzalez?

Mr. GONZALEZ. Madam Chair, thank you very much. Why I feel like the defenders at the Alamo at this moment I don't know, but being the only Democrat present obviously I am going to disagree quite a bit with the interpretation of the Constitution and the philosophies expressed by my colleagues.

Nevertheless, of course I respect it and if we had a good healthy debate here in Congress and the rules and the procedure and the mindset allowed it, we would progress and probably help all Americans, because somewhere in the middle lies the truth and the answer. That is a very difficult lesson for individuals here on Capitol Hill.

Let me ask you, Ms. Wood. You have worked very hard. At one time, and this is not a criticism of your father, now my father didn't feel that way, but my grandfather did about a woman taking someone's place, when I went to law school, many years ago, but a female student everyone would look at her and say, well she is

never going to practice full-time. She is taking some guy's slot. It is a horrible way of thinking.

Believe it or not, we try to address it. So even in the context of small business, we have policies and programs that encourage women to become entrepreneurs because we recognize patterns of discrimination as was expressed by certain mindsets and philosophies years past, but still impact the opportunities presented to minorities and women. It is out there. That is the reality of life. We live in a great society, but it has its imperfections and government does have a duty to level the playing field and that is what we really attempt to do.

The problem is when we go overboard. I see government really governed and should be inspired by the same maxim that the doctors follow and that is, first do no harm. That our policies do no harm, but sometimes we have to be proactive to make sure that there is a level playing field for women, minorities or others, but just by the definition of a small business we want to make sure that small businesses have a level playing field out there in competing with big businesses.

Why do we have rules on independent contractors? Because the truth is, if someone could they would not have any employees, because when you have an employee there are all sorts of additional burdens. It is not a simple matter of whether someone is following a schedule that determines whether it is independent or employee, it is about control. I am not going to go into a hundred years of law into this thing.

What we are trying to achieve is accountability and responsibility so that an individual that does not enjoy the reputation that you have in your area of commercial construction, someone who is not as forthright, is not as caring, is not as responsible can unfairly compete with you, who is following the rules and such.

The rules really attempt to impose an equal burden and responsibility on everyone so that they will conduct themselves accordingly and hopefully aspire and attain the position that you have. You very naturally have gone that route. Others need encouragement. Others need actually to be watched and that is a terrible thing, but it is true because it is called human nature.

If all of us in this room today, if I said don't worry about your local state or federal tax, we are never going to check on them, this year for 2003 we are not going to check whether you pay it or not, how many of us would pay taxes realistically? Think about it.

So there is a scheme out there and there is a reason. What we attempt to do is find some reasonable balance and that is what we really need in this Congress, in the state Houses and our city council chambers.

With your help, we can identify where we have gone overboard and are counterproductive, but please understand that a reasonable regulatory scheme does make sense and it will assist you in your success so that there are individuals out there that are not as competent, may be dishonest and never attained the fine reputations that you have that would be able to compete against you and actually underbid you and everything else and produce a lesser quality of a product or service and run you right out of business

because that is the way things are, but we are not going to allow that to happen.

We want you to prosper. We want you to represent the best there is out there in the small businesses and that is what we attempt to do in Congress, whether Republican or Democrat. So to that extent, I do disagree with some of the points of view that have been expressed earlier.

Chairwoman CAPITO. All right. I think that wraps up our testimony and our hearing. I again appreciate all of your input. I would like to tell you that I will pass on to Mr. Schrock that everything went well and that I will tell him as well that your grandson will be coming after him for his seat in the next several years.

Ms. WOOD. Thank you.

Chairwoman CAPITO. Thank you very much.

[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]

Statement of Shelley Moore Capito
Acting Chair
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
May 15, 2003

Good afternoon, ladies and gentlemen. I want to thank you all for participating in today's hearing on "Federal Agency Treatment of Small Business." I am honored to have the opportunity to chair this hearing today. It is, however, under unfortunate circumstances. Ed Schrock, Chairman of this Subcommittee, could not be with us today because his mother is terminally ill and he is tending to her. Our thoughts and prayers are with Ed and his family.

This hearing seeks to examine the federal government's treatment of small businesses when it comes to regulatory

compliance. Our small business sector is already heavily burdened with extra paperwork and additional costs because of regulation. When you add the cost of a possible enforcement action, the burden increases exponentially.

In 2000, a report put out by the Small Business Administration's Office of Advocacy calculated the cost of regulations to our economy at $843 billion per year or $8,164 for every household. That number rivals our massive federal budget this year. Even more troubling than that were statistics gathered on the impact of these regulations to small businesses. Small businesses face a regulatory burden that is 60% higher per employee than large businesses. The authors estimate in their report that the average small business is burdened with almost $7,000 per employee in regulatory compliance costs. Now the costs further increase when you are unable to comply with a federal regulation either because of lack of knowledge or just plain confusion. In 2001, the National Federation of Independent Business released a survey of their members which described some

82% of the respondents as "discovering regulations in the normal course of business" or when an enforcement action is begun. "Gotcha" regulations on an unsuspecting small business are not a good representation of attempts at compliance assistance by agencies. Dealing with the government once a penalty or fine is imposed can be extremely onerous and can throw a typical small business owner's life and livelihood into chaos.

I am pleased to welcome to our first panel two of our warriors in this fight to ensure fairness for small businesses, the National Ombudsman for small business and the National Taxpayer Advocate. They work everyday to help small businesses navigate the maze of regulations and help them deal with the multitude of regulators.

In a time when our economy relies so greatly on small businesses to keep our country moving, we cannot afford to stifle that progress by continuing to pile on costly regulations that disadvantage these groups. Half of our national workforce is employed by small businesses and 2/3 to 3/4 of net new jobs are

created by small businesses. Now is the time to do everything in our power to limit the reach of the regulators and lower the burden of regulation to small businesses.

