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THE PAPERWORK REDUCTION ACT AT 25: OPPORTUNITIES TO STRENGTHEN AND IMPROVE THE LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MARCH 8, 2006

Serial No. 109–171

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

29–707 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
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THE PAPERWORK REDUCTION ACT AT 25: OPPORTUNITIES TO STRENGTHEN AND IMPROVE THE LAW

WEDNESDAY, MARCH 8, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room 2154, Rayburn House Office Building, Hon. Candice Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller and Lynch.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Kristina Husar, professional staff member; Joe Santiago, GAO detailee; Benjamin Chance, clerk; Krista Boyd, minority counsel, Jean Gosa, minority assistant clerk.

Mrs. MILLER OF MICHIGAN. Good afternoon. I would like to call the hearing to order here, to begin.

On March 7, 1995, the U.S. House of Representatives passed the Paperwork Reduction Act of 1995 by a vote of 423 to 0—which is remarkable, I believe. But here we are, 11 years and 1 day later, reviewing what we have accomplished since then and since the PRA passed originally just over 25 years ago.

Although we have established a very strong system and eliminated hundreds of millions of hours of unnecessary paperwork, we have added billions of hours of paperwork burden even faster. Since its passage in 1980, we have increased total governmentwide burden by over 400 percent to more than 8 billion hours today. If future Members of Congress were to look back and say that our actions today increased the burden another 400 percent in another 25 years, to over 30 billion hours, then I would say, unfortunately, that we have failed.

In a time of increasing global competitiveness, the United States must be the best place in the entire world to do business. Part of being the best place in the world to do business means that we have to quench the Federal Government's appetite for unnecessary information. And no one can say with a straight face that every single form or every question or every recordkeeping requirement of the Government is absolutely necessary.

So we have set out as a Congress many times to put the right structure in place to create incentives, to reduce burden, and the disincentives to increase burden. But even now we do not seem to have the right formula yet.

In 1995 we established a set of certification requirements to force agencies to do the tough work of justifying their information collections. These requirements would force agencies to prove that they were avoiding duplication of information, reducing burden on the public and small entities, writing their forms in plain English, and that the information that they were collecting was really necessary to their programs. The GAO has conducted a comprehensive study of agency certifications and found them wanting. Agencies were missing or provided partial support for 65 percent of the collections in GAO's sample. Most agencies are not fulfilling their requirements for public consultation as well.

The watchdog for these agencies is the office we created in 1980 within the Office of Management and Budget, known as the Office of Information and Regulatory Affairs [OIRA]. This agency reviews each of these collections and can approve its use for up to 3 years. The Office has also had the responsibility of coordinating percentage reduction targets between agencies and reporting annually to the Congress on progress toward burden reduction.

As we have demanded more and more of OIRA, we have given it fewer resources. As the size and scope of Government has increased, OIRA has shrunk. It would be a different story if we had achieved our burden reduction goals while reducing OIRA's resources, but that is not the case. At the same time that OIRA's budget decreased, the budgets devoted to writing, administering, and enforcing regulations went from $11 billion in 1980 to $44 billion today. And while OIRA's staff has declined from 90 down to 50 employees, the staff dedicated to writing, administrating, and enforcing regulations has increased from 146,000 in 1980 to over 242,000 today.

I think the staff has put a chart up so you can follow what we are saying with all these numbers. You look at the line there.

Part of the work that we must do in our review of the PRA is reauthorizing appropriations for OIRA which expired in 2001. We want to make sure that they have the resources that they need to do the job that Congress has an expectation of them to do. And OIRA's other functions, including regulatory review, are as critical as ever. Burden imposed by regulation is every bit as costly and serious as burden imposed by paperwork. In fact, they are often two sides of the same coin. New regulations impose new paperwork requirements.

The specific burden reduction targets of the 1995 PRA were not accomplished. That act required a target for reducing government-wide burden by 40 percent between 1996 and 2001. If that would have been achieved, total burden would have measured 4.6 billion hours in 2001 rather than 7.5 billion hours—again, I think the staff has put up an additional chart so that you can have a visual of some of the numbers that we are talking about here as well—and we wouldn't be on our way to more than 9 billion hours during the next year.

We have a very, very big challenge ahead of us. Chairman Davis and I are in the process of writing legislation to improve the PRA and our Government's efforts at burden reduction. And that is why I am so glad today that we have such excellent witnesses to testify before our committee. We are certainly looking forward to your tes-

timony and your counsel on how we can amend the law to reduce unnecessary Government burdens and improve our Nation's competitiveness.

[The prepared statement of Hon. Candice S. Miller follows:]

Statement of Candice Miller
Chairman
Subcommittee on Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, DC
March 8, 2006

On March 7, 1995 the U.S. House of Representatives passed the Paperwork Reduction Act of 95 by a vote of 423-0. We are here 11 years and one day later reviewing what we have accomplished since then and since the PRA passed originally just over 25 years ago.

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In 1995, we established a set of certification requirements to force agencies to do the tough work of justifying their information collections. These requirements would force agencies to prove they were avoiding duplication of information, reducing burden on the public and small entities, writing their forms in plain English, and that the information they were collecting was really necessary to their programs. The GAO has conducted a comprehensive study of agency certifications and found them wanting. Agencies were missing or provided partial support for 65% of the collections in GAO's sample. Most agencies are not fulfilling their requirements for public consultation either.

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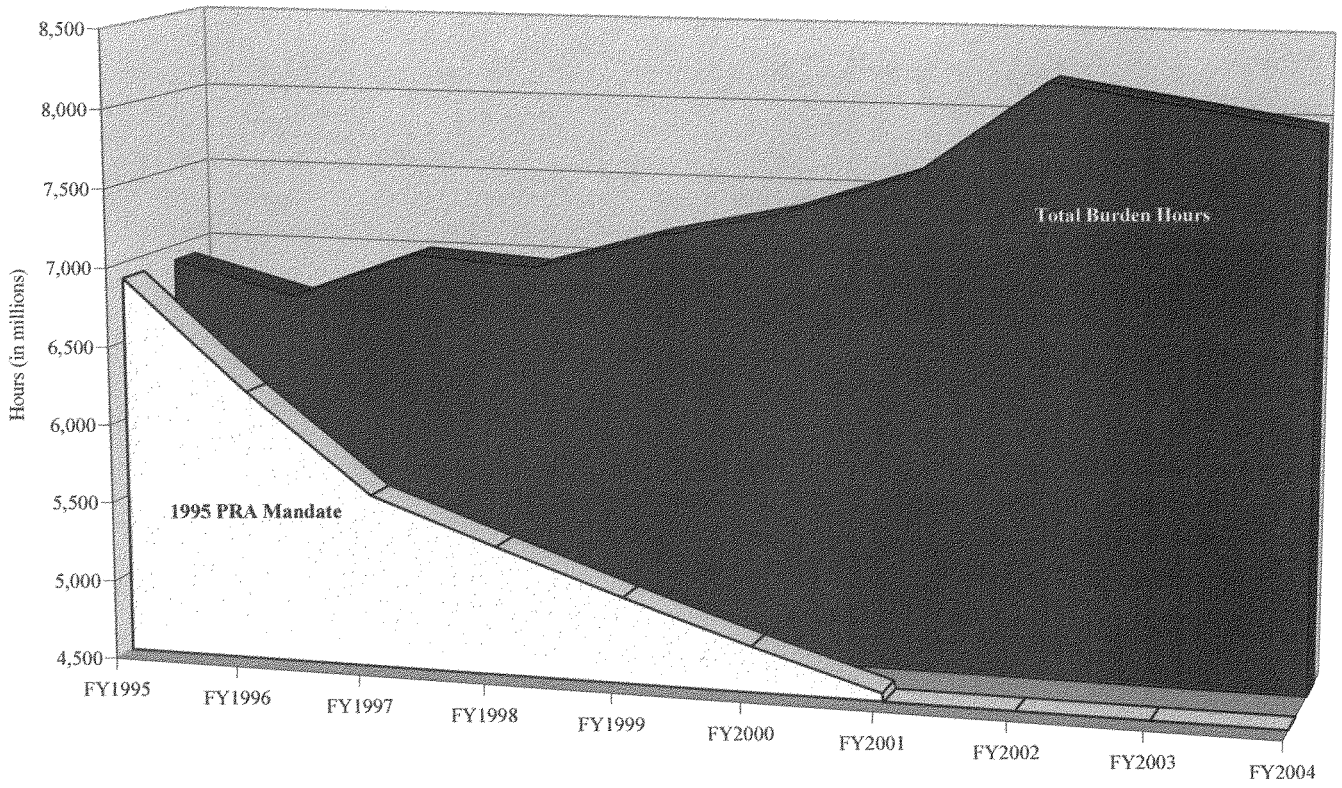
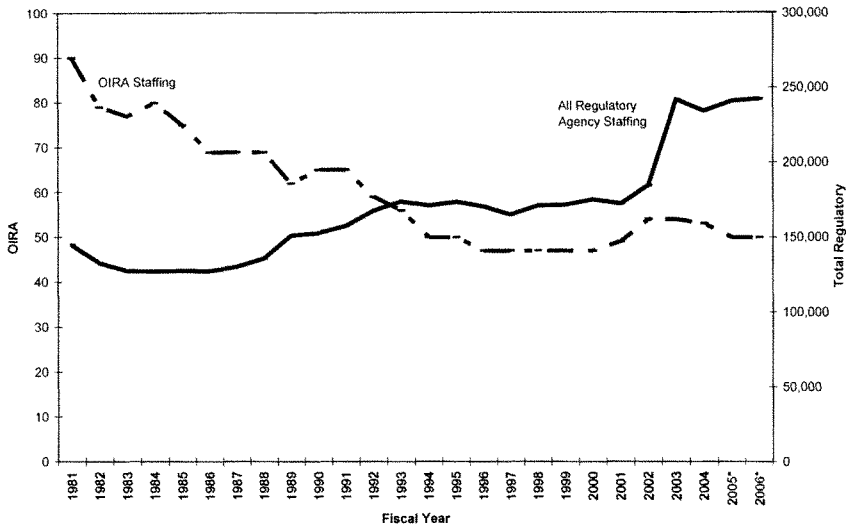
We have a big challenge ahead of us. Chairman Davis and I are in the process of writing legislation to improve the PRA and our government's efforts at burden reduction. And that is why I am so glad that we have such excellent witnesses before us today. I am looking forward to your testimony and your counsel on how we can amend the law to reduce unnecessary government burdens and improve our nation's competitiveness.

I'll now recognize Mr. Lynch for his opening statement.

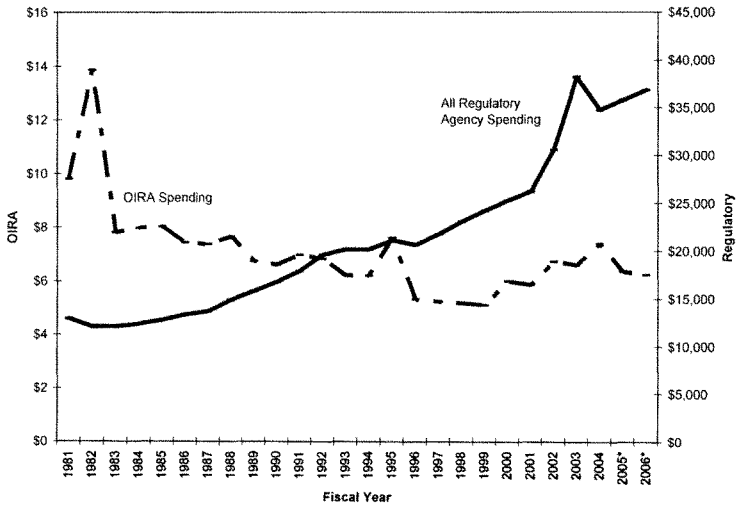
Government-Wide Burden



Comparison of OIRA Staffing to Total Regulatory Agency Staffing



OIRA vs. All Regulatory Agencies
Real Spending (Millions of 2000 dollars)



Mrs. MILLER OF MICHIGAN. And just at the right moment, my ranking member, Representative Lynch, has arrived and we appreciate his attendance here. He has just been a remarkable member of our committee. I would like to recognize him for his opening statement.