I look forward to your testimony and to that of our other small business experts on our second panel. We'll now have any additional opening statements.

STATEMENT OF MR. MICHAEL BARRERA,
SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN,
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

MAY 15, 2003

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss "Federal Agency Treatment of Small Business," how federal agencies comply with laws designed to ensure small business regulatory enforcement fairness.

Today, President George W. Bush, Administrator Hector Barreto, and I, as the National Ombudsman, all share your concern on the federal regulatory impact on America's small businesses. The Office of the National Ombudsman (ONO), along with the Office of Advocacy and with the full support of this Administration, is working diligently with small businesses, trade associations, Federal agencies and our partners in Congress to promote and ensure a more small business friendly regulatory environment. A fair and common sense approach to regulatory enforcement helps save small businesses their valuable resources such as time, money, and jobs, thereby improving the economy overall. The ONO plays a critical part in this process by evaluating how federal agencies treat small businesses during regulatory enforcement or compliance actions.

Decreasing the number of excessive and arbitrary enforcement actions by Federal regulatory agencies while increasing compliance assistance activities are primary objectives for ONO. While the law requires ONO to be a neutral party, ONO still seeks to ensure that high-level federal agency officials hear and address complaints and concerns made by small entities. In other words, ONO seeks to act as a "troubleshooter" for small business. ONO is given this authority through the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which directs ONO to:

- work with each federal agency having regulatory authority over small businesses to ensure that the latter have a means to comment when they receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by agency personnel;

- establish a means to receive comments from small businesses regarding actions by agency employees conducting compliance or enforcement activities, and a way to submit these comments confidentially, if requested, to the affected agency;

- report annually to Congress evaluating agencies' enforcement activities and rating their responsiveness to small business; and

- coordinate the activities of ten regional Regulatory Fairness (RegFair) Boards.

ONO relies on the efforts of the ten regional RegFair Boards across the U.S. to conduct outreach to small businesses in their regions to receive comments and educate small businesses about the services of ONO. Additionally, ONO, along with the RegFair Boards, conducts public hearings and receives small business comments regarding federal regulatory enforcement actions.

ONO also holds roundtables with trade associations to educate them and their members about ONO and its services. In conjunction with hearings and roundtables in each city ONO host Emerging Markets meetings, with group leaders which focus on women, minorities, and veterans, to inform under-served small business communities about the services offered by the ONO and the Small Business Administration (SBA).

One concern I often hear from small businesses throughout the country is that regulations are confusing and difficult to navigate. Small businesses want to comply with the law, but they need help knowing when a regulation will affect them and how to comply with it. In many cases, small businesses "don't know what they don't know". As such, federal agencies cannot rely merely on posting a new regulation in the *Federal Register* and developing a brochure in order to educate small businesses about regulations. Federal agencies must provide assistance that is both easy to read <u>and</u> easy to understand. Additionally, small businesses need to know that assistance is available <u>and</u> accessible.

As public awareness of ONO grows, cooperation among the small business community and Federal regulatory agencies is growing and producing strong, positive relationships that produce results.

For example: The Internal Revenue Service (IRS) was once feared by small businesses which envisioned fines and penalties whenever the "tax man" was coming. Today, the IRS has taken a more proactive and responsive approach to the interests and concerns of small business. The IRS, through its Taxpayer Advocate system, now attends every RegFair Hearing and Roundtable conducted by ONO. In some cases, the small business owner testifying and attending the Roundtable or Hearing, and the IRS representative leave the room, address the problem and return to report that they have solved the problem **on the spot**.

Then there is the small shipping company from Baltimore, Maryland which had its fine refunded by U.S. Customs. Customs had fined the shipping company for failing to notify it in a timely manner of the presence of un-entered merchandise. The owner, Mr. Robert Herb, paid the fine, but appealed, contending that small shipping agencies should not be responsible for the following and tracking cargo after discharging from a vessel. After discovering ONO on the Internet, he contacted us for assistance. ONO replied within a day. Mr. Herb subsequently heard from the Director of U.S. Customs, who informed him that the agency had reviewed the case and reconsidered its previous decision, noting that "This issue appears to be more a case of miscommunication between Customs and Terminal Shipping as opposed to noncompliance with the regulations.) Mr. Herb then

received a refund of the fine money. He told us, "It was undoubtedly the most pleasant surprise of the year."

Another example comes from a hearing I chaired in Indianapolis, Indiana. The owner of Mickey Finn's Restaurant in Libertyville, Illinois testified that the Department of Labor (DOL)Wage and Hour Division field investigator appeared at his business one day and informed him that he could not claim an exemption from Fair Labor Standards Act (FLSA) minimum wage and overtime provisions for his brewmaster and his assistant. The owner, after spending $7,000.00 in legal fees to contest this ruling, filed a comment with my office, and we went to DOL with the comment for review. Within 30 days, the DOL and this small business reached a mutually agreeable resolution at no additional cost to this small business.

During the past year, federal agencies have demonstrated a growing commitment to working with ONO and small businesses to improve the regulatory enforcement and compliance environment. Federal agencies have begun to think outside the box as they are making use of the internet, including SBA's BusinessLaw.com website with its Business One Stop Compliance portal; increasing and improving outreach; conducting training seminars; and working more closely with trade associations. Many agencies consistently attend ONO's hearings, particularly the DOL and IRS, which have attended each hearing and roundtable, not only to hear small business concerns but also to use these hearings as vehicles to educate small business about available compliance assistance.