Mr. LYNCH. Thank you, Chairwoman. I appreciate your kind remarks. I am happy to support the efforts of the committee to reauthorize and improve the Paperwork Reduction Act and the ultimate goal of making Government paperwork less complex and more efficient.

It is beyond argument that the promise of democracy and the fullness of individual rights and the ideals of equal protection and access to Government under the law can never be attained if the communications we seek to carry out the work of Government are drafted in such a way that their meaning and their object remain a complete mystery after being read. The Tax Code, which is the bane of many of us here on this committee, which applies to every single working soul in America regardless of their education, is today written in a style and language that is not unlike the technical specifications for the space shuttle. It is no surprise that the IRS accounts for about 80 percent of the Government's paperwork burden.

Many other Government forms that are central to the basic rights of our citizens, by their sheer volume and complexity place too big a burden on the citizens trying to complete them. I think the Commission to Government by Alfred E. Smith, the Governor of New York, said it best when they said that Democracy does not merely mean periodic elections; it also means that Government must be accountable to people between elections. And in order to hold their Government to account, the people must have a Government that they can understand. When Americans are required by their Government to fill out forms, they should be able to do it without spending unnecessary hours and difficulty trying to understand and complete these forms.

We will hear a lot today about the paperwork burden, the estimates of how many hours Americans are spending every year filling out various forms. OMB estimates that the current paperwork burden is almost 10.5 billion hours. OMB also says that the number may be somewhat inflated because of adjustments being made to some IRS forms, but even that being said, the paperwork burden is significantly higher than just 6 years ago. In fiscal year 2000, the paperwork burden was 7.4 billion hours. I can see the impact alone of the Patriot Act on so many of our industries in compliance with various forms has probably contributed greatly to that.

However, it is misleading to only talk about the burdens of information collection. Information for a variety of purposes and many information collections do provide agencies and the public with extremely valuable information. Just a few examples: The FDA requiring drug manufacturers to list warnings and other safety information on prescription drug labels. The Bureau of Customs and Border Protection requires ships to provide cargo manifests and other information 24 hours before loading, and we are all familiar with the security concerns in our ports. It is based on that information that Customs can refuse to allow high-risk cargo into the

United States. Another area as well, Mine Safety and Health Administration requirements hold mine operators to the requirement that they keep records of miners' exposures to toxic chemicals, and miners then have the right to get copies of that information.

It is the role of Government to balance the power of commercial interests against the public's right to have access to that information. In many cases, when industry has a few employers that are overwhelming in size and power that it is only the role of Government that can actually intervene on behalf of our citizens. It is our role of Government to provide that balance.

Unfortunately, burden reduction is sometimes used to rationalize efforts to weaken public health and safety protections. One recent example of this is EPA's proposed changes to the Toxic Release Inventory Program. Last September, EPA proposed a rule that would allow thousands of facilities to avoid disclosing details about the toxic chemicals that they are releasing into the environment, information that is relied upon greatly by local communities. The EPA rationale for this proposal was that it would reduce the time industry has to spend filling out toxic release forms. But EPA's own analysis found that the proposed rule would only save facilities an average of 20 hours per year and, in monetary terms, about $2.50 per day. Yet under EPA's proposal, as much as 10 percent of those communities that currently had a facility reporting under the Toxics Release Inventory could lose all the data about local toxic chemical releases.

So agencies need to find a way to reduce the burden of filling out paperwork, but the key is to find ways to make reporting easier and less time consuming without sacrificing the quality and the nature of some of the information that is actually collected and made public. One good example is a recent effort by the IRS to make some of its tax forms easier to understand so that the forms will take less time to complete. As any taxpayer knows, there is a lot more we should do to simplify the process of filing taxes.

In the end, I look forward to working with Chairman Miller and Chairman Davis on reauthorizing the Paperwork Reduction Act. I believe we can work together on a bipartisan basis for legislation that makes improvements on the Paperwork Reduction Act without controversial provisions aimed at slowing down or weakening the regulatory process, that part of the process that does serve the public interest.

We have some very distinguished witnesses joining us today. I want to thank you, and I look forward to hearing your thoughts.

[The prepared statement of Hon. Stephen F. Lynch follows:]

REPRESENTATIVE STEPHEN F. LYNCH
STATEMENT
SUBCOMMITTEE ON REGULATORY AFFAIRS
HEARING ON
THE PAPERWORK REDUCTION ACT AT 25: OPPORTUNITIES TO STRENGTHEN AND IMPROVE THE LAW
MARCH 8, 2006

I am happy to support the efforts of this committee to reauthorize and improve the Paperwork Reduction Act and the ultimate goal of making government paperwork less complex and more efficient.

It is beyond argument that the promise of democracy, the fullness of individual rights, and the ideal of equal protection under the law for all citizens can never be attained if the communications which seek to carry out the law are drafted in such a way that their meaning and object remain a mystery after being read.

The tax code, which applies to every working soul in America regardless of their education, is today written in a style and language that is not dissimilar to the technical specifications for the Space Shuttle. It is no surprise that the IRS accounts for 80% of the governmentwide paperwork burden.

Many other government forms that are central to the basic rights of our citizens also, by their sheer volume and complexity, place too big a burden on the citizens trying to complete them.

I think the Commission to Gov. Alfred E. Smith on Government Reorganization said it best.

"DEMOCRACY DOES NOT MERELY MEAN PERIODIC ELECTIONS. IT (ALSO) MEANS A GOVERNMENT HELD ACCOUNTABLE TO THE PEOPLE BETWEEN ELECTIONS. AND IN ORDER TO HOLD THEIR GOVERNMENT TO ACCOUNT THEY MUST HAVE A GOVERNMENT THEY CAN UNDERSTAND."

When Americans are required by the government to fill out forms, they should be able to do so without spending unnecessary hours trying to understand and complete the form.

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OMB says that number may be somewhat inflated because of adustments being made to some IRS forms. But clearly, the paperwork burden is significantly higher than just six years ago. In fiscal year 2000, the paperwork burden was 7.4 billion hours.

However, it is misleading to only talk about information collections in terms of "burden." Agencies collect information for a variety of purposes and many information collections provide agencies and the public with extremely valuable information.

Here are just a few examples:

FDA requires drug manufacturers to list warnings and other safety information on prescription drug labels.

The Bureau of Customs and Border Protection's requires ships to provide cargo manifest information 24 hours before loading cargo bound for a U.S. port. Based on that information, Customs can refuse to allow high risk cargo into the U.S.

The Mine Safety and Health Administration requires mine operators to keep records of miners' exposure to toxic chemicals. Miners then have the right to get copies of that information.

It is the role of government to balance the power of commercial interests against the public's right to have access to information.

Unfortunately, burden reduction is sometimes used to rationalize efforts to weaken public health and safety protections. One recent example of this is EPA's proposed changes to the Toxics Release Inventory program. Last September, EPA proposed a rule that would allow thousands of facilities to avoid disclosing virtually all details about the toxic chemicals they are releasing.

EPA's rationale for this proposal is that it would reduce the time industry has to spend filling out Toxics Release Inventory forms. EPA's own analysis found that the proposed rule would only save facilities an average of 20 hours per year- in monetary terms, about $2.50 per day. Yet, under EPA's proposal, as many as 10 percent of communities that currently have a facility reporting under the Toxics Release Inventory could lose all data about local toxic chemical releases.

Agencies should find ways to reduce the burden of filling out paperwork. The key is to find ways to make reporting easier and less time consuming without sacrificing the quality of the information collected.

One good example is a recent effort by the IRS to make some of its tax forms easier to understand so that the forms will take less time to complete. As any taxpayer knows, there is a lot more we should do to simplify the process of filing taxes.

I look forward to working with Chairman Miller and Chairman Davis on reauthorizing the Paperwork Reduction Act. I believe we can work together on bipartisan legislation that makes improvements on the Paperwork Reduction Act without controversial provisions aimed at slowing down and weakening the regulatory process.

We have some very distinguished witnesses joining us today. Thank you for joining us and I look forward to hearing your thoughts.

Mrs. MILLER OF MICHIGAN. Thank you very much.

Now, because Government Reform is an oversight committee, it is a practice of the committee to swear in all of our witnesses. So if you will rise and raise your right hands.

[Witnesses sworn.]

Mrs. MILLER OF MICHIGAN. Thank you very much.

Our first witness today is certainly no stranger to Capitol Hill. Dr. Jim Miller is an expert on various public policy issues, including Federal and State regulatory programs, industrial organization, antitrust and intellectual property, and the effects of various laws and regulations on the overall economy. During the Reagan administration, Dr. Miller served in numerous capacities, including the Administrator for Information and Regulatory Affairs at OMB, a member of the National Security Council, and a Director of the Office of Management and Budget.

Dr. Miller is often seen on television and appears in newspaper articles, where he comments on public issues. He is a distinguished fellow of the Center for Study of Public Choice at George Mason University, a distinguished fellow of the Mercatus Center at George Mason University, and a senior fellow of the Hoover Institution at Stanford University.

He and his wife Demaris live away from the hustle and bustle of Washington, out in—how do you pronounce that? Rappahannock County? Rappahannock County, VA. And as you just mentioned before we began our hearing, not only do you have a very good last name, but your daughter-in-law's name is Candice.

Mr. MILLER. Absolutely.

Mrs. MILLER OF MICHIGAN. That is amazing. I have only met one other Candice Miller in my entire life, so that is just an interesting fact. Dr. Miller, welcome so much. We are interested in your testimony. You do have the floor, sir.

STATEMENTS OF JAMES MILLER, CHAIRMAN, BOARD OF GOVERNORS, U.S. POSTAL SERVICE; AND SALLY KATZEN, VISITING PROFESSOR, GEORGE MASON UNIVERSITY LAW SCHOOL

STATEMENT OF JAMES MILLER

Mr. MILLER. Thank you, Madam Chairman, and Congressman Lynch. It is a pleasure to be here. Thank you for inviting me. It is an honor to be here with Sally Katzen.

As you pointed out, I was head of OIRA at one point. In fact, I was the very first administrator of OIRA. I was the first Oiranian, as we called ourselves. And it is a memory that I relish.

I think enacting the PRA, the Paperwork Reduction Act, was one of the best things Congress has done. It is very important that you did this and that you continue to support it. And the reasons are that what is at stake is so large, as Congressman Lynch was pointing out. The paperwork burden is so large. And, chairman, you were pointing out there is so much in terms of resources that are allocated by ordinary Americans to this effort.

Also, the regulatory burden, the effects of regulatory activity, both positive and negative, is so large, the effects are so large, the impact is so large, that it is just really important that you have an institutional way of dealing with this.

Let me just give you a couple of figures I checked out. The regulatory burden, according to Mark Crain, who is a professor of economics, is like $1.113 billion. That is over $1 trillion a year. The Tax Foundation has concluded that the Internal Revenue Code imposes paperwork costs equal to something like $256 billion a year. Now, I know that there are people that would contest those, some have higher numbers, some lower numbers; but the numbers are staggering when you think about them.

Overall, I think successive administrations have done a good job of employing the act. If you just look at the OIRA Web page, I think you will be impressed by the variety and the depth, the breadth of scope of activities and the depth of activities that they have engaged in. I think the work of OIRA and other Federal agencies in the paperwork and the regulatory spheres should be governed by three principles.

The first is have sufficient information to know what you are doing. Too often, Government agencies promulgate regulation and promulgate paperwork reductions without knowing what they are doing. Too often, people just sound the alarm and say stop, it doesn't make any sense without knowing what the information is. So first, have requisite information.

Second, you ought to apply the principle of cost-effectiveness. This is very commonsensical kinds of advice. That is to say, for any given cost of a regulation or a paperwork requirement, you ought to achieve the maximum benefits from that. Or alternatively, the flip side, you ought to, for any given level of benefits, you ought to find a way to achieve those benefits at the lowest cost. That is the second principle.

The third principle is a little more difficult to employ in that it sort of envisions a schedule. You think of the stringency of a paperwork requirement or of a regulatory requirement going from least stringent to most stringent. You want to think of the benefits. Of course, the extra benefits decline as the extra costs increase. But you want to secure that level of stringency where the difference between the benefits and the costs are greatest: the net benefits. You want to maximize net benefits.