Small businesses also received a helping hand with the enactment of the Small Business Paperwork Relief Act of 2002 (SBPRA). ONO is working with Office Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA) to assist federal agencies in complying with the SBPRA. Specifically, ONO and OMB have requested that federal agencies designate a small business point of contact within the agency for compliance assistance, provide a listing of their compliance assistance activities and submit a general summary of their compliance assistance program.

The SBPRA will also hold agencies accountable, as they must report on the number of enforcement actions taken against small businesses in which a civil penalty was assessed, the number of actions in which penalties were reduced or waived, and total monetary amount of the reductions or waivers. The first report is due at the end of this calendar year.

While we are seeing improvement, challenges still exist. Many small business owners are still hesitant to tell ONO about the treatment they received by a federal agency due to their concerns of federal retaliation. In order to address this fear, whether real or perceived, ONO has now started rating agencies on whether they have small business non-retaliation policies. Several agencies have been proactive and adopted written non-retaliation policies including USDA, IRS, U.S. Department of Interior, Federal Deposit Insurance Corporation (FDIC), Occupational Safety and Health Administration (OSHA), SBA, U.S. Securities and Exchange Commission (SEC),

Customs, National Credit Union Administration (NCUA), Food and Drug Administration (FDA), Federal Trade Commission (FTC), Federal Communications Commission (FCC) and Equal Employment Opportunity Commission (EEOC). ONO would like to see more agencies adopt formal written non-retaliation policies in order to demonstrate to small businesses that their government will hear from them without fear of reprisal.

As stated by President Bush: "The role of Government is to create an environment that encourages risk taking, an environment that facilitates the flow of capital and an environment in which people can realize their dreams." By removing the "strangulation of regulation," federal agencies can help America's entrepreneurs turn their dreams into successes.

It is the mission of ONO to encourage federal agencies to adopt a "help you" attitude instead of a "gotcha" attitude, creating a more small business friendly federal regulatory enforcement environment. I am grateful for the opportunity to testify this morning on behalf of SBA. I will be happy to answer any questions for you or the other Subcommittee Members.

Statement of
Nina E. Olson
National Taxpayer Advocate
Internal Revenue Service

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

15 May 2003

Mr. Chairman and Distinguished Members of the Subcommittee, thank you for inviting me to speak today on important issues facing small business and how the Office of the Taxpayer Advocate can assist the small business community.

The Office of the Taxpayer Advocate

Congress greatly expanded the authority of the Office of the Taxpayer Advocate and the National Taxpayer Advocate in the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98).[1] The statutory function of the Office of the Taxpayer Advocate is to (i) assist taxpayers in resolving their problems with the IRS; (ii) identify areas in which taxpayers have problems in dealing with the IRS; and (iii) identify administrative and/or legislative proposals that might mitigate those problems.[2]

The mission of the Taxpayer Advocate Service is clear: "As an independent organization within the IRS, we help taxpayers resolve problems with the IRS and recommend changes that will prevent problems." This dual mission is supported by two organizational components within the Taxpayer Advocate Service (TAS). The largest is case advocacy, which deals with problems faced by specific individual and business

[1] Pub. L. 105-206 (1998).

taxpayers. Congress has mandated that there be at least one Local Taxpayer Advocate in each state. Case advocates, who report to the Local Taxpayer Advocate, help to resolve specific taxpayer problems. These problems range from simple IRS processing errors or delays to complex examinations and appeals.

Systemic advocacy, as its name implies, addresses taxpayer problems from a broader perspective. This component of TAS identifies and evaluates systemic problems that are already occurring and recommends processing changes and/or corrections. It receives suggestions, complaints and ideas from internal and external sources and evaluates the feasibility of incorporating those ideas into processing changes and administrative or legislative proposals. Systemic advocacy, along with Local Taxpayer Advocates, proactively participate on IRS task forces to provide an independent perspective on potential changes in processes or guidance. In particular, TAS representatives seek to ensure that taxpayer rights are protected and taxpayer burden is minimized.

The National Taxpayer Advocate is required, by statute, to provide two annual reports directly to Congress, without any prior review by the Commissioner or by employees of the Department of Treasury, the Office of Management and Budget, or the IRS Oversight Board. The December 31st report consists of three major sections that:

1. Identify the twenty most serious problems facing individual or business taxpayers.
2. Recommend key legislative proposals that resolve significant taxpayer problems, address an inequity in the law, or simplify the administration of the tax laws.

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[2] I.R.C. § 7803(c)(2)(A).

3. Discuss the ten most litigated issues, analyze trends and identify approaches that might prevent the need for litigation.[3]

Outreach to Small Business Owners

The TAS organization conducts extensive outreach to make taxpayers aware of its mission and how we can advocate on behalf of taxpayers. These outreach efforts include public presentations and speeches by myself, local taxpayer advocates, and other TAS officials. They also include attendance by TAS employees at trade shows, radio broadcasts, practitioner meetings, and presentations to civic and trade organizations. This year, we are conducting an extensive outreach campaign to small business groups including truckers, restaurateurs, small business forums and the SBA's Reg-Fair Hearings.

Last year the IRS was one of the three agencies to receive an "A" rating from the SBA Ombudsman's office. (Twenty-five agencies were rated.) The IRS received this rating because of its attention to small business concerns in general and because of our interest and attendance at SBA's Reg-Fair Hearings. TAS contributed to this rating by having our personnel attend those hearings and try to help taxpayers solve their business tax problems as well as listen for areas where systemic problems are identified. In addition, my staff works on problem cases identified by the SBA and drafts correspondence explaining either a solution or a reason why a solution is not possible. Those letters are personally reviewed and edited by me and go out over my signature.

[3] *See* I.R.C. § 7803(c)(2)(B).

Recently, my office conducted an in-depth research study to determine which taxpayers were most in need of our services. The study determined that, using a conservative estimate, 1.2-2.0 million taxpayers were currently underserved by TAS – that is, they had problems with the IRS in the last two years and might have benefited from the services of TAS. We followed up our survey of over 3,000 taxpayers and practitioners with a series of focus groups with different categories of taxpayers – Spanish-Speaking Taxpayers, Affluent Families, Unmarried Poor, Stable Middle Class, Surviving Spouses, Struggling Young Families, and Small Business Owners.

It is interesting to note that small business owners (SBOs) accounted for 25 percent of all of the underserved population surveyed. Here is what we learned from our focus groups of small business owners:

- Nearly all participants in both groups said they use a paid preparer for at least some part of their taxes for their business (mainly for their annual tax returns).
- Many SBOs first try to solve their IRS problem themselves and seek professional tax help only as a last resort.
- Those who called IRS Customer Service directly were frustrated with the menus in the hotline and at having to re-explain their tax situation to a different Customer Service representative each time.
- Overall, however, about one-third of those who dealt with IRS Customer Service reported that they were satisfied with the treatment they received. They noted that when the representative was not "mechanical," is knowledgeable, and is able to

transfer them to the appropriate person, their experience becomes far more positive.

- Most of the SBOs described themselves as "IRS Intimidated." While they generally trust the IRS, they feel it "is not always competent in solving problems." However, SBOs say they view the IRS as "big brother," that it is like a monopoly with too much power – further noting that the IRS is aware of this power and "use[s] it to [its] advantage."

In general, the SBOs had a positive reaction to the concept of the Taxpayer Advocate Service. Most of the SBOs were hopeful that TAS would be so effective that they would not have to get their preparer involved, thus saving them money. They also felt that working with TAS would give them more of a sense of control over their problems. They like being able to act independently and to fix a problem by themselves. Additionally, they said that TAS "sounded more personal" and that they would no longer be "just a number" as they felt they were with IRS Customer Service.

We found that SBOs have many of the same concerns about TAS that we found in other groups: potential lack of confidentiality; TAS' not having enough authority and power within the IRS; and the potential for case advocates' being overloaded with cases. In addition, and perhaps most important, some SBOs were concerned that TAS would not apply to businesses – that it is designed mainly for individual taxpayers.[4]

[4] Russell Marketing Research: Task 149: A Qualitative Study of the TAS Underserved Segments (April, 2002).

Our case inventories, of course, show that this latter point is most emphatically not correct. For fiscal year 2002, small business cases accounted for 35 percent (or 79,509) of our total case closures. Of these 79,509 cases, 89 percent came into TAS because of systemic delays, not economic hardships. Table 1 shows the number of case closures and "change" rate for the four most frequent reasons small business and self-employed taxpayers required our assistance.

FY 2002 TAS Case Closures – SB/SE Top Issues			
Major Issue	**Number of Cases**	**% of Total TAS Cases**	**% of Cases Resulting in Change**
Processing claims/amended returns	9,268	11.7	80
Other penalty issues	7,096	8.9	76
Lost/misapplied payment issues	5,048	6.3	84
Refund inquiry/request	4,882	6.1	75

Table 1 - FY 2002 TAS Case Closures – SB/SE Top Issues

This fiscal year, TAS is piloting several marketing initiatives targeted to a few of the segments of the TAS underserved population. We are designing a specific marketing strategy and set of messages to small business owners that cut across each of those segments. We have identified several key messages that we want to get across to small business owners:

- We are available, as an expert resource, to help small businesses with their unresolved federal tax problems.

- Payroll tax issues, among the most common for small business, are particularly challenging because of the potential for stiff penalties. Small business owners should not wait too long to seek help on these issues.
- We recognize the hardship that tax problems impose on small businesses. Once a small business taxpayer qualifies for TAS assistance, the taxpayer will receive personal service until the problem is resolved. The taxpayer will be assigned an impartial advocate whose job is to listen and work with the taxpayer.

Tax Problems of Small Business

In my 2002 Annual Report to Congress,[5] I identified a number of issues that affect small business. In the Most Serious Problems section, we identified the following items:

1. *Navigating the IRS* – This continues to be a serious problem for business taxpayers as they have to deal with the IRS on many more occasions than individuals. They file employment and excise returns in addition to income tax returns. Finding the right person to address their problem is sometimes a difficult task.

2. *Processing of Offer-in-Compromise Cases* – There are major delays and processing problems with this process, which can often be helpful to small business taxpayers that fall behind on either their payroll taxes or their self-employment tax payments.

3. *Access to Automated Collection System* – Small business taxpayers need to be able to contact someone at IRS once they have a delinquent account. Taxpayers have a very difficult time getting through the system to talk to someone. This is generally due to too few employees assigned to that type of work.

4. *Collection Due Process (CDP)* – This process is relatively new to IRS but the backlog of cases has grown very quickly. This process was established in RRA 98 to allow taxpayers an opportunity to appeal a collection enforcement decision and to explore collection alternatives other than what was being proposed by the Service with an independent third party (the Appeals officer).

[5] National Taxpayer Advocate, *FY 2002 Annual Report to Congress,* publication 2104 (Rev. 12-2002).

5. *Federal Tax Deposits* – The Service assesses a large number of penalties for late employment tax deposits. The rules are complicated and change during the life of a business. The amount of these penalties can be very severe on small businesses and potentially impact the business' ability to continue operations.

6. *Toll Free Accuracy* – This is a problem for small businesses because they are often the ones that will be calling to get free assistance rather than hiring an accountant or lawyer.

7. *Obtaining Employer Identification Numbers (EINs)* – We have identified this problem in the last two reports. Getting a new EIN is a crucial first step for new businesses. Getting this number immediately is important because it is used on a number of other business documents and it is needed to make employment tax deposits. While IRS has made improvements, we continue to receive complaints about the slowness of this process.