Now, those three principles were articulated by OIRA and by President Reagan in the 1980's and they have been followed pretty well since then. But as, Congressman Lynch, you pointed out, 80 percent of the paperwork burden is from the IRS. And as you pointed out, Madam Chairman, in your letter of invitation, those numbers have gone up, and you just said those numbers have gone up—why? The burden has gone up. Why?

Well, is it the fault of OIRA? I don't think that is probable. Is it the fault of IRS? IRS has done a lot to try to secure a lower burden, simplification and things. I think the real fault is that Congress and the President continue to enact tax simplifications that end up making the Tax Code longer—the shelf that houses the Tax Code longer and longer. And so, it means that the cost of filling out all the forms and complying with the requirements of the Tax Code are greater.

The one thing that you could do—I am not suggesting it is easy—but if you were to pass a flat tax, boy, would that reduce the amount of paperwork burden. I mean, it would cut it enormously.

Failing that, you might think of having people file with the IRS every other year instead of every year. I once suggested that to an IRS commissioner. I thought he was going to fall out of his chair. But if you think about it, when you file, it is really a settling up, isn't it? You pay your income tax and, you know, but you just settle up once a year. That is what filing is. And maybe file every other year and it would reduce—it wouldn't cut it in half, but it would reduce the paperwork burden. And there are simple rules. You know, if you were born in an odd-number year, you file in an odd-number year. Even-number, file in an even-number year. Of course, with joint returns, you would have to have some rule about whose birthday applied there.

Similarly with the regulatory area, a lot of the problem of regulatory burden is because of mandates. Sometimes Congress passes a law that says the agency has to promulgate a regulation a certain way no matter what the cost. Well, I mean, that is kind of nonsensical. They ought to be able to make some adjustments, some judgments about the minute benefits at some point and the enormous cost in others. I think this is something that you really should look into.

Now, if you will permit me just a level of abstraction here. Your committee and your sister committee over in the Senate are really the only committees that are focused directly on trying to limit the paperwork burden and the regulatory burden. You are limiting. Most other committees are engaged in activities that increase the paperwork burden and increase the regulatory burden. And so you are at a big disadvantage. How do you provide some institutional arrangement where the Congress, as a whole has to make those kinds of tradeoffs?

My suggestion—it is not original with me, but I think it is a very good one—is to have a regulatory budget; that is so Members of Congress think of the regulation in total. Do you realize that the total burden of regulation and paperwork is about twice, over twice all discretionary spending? And it is approaching half of the total Federal financial budget.

Now, again, this is an enormous resource cost. And I am suggesting that Congress and the President impose, through regulatory activity and paperwork activity—and it is one I don't think Congress has the institutional equipment to really come to grips with. And so if you had a regulatory budget, if you had the President every year propose, along with a financial budget, which I used to help put together as OMB Director, a regulatory budget. So then the Congress and the committees would have to deal with priorities and deal with the excesses, and reduce excesses but make sure that they were doing the right thing in promulgating and making sure the agencies carried out the regulations that made sense and the paperwork that made sense.

I think that a regulatory budget wouldn't solve everything, just like reconciliation doesn't solve everything on the budget side, but I think it would go a long way toward improving the regulatory performance of the Federal Government.

Thank you, Ma'am.

[The prepared statement of Mr. Miller follows:]

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March 8, 2006

PREPARED STATEMENT
before the
Subcommittee on Regulatory Affairs
of the
Committee on Government Reform
of the
U.S. House of Representatives

Mdme. Chairman and members of the committee: thank you for inviting me to appear before you today to discuss reauthorization of the Paperwork Reduction Act (PRA).

As you may know, I was the first Administrator of the Office of Information and Regulatory Affairs (OIRA), which was established by the Act. Subsequently, I served as Chairman of the Federal Trade Commission and as Director of the Office of Management and Budget, also under President Reagan, and now serve as Chairman of the Board of Governors of the U.S. Postal Service, having been appointed by President George W. Bush, confirmed by the Senate, and elected chairman by my colleagues on the Board. In addition, I serve on the boards of directors of five companies and am a consultant to Freddie Mac.

Enacting the PRA is one of the best things Congress and the President have accomplished. Moreover, it was truly a bipartisan effort, with genesis in the Commission on Federal Paperwork and championed by Congressmen Jack Brooks and Frank Horton. It was signed into law by President Carter – the very last bill he signed.

Here's why the PRA is so important: First, the stakes are enormous. According to The Tax Foundation, the annual federal paperwork burden just for the income tax portion of the Internal Revenue Code exceeds $256 billion. Of course, the PRA covers more than just the Internal Revenue Service (IRS) and more than just paperwork: it facilitates the President's program in regulatory control. Estimates by Professor Mark Crain place the cost of the annual federal regulatory burden (including paperwork) at $1,113 billion. Thank of that: the federal regulatory burden is nearly half as large as the entire federal budget, and handily exceeds total discretionary spending!

Overall, successive Administrations have done a good job in employing the Act. Just a quick look at the OIRA home (web) page is evidence of the range and depth of the work carried out by the professionals at OIRA. Yet, as with all institutions, the work of OIRA could be improved – as discussed below.

The work of OIRA and other federal agencies should be guided by three principles. First, before increasing the paperwork burden or issuing a new regulation, policymakers should have adequate information. This seems straightforward common sense, but as I'm sure you have experienced, the principle is not always observed. Agencies have time demands, and analysis often takes a back seat. Their most vocal constituents are supporters of the rule, and there's a tendency to grease the squeaky wheel. The beneficiaries of a new rule tend to be informed, relatively small in number, well-organized, and make their views well known; those who bear the costs tend to be ill-informed, large in number, not organized, and silent.

Second, they should apply the principle of cost-effectiveness. This too is common sense. It simply means that each paperwork requirement or rule should be designed so that for any given cost burden a maximum of benefits are secured. Or, the flip side, for any given level of benefits generated, the initiative should impose the lowest cost.