There were several other issues that primarily dealt with individual taxpayers but that could also affect small businesses. These included misapplied payments, delays in receiving requested documents, refund inquiries, return preparation and language barriers.

We also looked at the ten most litigated tax issues in federal courts over the preceding year and found that many of those cases involve small businesses. The business issues we identified were abusive trusts, barred refunds, capital gains, Collection Due Process, trade and business expenses, underreported and unreported income and valuation issues. These cases contained many unique sets of facts and circumstances.

Many of the legislative recommendations I have submitted to Congress in the two annual reports I have issued since becoming National Taxpayer Advocate in 2001 address small business issues. In the 2002 Annual Report to Congress, for example, I recommended that a husband and wife who jointly own an unincorporated business and who file a joint

federal income tax return be permitted to elect out of the partnership provisions of the tax code and instead file a "joint" sole proprietorship or farm schedule and report each spouse's share of self-employment income. Under current law, a husband and wife jointly owning and operating an unincorporated business – say a dairy farm or small shop or even a pet-sitting business – should file a partnership return. In practice, most couples merely report the business's income on a sole proprietorship return, with only one spouse receiving credit for Social Security and Medicare purposes. This can lead to disastrous consequences if the uncovered spouse becomes disabled or dies. Because 97 percent of all sole proprietorship and farm schedules show income below the social security wage cap and because we propose to make this provision elective in any event, no couple would experience a tax increase as a result of our proposal, yet many would clearly benefit from Social Security and Medicare eligibility. This proposal clarifies and simplifies the status of husband and wife co-owned businesses and ensures appropriate Social Security and Medicare coverage for the working couple.

Other small business recommendations included in the 2002 Annual Report to Congress were a *de minimis* exception for passive loss and credit limitations and a revision to the S corporation election process, whereby a small business corporation could elect to be treated as an S corporation at the time it files its first Form 1120S return. Currently, the election must be made on or before the 15th day of the 3rd month of the tax year, a confusing requirement that results in some taxpayers missing the election date.

We also put forth a proposal to regulate federal tax return preparers. At present, persons who prepare federal tax returns for a fee and who are not attorneys, certified public accountants, or enrolled agents are not required to meet any minimum standards of competency. Many small companies seek the assistance of unregulated preparers because their fees are generally lower than those of the regulated preparers. This choice sometimes leads to disastrous results for small businesses because the preparer may be less skilled or knowledgeable about specific business issues. Our proposal requires unenrolled preparers to register, pass an examination, and receive certification from the IRS. The enforcement of this program rests with the consumer, because the taxpayer will be able to check the credentials of the preparer and "vote with his feet."

My 2001 Annual Report to Congress[6] contained additional recommendations that may benefit small businesses, including:

- Authorization of a discretionary first time waiver of certain penalties.
- Repeal of the failure to pay penalty.
- Reduction of the failure to deposit penalty where the correct amount of tax was paid but the wrong payment method was employed.
- Providing for a health insurance deduction in computing the net earnings of a sole proprietor for self-employment tax purposes.
- Extension to commercial fishermen of the benefits of income averaging under IRC § 1301(a) that are currently available to farmers.
- Repeal of the individual alternative minimum tax.

[6] National Taxpayer Advocate, *FY 2001 Annual Report to Congress,* publication 2104 (Rev. 12-2001).

The Role of the Office of Taxpayer Advocate in the Regulatory and Guidance Processes

As with most taxpayers, small businesses sometimes have difficulty complying with the tax law because of its enormous complexity. More written guidance and direction to small businesses explaining legal requirements and their obligations under the law should positively affect compliance. The IRS and the Department of Treasury are committed to publishing more guidance to assist taxpayers in understanding and complying with the tax laws.[7] This guidance takes the form of regulations, revenue rulings, revenue procedures, and some notices. The types of issues and substantive tax law matters addressed in guidance projects are numerous and varied, affecting all types of taxpayers.

The National Taxpayer Advocate participates fully in this legal advice process. My office is provided the opportunity to comment on potential guidance items as they are developed and drafted. We ensure that issues of taxpayer rights and taxpayer burden are not overlooked. Additionally, where we find that there is a need for further guidance in a particular area, we submit recommendations for consideration and development of guidance.

The NTA is also a member of the IRS/Treasury Published Guidance Advisory Committee (PGAC). The PGAC reviews, selects, and prioritizes proposals for written guidance for

[7] B. John Williams, Jr., The Office of Chief Counsel-A Renewed Commitment to Guidance, The Tax Executive, March-April 2002.

inclusion in the annual guidance plan. This plan identifies the significant issues for which written guidance will be developed over the next plan year.

The participation of the NTA in the whole of the guidance process provides an independent perspective on developing guidance, whether the guidance takes the form of a notice, a revenue ruling, or a regulation. Ensuring that taxpayer rights are protected and taxpayer burden is minimized is central to the role of the NTA.

Conclusion

The role of the Taxpayer Advocate Service is the same for businesses as it is for individuals. That is, we help resolve taxpayer problems and we make administrative and legislative recommendations that help reduce or eliminate those problems. As an independent advocate within the IRS, we are able to be aware of issues that are creating problems, procedures that are being considered, processes that are changing and regulations that are being drafted. We are also able to speak with an independent and impartial voice to ensure that taxpayer rights are respected and considered and taxpayer burden is minimized. We take this responsibility seriously.

Thank you for the opportunity to speak to you today about my office and our efforts to assist small business. I have been and remain committed to expanding and improving our outreach and services to the small business and self-employed taxpayer. It is an honor to be here today with the SBA's Ombudsman, as we share many of the same interests. I welcome any questions or comments that you may have.

Statement of Dorothy Wood
President, JD&W, Inc.
Submitted Before
Subcommittee on Regulatory Reform and Oversight
U.S. House Committee on Small Business
on
"Federal Agency Treatment of Small Business"

May 15, 2003

Good morning, Mr. Chairman. My name is Dorothy Wood. I am the President of JD & W, Inc. located in Virginia Beach, Virginia. Thank you for inviting me to be with you today to discuss the way that federal agencies treat small businesses, specifically with respect to enforcement and compliance. I want to begin by congratulating the Subcommittee on its continued emphasis on reducing the regulatory burden on small businesses. Passage of the Regulatory Flexibility Act and the Truth in Regulating Act and the Small Business Administration's (SBA) Office of Advocacy's vigilance in carrying out the law have been a significant force in development of a more business friendly regulatory environment for small business. I am grateful to Chairman Ed Schrock and to this Subcommittee for your continuing efforts to fulfill the promise of these laws and to look beyond the way federal rules are written to how they are enforced.

I am also a founding member of Women Impacting Public Policy (WIPP), a bipartisan nationwide organization of 500,000 women and minority business owners. My testimony today is based on my own experience as a business owner, but also incorporates comments I received from my fellow WIPP business owners.

My company, a commercial construction company, is a small business, employing around 23 people. We do work throughout Virginia for office, retail, industrial, institutional and government clients. Federal regulations cause several areas of concern to me. I will attempt to briefly summarize some of my experiences and those of others with whom I do business.

First, the implementation of the federal privacy rules issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) has had a huge impact on small businesses. Compliance may be burdensome for large

companies with extensive human resource staffs but for small businesses, it is nearly impossible. I have no human resources department, no personnel manager, and no compliance team. Yet I am held to the same standards as a multi-national corporation. When an employee is out sick, my business is impacted far more significantly than a large business. However, I cannot ask the employee what the problem is so that I can know the length of time we will be out. On a personal level, if he/she is going to be out for a while, I would like to be in a position to offer assistance to him and his family.

It is my understanding from health insurance brokers that under COBRA, for example, the Federal Government makes no distinction between a business that has 21 employees and a conglomerate employing 21,000. That just isn't equitable.

I believe that initial compliance with HIPAA will cost my company several thousand dollars with ongoing costs of approximately $500 per year and I know from other WIPP members and business associates I am not alone. I urge this Committee to continue its pursuit of delaying enforcement of HIPAA and to supplement these regulations with "plain English" guidelines. I thank the leadership of this Committee for its letter to HHS Secretary Thompson on this issue.

On a personal level, I went to my doctor the other day and was amazed that I had to stand behind a white line that he had taped to his nice new carpet. Even as an established patient, I had to sign a stack of privacy forms then I watched in fascination as the nurse called out only the first name of patients because she was not permitted to say anyone's full name. The doctor told me he would have to spend thousands to renovate his office to allow for the new law. Consider also the small pharmacy competing with the "big box" drug stores. These businesses often simply do not have the physical space necessary to meet the required distances between the patient being served and the next person in line. What alternatives do they have? HIPAA stands in the way of what many health-care providers have tried to establish for a long time: shared patient files among appropriate care-givers to provide the best possible care for patients.

I also want to appeal to the Subcommittee on behalf of a charity close to my heart. I founded Meals on Wheels in Virginia Beach many years ago, and we have faced problems with implementation of HIPAA. Since HIPAA. We have been required to obtain authorizations so that we can tell our volunteers

when they should just knock and enter because the person to whom they are delivering a meal is either hearing impaired or physically disabled and cannot come to the door. This is just an example of how a well-intentioned law can cause hardships for those who want to help the elderly or disabled.

Second, while my business falls primarily under the Virginia Department of Labor and Industry, we have had a few experiences with federal OSHA. I run a $10 million a year commercial construction company. My company has not had a serious workplace injury or death in all my 25 years of operation. Nonetheless, my company was recently in jeopardy of being cited for an OSHA violation when I could not produce our logbook of injuries within four hours as required by federal rules.

The person on my staff who maintains the logbook was out of the office because of illness, and, although I am the president of the company, I did not have immediate access to the secure location in which the logbook is kept. Although we were able to work things out with the enforcement officials, it seemed more than a little ironic that my company's exemplary compliance record might be marred by our inability to produce a book that reports nothing in less than half a business day.

Many other local small businesses must deal with Federal OSHA regulations regularly. It is nearly impossible for small businesses to keep up with the ever-changing regulations. OSHA frequently conducts "no notice" inspections where there has been no report of a problem. A friend who owns a boat repair business in Hampton Roads told me that OSHA inspectors always fine companies that they inspect.

I would be interested to know how many inspections OSHA performs per year on small businesses and how many of those resulted in fines. I would also like to know if small businesses are given the opportunity to correct the problem and be re-inspected. It just seems logical to me that small businesses should be allowed to correct problems without harsh penalties. After all, that is the point - compliance.

Finally, I urge your Subcommittee to continue its mission of overseeing and demanding that the federal agencies take a measured and reasonable approach toward small business. According to a 2001 study funded by the

Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, by Dr. Mark Crain and Dr. Thomas Hopkins, small businesses spend nearly $7,000 each year per employee just to comply with federal regulations and mandates. That's 60% more than large firms. According to the National Federation of Independent Businesses, small businesses employ 53 percent of the work force, but shoulder 63 percent of the total business regulatory costs.

Clearly, then, regulatory flexibility for small businesses continues to be important as we seek to reinvigorate our economy. Even more important is ensuring reasonableness when it comes to enforcement actions taken against small business owners.