The third principle is that the requirement or rule should be neither too much nor too little. This principle is more difficult to apply in practice than the other two, but builds on both. Assume you have requisite information and have performed cost-effectiveness analysis, so that for each relevant level of stringency of the requirement or rule you have estimates of both benefits and costs. The appropriate level of stringency is not the level where the benefits equal the costs, but where the excess of benefits over costs is at a maximum.

These principles were articulated by President Reagan and OIRA back in 1981 and have been followed reasonably faithfully since. But, Mdme. Chairman, as your letter of invitation indicates, there is certain unhappiness over the fact that since the 1980s the paperwork burden has grown considerably, despite explicit reduction goals. Please let me comment on the problem and then suggest a few solutions.

As you note, approximately 80 percent of the federal paperwork burden Is imposed by the IRS. Is the fact this burden has grown steadily the fault of the IRS? Perhaps to some extent. The fault of OIRA? Conceivably. Actually, the major fault is with successive Congresses and Presidents which/who have enacted ever-more complicated tax codes. Whatever the year, "tax simplification" inevitably results in more tax reports and more complicated returns. If you really want to reduce the tax burden, enact a flat tax – either on income or on sales. Also, consider having people file every other year instead of every year. For example, those who were born (or incorporated, in the case of businesses and non-profits) in an odd-numbered year would file in odd-numbered years and those in even-numbered years would file in even-numbered years (with simple rules for joint returns). This would not cut the paperwork burden in half,

but would reduce it considerably.

Similarly, in the regulatory area, a major problem is mandates. Sometime Congress and the President mandate certain regulations "regardless of cost." Sometimes Congress and the President impose unrealistically short timetables in regulatory bills, giving OIRA and the agencies little or no time to collect the data and perform the requisite analysis. Also, there is the question of whether OIRA has enough "clout" with the agencies – a matter exacerbated when Congress and the President formally separated the management and budget functions in OMB.

If you'll permit me a level of abstraction, your committee and your equivalent committee in the Senate are the only ones whose focus is on limiting the paperwork and regulatory burdens. Other committees have as their focus activities which increase these burdens. Somehow, you need to arrange things so that all committees (and Members) have a balanced view of the benefits and costs of paperwork and regulatory activity.

My suggestion is that Congress pass and the President sign legislation establishing a paperwork/regulatory budget. Just think of the disparity between the Congressional/Administration resources that currently go into the federal financial budget each year, and the attention given to the costs (and benefits) of paperwork/regulatory activity. I realize, of course, there are defects in the current committee system, where Ways and Means (or Finance, in the Senate) and all the Appropriations subcommittees have a focus which is narrower than the entire budget. But that defect is partly – only partly -- remedied by the reconciliation process.

What I propose is that each year the President propose to Congress along with the conventional financial budget a paperwork/regulatory budget that would have to be enacted. Burdens pursuant to requirements/rules presently in force would be treated in the same way as entitlements in the financial budget – they could continue to be imposed unless Congress and the President enacted lower limits. But new requirements/regulations, as with discretionary spending, would have to be "appropriated" and could not be promulgated unless they were within the scope of the relevant "appropriation."

Mdme. Chairman, this completes my statement. I shall be happy to address any questions you and your colleagues may have.

Mrs. MILLER OF MICHIGAN. Thank you very much.

Our next witness this afternoon is Sally Katzen. Ms. Katzen served during the administration of Bill Clinton as a Deputy Director for Management in the Office of Management and Budget and as Deputy Assistant to the President for Economic Policy, and Deputy Director of the National Economic Council, and as Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. In addition, she served in the Carter administration as General Counsel and then Deputy Director for Program Policy of the Council of Wage and Price Stability in the Executive Office of the President.

Before joining the Clinton administration, she was a partner in the Washington, DC, law firm of Wilmer Cutler & Pickering, where she specialized in regulatory and legislative matters. She was elected in 1988 as Chair of the Section of Administrative Law and Regulatory Practice of the American Bar Association, and she served as a public member and vice chairman of the adjunct professor at Georgetown Law Center. In 1990 she was elected president of the Women's Legal Defense Fund.

We certainly—oh, you also taught at the University of Michigan Law School. I can't pass that without going on about that. I happened to be in Ohio yesterday and there was a lot of talk about the Buckeyes and Go Blue.

So we certainly welcome you, Ms. Katzen. We welcome you to the committee and look forward to your testimony.

STATEMENT OF SALLY KATZEN

Ms. KATZEN. I greatly appreciate your invitation for me to testify today, although having to follow Jim Miller is sort of a tough act to come behind. But in any event, I have provided written testimony which I would ask be included in the record. That testimony endorses the reauthorization of the PRA and it reflects a number of very specific suggestions for strengthening the act that I hope will be useful to you all.

I would like to use the few minutes available to me for the oral presentation to focus on what I think the goals of the PRA should be. I think that it is more complicated than what might appear at first glance.

Chairman Miller, you, and the invitation to testify, and Mr. Miller, have all talked about reducing the burden. We are told that the total burden imposed by Government information requests is in the order of 9 billion hours. That is a big number. I will not dispute that. There is, therefore, a natural impulse to want to do something, whatever it would take to reduce it. But I think that there are several intermediate steps that we have to go through.

First, I am concerned that references to total burden hours is somewhat misleading. That is because I believe that not all of the 8 billion hours or 9 billion hours are the same. Mr. Miller mentioned the IRS and the fact that it alone accounts for over 80 percent of the total burden hours. Now, that number is affected by the number of people Mr. Lynch mentioned who have to fill out the 1040 or the 1040-EZ. But the large IRS burden numbers are also a factor of the complexity of the Tax Code and the very complicated and often quite detailed forms that most sophisticated corporations,

with their legions of accountants and lawyers, fill out to obtain special—as in favorable—tax treatments, which Congress has decided is wholly appropriate, in fact desirable.

Consider the form for accelerated depreciation, or the one for oil and gas depletion allowances. Now, surely those who spend the hours filling out those forms have made a calculation, however informal, that the burden of doing the paperwork is outweighed, often greatly outweighed, by the benefit of obtaining the resulting large, often very large, tax advantage.

Now, assuming for present purposes that dramatically revising the Tax Code is not within the jurisdiction of this subcommittee, and therefore passing for the moment Mr. Miller's endorsement of flat tax. It is within the scope of the jurisdiction of this committee to consider whether the total burden hours makes sense in light of the fact that individuals struggling with a 1040-EZ to pay their taxes is not the same thing as the hours spent by trained lawyers and accountants on the multitude of complicated forms enabling their clients to reduce their taxes.

So should we really keep emphasizing total burden hours? Consider also that the burden hours attributable to the IRS are of a wholly different sort than the burden hours represented by, for example, filling out a form for a small business loan, or for a student loan, or to obtain veterans benefits, or Social Security disability payments. All of which are also included in this total number that people keep talking about. The IRS forms are the basis for a liability. The ones I have just mentioned are the basis for an applicant to receive a benefit—which, again, Congress in its infinite wisdom has decided is a good thing.

I am not saying the latter forms should not be as streamlined and simplified as possible so that the burden is kept to a minimum without sacrificing information essential to programmatic accountability. After all, we want some confidence that only those eligible for a program are receiving payments and that the agency has sufficient information to monitor and evaluate whether the program is achieving its objectives.

The point I am making is that calling the paperwork necessary for a benefits program, calling that a burden and counting those hours required to fill out those forms to obtain the benefits as part of the total burden hours, masks the qualitative difference between these forms and those sponsored by the IRS.

There are other types of burden hours included in the total that are very different, even from the ones I just identified, and those are called "third-party disclosures" requirements: Employers must post information announcing the presence of a toxic chemical in the workplace; that is included. Pharmaceutical companies must supply package inserts as to the implications of a drug; that is included. And my favorite is the nutrition labeling for food. I can hardly get down an aisle in a grocery store without running into some consumer standing there with two packages, looking at the back of them and comparing, and then tossing one of them into his cart. This is information the American people want and use, and it enhances their health and perhaps even their safety.

Now, this leads me to the second point that I want to make, and that is, that burden is one side of the equation, but it is not, and should not be the only consideration.

The 1995 act reflects another purpose, and that is to enable "the greatest possible public benefit . . . and maximize the utility of information . . . collected . . . by . . . the Government. That is designed to improve the quality of the information that the Federal agencies need for rational decisionmaking."

Regrettably, this side of the equation has gotten relatively short shrift in the discussions about the PRA. Yet, the benefit or utility side is not a new ingredient. Both the legislative and the executive branch have recognized that Federal agencies need information for informed decisionmaking. Mr. Miller's first point was that before taking action, policymakers should have adequate information. Where do they get it?

Actually, political leaders from both political parties—this is not a partisan issue—have recognized that information is a valuable, indeed essential assets, and this is true not only for the public sector but for the private sector as well. It is significant that a lot of the information collected by the Government is, in fact, disseminated to the public, either in its raw state or with some processing.

Consider, for example, weather information, census data—stripped of its personal identifiers—and economic indicators. This information is highly valued and sought after by industry and the academy so that they can work this information and then ultimately use it to enhance our safety, to decide on marketing strategies and to make investment decisions. When we clamp down on information, we are the losers.

Now, I also want to agree with Mr. Miller's observation that, while you are here considering reducing the burden, there are committees in both Houses of Congress thinking about increasing it. They are doing it for a reason, though. It is not just foolhardy. There is a concern about preventing fraud in Government programs. There is a concern about enabling informed choices, as Mr. Lynch mentioned, to enhance national security. That was the basis of the Patriot Act, which imposed an enormous burden if you are thinking in terms of only that side of the equation. Presumably, Congress felt it would produce an enormous benefit at the same time. As I say, this should not be a surprise, because we are, after all, in an information age.

Because the benefit side does not get the same attention that the burden side has gotten, we are sending a message both to the agencies and to OMB that they will satisfy congressional concerns only if they shut down new surveys, if they close off new inquiries and if they cut back new requests for information. And I am aware of a significant amount of anecdotal information that says agencies have given up. They don't even send to OMB those information collection requests unless statutorily mandated, and that is why the numbers are going up, because they are statutorily mandated. That is what the OMB reports have shown year after year. New congressional mandates have outpaced whatever efforts the agencies have made to cut back, but they don't send these needed inquiries through because they feel that the burden reduction side pressure is so great.

If this is, in fact, accurate—and I would encourage some empirical research to decide if it is or not—then I think it is a most unfortunate development. And your committee would do well to help right the balance.

I would like to pick up on some of the things that Mr. Lynch said. Without oversimplifying, all the key words begin with "B": We talk burden. We should also talk benefit. And we should talk balance. And I think that will bring us a long way philosophically to achieving what we need.

Again, I have specific suggestions in my testimony and would be pleased to answer any questions you might have on that or any other subject.

[The prepared statement of Ms. Katzen follows:]

Testimony of Sally Katzen,
Visiting Professor, George Mason University Law School

before the House Committee on Government Reform
Subcommittee on Regulatory Affairs

on March 8, 2006

on Reauthorization of the Paperwork Reduction Act

Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me to testify today on the Reauthorization of the Paperwork Reduction Act (PRA or Act). As the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) from 1993 to 1998, I was very involved in the discussions and decisions about the last reauthorization of the PRA, which resulted in the Act which was signed by President Clinton on May 22, 1995. I also was responsible for implementing the Act (before and after the 1995 revisions) during my tenure as Administrator and later as the Deputy Director of Management of OMB from 2000 to January 2001.

I appreciate the efforts being undertaken by this Subcommittee to improve the operation of PRA and better promote the goals of the Act. With the suggestions discussed below, and assuming a clean bill, I fully endorse reauthorization of the PRA.

The reasons for reauthorization are obvious and, I believe, not in dispute. OIRA has been given and is responsible for many significant and important government functions. These include, among other things, the review and approval of agency information collection requests (ICRs), federal statistical activities, record management activities, and information technology and information policy generally. OIRA's record has been consistently strong in these areas, and reauthorization of appropriations for the office is clearly warranted.

In your invitation to testify, you specifically directed my attention to the fact that the government-wide reduction goals set forth in the 1995 Act have not been realized, and you further noted that the burden imposed on the public by ICRs has in fact increased 33% since 1990. In this context, you requested me to offer any comments or suggestions about possible ways to achieve real burden reduction.