We are Americans, pursuing the American dream and we do not shy away from following the rules. However, to many of us, our greatest fear is inadvertently missing a form or payment; or failing to properly document something the way a bureaucrat in Washington wants it done. Small businesses simply do not have the resources to effectively comply with all of these regulations. **We need your help.**

Thank you for allowing me to speak today. I would be happy to answer any questions.

National Association for the Self-Employed

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Testimony of

Kristie L. Darien
Director of Government Affairs

The National Association for the Self-Employed

House Small Business Subcommittee on Regulatory Reform and Oversight

"Federal Agency Treatment of Small Business"

May 15, 2003

I would like to express my appreciation to Chairman Ed Schrock, Ranking Member Robert Brady and the members of this Subcommittee for the opportunity to participate today in this hearing. I am here to testify on behalf of the National Association for the Self-Employed and our 250,000 member businesses, representing over 600,000 owners and employees nationwide.

The National Association for the Self-Employed is the nation's leading resource for the self-employed and micro-businesses, businesses with ten or less employees. Today, this vital segment of the small business population within our nation numbers more than 18 million. Micro-businesses are the drivers of America's economic engine, creating well over a third of all new jobs to the economy between 1998 and 1999. The last U.S. Census reported that these firms employ more than 12.3 million workers with a total annual payroll of more than $309 billion. Beyond these tangible contributions, it is also important to note that according to an August 2002 poll by USA Today, CNN and Gallup, Americans rate people who own and operate small businesses as the second most trustworthy group in the nation, right behind teachers.

Often, the chief speed bump faced by micro-business owners on the road to their success is a collective $800 billion dollar bill called federal government regulation. And because big successes usually have small beginnings, these costs loom large to micro-businesses, which are capitalized chiefly on dreams and ideas.

A report sponsored by the U.S. Small Business Administration entitled "The Impact of Regulatory Costs on Small Firms," cited that firms employing fewer than 20 employees face an annual regulatory burden of $6,975 per employee. This same report cited that environmental regulations and tax compliance issues are particularly burdensome to small business. The NASE membership is from a diverse array of industry sectors; from consultants to manufacturers to farmers. Yet with each of the industries we represent, the chief agency they interact with on a continuous basis is the Internal Revenue Service.

Internal Revenue Service

The NASE has been very pleased with the recent efforts made by the Internal Revenue Service to become small business friendly. However, the self-employed and micro-business communities still face an overwhelming regulatory burden in complying with IRS regulations and enforcement of various rules. Vague and complex rules can mean the demise of their business. According to a study by the Tax Foundation, in 2002 businesses bore the majority of the tax compliance cost with 52.8 percent of the total cost, or $102.5 billion. The Office of Management and Budget estimated that in 1995 businesses spent 2.4 billion hours on tax compliance efforts.

One specific IRS regulation that is exceedingly burdensome to the micro-business and self-employed communities is the employee vs. independent contractor classification. Many NASE members either utilize independent contractors or are themselves independent contractors. Disputes about who is an employee and who is an independent contractor have cost small businesses more than three-quarters of a billion dollars in IRS penalties and back-taxes during the past 10 years.

The IRS has a complicated 20-point checklist the can be used as a guideline in determining whether or not an individual is an employee or an independent contractor. Yet, using this checklist does not guarantee that a person is correctly classified. Other IRS materials published to assist in classification are equally as convoluted. NASE Members have indicated when utilizing the I.R.S.'s tax assistance help line on this issue, they have gotten different answers from different agents on this same issue. A large issue is that there is no one, single, homogenous definition of the term "employee." Thus, there is no clear and concise manner for a self-employed individual or micro-business owner to easily determine when an individual should be classified as an independent contractor or an employee.

Also, if a micro-business owner has been selected for an audit, the IRS is supposed to provide employers with relief from potential IRS reclassification of a firm's independent contractors as employees, by prohibiting the IRS from reclassifying such workers if the employer has met various relief requirements as laid out by Section 530 of the Revenue Act of 1978. Section 530 was enacted in response to complaints regarding increased enforcement and aggressive application of the employment tax laws by the IRS. Section 530 requires small business owners to meet the following relief requirements:

1. A "reasonable basis" for treating the workers as independent contractors rather than employees. A "reasonable basis" includes reliance on:

- Judicial precedent or IRS rulings;
- A past IRS audit in which there was no assessment attributable to employment taxes; and
- A long-standing industry practice of treating the workers as independent contractors.

2. Substantive Consistency: must have treated similar workers equally in regards to classification.

3. Reporting Consistency: must have filed Form 1099-MISC for each worker, unless the worker earned less than $600.

Over the years, the IRS has chipped away at many of these supposed "safe harbors" for reclassification. A micro-business owner is typically an owner whose office occupies the corner of their bedroom, whose warehouse is their garage, whose CIO and CFO and CEO and janitorial staff share the same desk and business card. Is it "reasonable" to believe they would have the ability and time to research IRS rulings and judicial precedent to make certain they have a "reasonable basis" for classifying someone as an independent contractor?

With more and more individuals conducting a business out of their home as "independent contractors" and the economic incentive to employers to use independent contractors rather than employees, the issue of worker reclassification continues to be a key area for the recovery of revenue by the IRS despite its recent efforts to become more small business friendly. Due to the regulations vagueness and complexity it is very easy for the IRS to arbitrarily reclassify workers and thus, require micro-business owners to pay enormous sums of back taxes and penalties, which ultimately force them to go out of business. Reclassification of 10 independent contractors to the classification of employee, with taxes, penalties and interest can net 100 times more revenue than auditing an individual. (Willingham & Coté, 2001)

Solutions

The NASE strongly feels that the IRS regulation must be updated to provide straightforward rules for classifying workers and relief from reclassification. We strongly support the reintroduction of last years' Independent Contractor Determination Act, which clearly defined the rules for classification of workers, provided certainty for businesses that enter into independent-contractor relationships, and minimized the risk of huge tax bills for back taxes, interest, and penalties if a worker is misclassified after the parties have entered into an independent-contractor relationship in good faith.

The NASE also feels that a continued push towards tax simplification and paperwork reduction would greatly alleviate the IRS regulatory burden on small business and minimize enforcement issues. Due to their size, micro-businesses are responsible for managing every aspect of their business. Every second spent contending with burdensome record keeping and tax preparation

takes away from the time they expend running and growing their business. Tax simplification and paperwork reduction would have numerous positive affects. First, easy to understand tax rules would reduce the compliance costs of the self-employed and micro-business owners, allowing them to reinvest that time and money in the success of their business. Second, a simpler tax code would raise compliance rates and lessen mistakes made in tax filings, thus reducing the administrative burden of both the taxpayer and the IRS. Most importantly, clarifying tax regulations allows those preparing their own taxes to more readily understand the law and their responsibility of complying, lessening the need for enforcement.

Conclusion

The ultimate hardship that is faced by the self-employed and micro-businesses when dealing with federal agencies is the complexity and vagueness of regulations they issue. The simple difficulty of understanding and then complying with any and all regulations affecting their business is overwhelming for a micro-business owner. This burden imposed on micro-business is disproportionate to that of larger businesses because smaller firms cannot spread the overhead costs associated with hiring accountants and attorneys, and the general cost of paperwork burdens and staff needed to try and comply with the maze of federal regulations.

Small business in general do not feel comfortable with calling the various federal agencies to ask questions and seek compliance assistance. The NASE feels that agencies need to do a better job of giving small business owners better access to plain-English compliance assistance materials via their websites or local offices. The majority of micro-business owners, while not fond of the regulations imposed on them, want to do what is right and comply with the regulations. The NASE was greatly pleased to see the passage of H.R. 205, the National Small Business Regulatory Assistance Act, which expands the SBA-sponsored Small Business Development Center Program to provide, as one of their services, regulatory compliance assistance. We believe that no written guidebook, online or phone compliance assistance can outweigh the benefits of the one-on-one assistance micro-business owners and self-employed individuals receive at their local Small Business Development Centers.

The National Association of the Self-Employed would again like to thank this Subcommittee for the opportunity to express the concerns of America's micro-business owners. We hope you will continue your valuable efforts to alleviate the regulatory burden on America's micro-business and self-employed communities. The members of the NASE who hope to turn the American dream into an American success story depend upon your vigilance on our behalf.

TESTIMONY OF ROBERT F. (BOB) HEDRICK

President and CEO, Sprinkle Masonry, Inc.

"Federal Agency Treatment of Small Businesses"

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

May 15, 2003

Chairwoman Capito and other Members of the Subcommittees on Regulatory Reform:

Thank you for inviting me to testify today. My name is Bob Hedrick, and I am the President and CEO of Sprinkle Masonry, Inc. (SMI) in Chesapeake, Virginia. Sprinkle Masonry is a small business employing 250 to 400 employees, depending on the economy. SMI works as a subcontractor on some of the largest construction jobs in Virginia and North Carolina.

A portion of Sprinkle Masonry's business is as a subcontractor on federal government buildings, primarily military facilities. As such, I come into frequent contact with many federal agencies including the Department of Labor, OSHA, EPA, contracting officers in all branches of the military, and the Army Corps of Engineers. My remarks today will focus primarily on the Army Corps of Engineers because of an ongoing dispute with them that I believe is indicative of their treatment of small businesses in general. I have found a number of the Army Corps officials I have dealt with to be arrogant and altogether unwilling to deal in a fair and reasonable manner with small businesses.

My latest problems with the Army Corps of Engineers began in the summer of 2001 when Sprinkle Masonry was performing masonry work for the construction of two dormitories at Langley Air Force Base. The contract labor rates were governed by the Davis-Bacon Act. The Department of Labor published an incorrect wage rate of $12.68 for MASON TENDERS, BRICK. As you all know, the prevailing wage rates are designed to pay the same rates for the same jobs in a particular region regardless of the contractor or contracting agency. In May of 2001 I received a phone call from Todd Norfleet, an employee of the general contractor J. B. Denny Company, advising me that the COE was going to begin withholding a portion of monies due on our payment applications unless I directed my Project Manager to begin paying the INCORRECT rate of $12.68 per hour. We did so in June 2001 until we could get DOL to intervene with the COE on our behalf. I had our attorney contact the Department of Labor in an attempt to have the correct wage rate provided to COE. We received copies of three letters from DOL to the Army Corps of Engineers covering a period from June 2001 to November 2001. DOL advised the COE that the wage rate of $12.68 for MASON TENDERS, BRICK was in fact "an inadvertent clerical error ", the correct rate of $7.76 was to be applied retroactively to the start of construction and funds should not be withheld from SMI for workers who performed the work of MASON TENDERS, BRICK, at a rate of $7.76 per hour.

Several months after DOL's last letter, The COE released the money they withheld from our progress payments in May, June and July 2001; however, the COE has steadfastly refused to refund the difference in wages we were forced to pay the MASON TENDERS, BRICK for the period of June, July and August 2001. The incorrect rate paid was higher than the wages used in our bid and the rate DOL had told COE was an error.

Our claim for overpayment of wages may be considered small by some; however, the amount is NOT the issue. I do not believe one branch of our government should profit from a mistake made by another branch of our government. This is neither fair nor reasonable.
Thank you for your time.

Sincerely,

SPRINKLE MASONRY, INC.

Robert F. (Bob) Hedrick
President and CEO