The term "burden" and the stated goal of "reducing the burden" imposed on the public through government sponsored information requests appears throughout the 1995 Act. It is the first subject identified in the enumerated purposes of the Act (Sec. 3501):

> "The purposes of this chapter are to (1) minimize the paperwork burden for individuals, small businesses, educational and non-profit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government."

And the first task assigned to the Director of OMB in Section 3505 is to achieve at least a specified government-wide percentage reduction of the information collection burden.

The total burden imposed by government information requests, as it has been calculated by OMB and others, is roughly 8 billion hours. That number is large—very large-- and it has continued to grow. There is therefore a natural impulse to want to take whatever action is necessary to reduce it. But, with respect, I think it is far more complicated than that.

First, I am concerned that references to total burden hours and their increases (or decreases were that to occur) is somewhat misleading. My comment rests on the premise that not all the 8 billion burden hours are the same. At this time of the year, we are painfully aware of the "burden" imposed by one particular agency – the Internal Revenue Service (IRS). Yet we must recognize that the burden hours attributable to IRS forms are of a wholly different sort of burden than the burden hours represented by, for example, filling out a form for a small business or a student loan, or to obtain veterans' benefits or social security disability payments, all of which are also included in the calculation of total burden hours. The IRS forms provide the basis for the collection of revenue by the Federal Government, while the latter forms provide the basis for the affected individual to obtain benefits from the Federal Government. I am not saying that the latter forms should not be as streamlined and simplified as possible so that the burden on the applicant is reduced to a minimum, without sacrificing information essential for programmatic accountability; after all, we want some degree of confidence that only those eligible for a program are receiving payments and that the agency has sufficient information to monitor and evaluate whether the program is achieving its objectives. The point I want to make is that calling the paperwork that is necessary for a benefits program a "burden," and counting the hours required to fill out the forms to obtain the benefits as part of the total burden imposed on the American public, masks the qualitative difference between these forms and those imposed by the IRS.

Separating out the IRS burden hours from all others is important because, as noted in your invitation to testify, the IRS's parent agency -- the Department of Treasury -- accounts for over 80% of the total paperwork burden. This number is affected to some extent by the large number of people who fill out the Form 1040 or the simplified version Form 1040EZ. But the large IRS burden numbers are also a factor of the complexity of the Internal Revenue Code and the very complicated (and often very detailed) forms that the most sophisticated corporations and their legions of accountants and lawyers fill out to obtain special tax treatments which Congress has decided is not only appropriate but also desirable. Consider the form for accelerated depreciation or the one for oil and gas depletion allowances. Surely those who spend the hours filling out those forms have made a calculation (however informal) that the burden of doing the paperwork is outweighed (often greatly outweighed) by the benefit of obtaining the resulting tax advantage. Thus, even to treat the burden hours for the individual struggling through the 1040EZ the same as the hours spent by the trained lawyers and accountants is to come up

with a total burden number that is not very informative about the nature and/or effect of the problem.

In any event, with 80% of the total burden attributable to the IRS, it is difficult to see how there can be meaningful reduction in total hours without dramatic changes to the tax code. This would be true even if Congress were to determine to cut in half or even in third all the non-IRS burden hours. And, it is fair to ask, under that scenario, what would be eliminated?

I have already mentioned the forms for small business or student loans, for veterans' benefits, and for social security disability payments, which are only a few of the forms required to establish eligibility (and accountability) for a wide variety of government programs approved by the Congress and signed into law by Presidents of both parties to help the American people. As noted, the hours spent filling out those forms are included in the total burden hours. Also included are the hours attributable to the requirements with respect to nutrition labeling for food, which provide consumers with data for informed choices affecting their health (and possibly their safety). These labels are a prevalent form of what are called "third party disclosures."

There are also third party disclosure requirements whereby employers are to post information announcing the presence of toxic chemicals in the workplace, and pharmaceutical companies must supply package inserts to explain the correct use of a drug and provide other relevant medical information, to name just two. Again, this form of information is included in the total burden hours. And this raises another issue – namely, whether such information requirements -- however burdensome – may be the least restrictive, least onerous alternative? Consider the two examples just mentioned. Are not the disclosure requirements less burdensome, less costly, less intrusive than if the government were to ban the toxic chemicals from the workplace or to require doctors or pharmacists to read the medical insert information to all patients? In fact, it is not an infrequent occurrence that disclosure requirements are the least restrictive, and therefore the preferred, form of regulation.

Thus, while it is a legitimate concern that total burden hours are increasing contrary to the express purpose of the Act, that alone is not reason to legislate a government-wide reduction of government sponsored information requests. Rather, I would recommend that the Subcommittee first disaggregate the total burden hours and identify with some precision where (and why) the burden is being imposed. With that information, there may well be avenues for reducing the burden that are now obscured by the emphasis on total numbers.

More importantly, while burden is one side of the equation, it is not -- and should not be -- the only consideration. The 1995 Act reflects another purpose. Section 3501 (2) identifies as a purpose of the Act the need to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by and for the Federal Government." And subsection (4) speaks of the need to "improve the quality and use of Federal information to strengthen

decisionmaking, accountability, and openness in Government and society." This side of the equation has, I fear, gotten very short shrift in the ongoing debate about the PRA.

The benefit or utility side of the equation is not a new ingredient. The very earliest attempts to get a handle on government information collections recognized that information was needed by federal agencies for informed and rational decision making, and further that much of the information collected by the government was subsequently disseminated to the public – for example, weather information, census data (stripped of personal identifiers), and economic indicators. This information is highly valued by industry and the academy, which in turn evaluates, analyzes, or interprets the information collected by the government, and often eventually uses it to enhance our safety, decide on marketing strategies or make investment decisions.

It has long been recognized, both by the Legislative and the Executive Branches of government, that information is valuable – indeed, essential -- to decisionmaking in both the private and the public sectors. While this Subcommittee is here considering how best to reduce the burden of government information collections, other Committees in both Houses of the Congress are considering new legislation that would require new information collections – whether to prevent fraud in government programs, to enable better informed policy choices, or to enhance national security. Indeed, OMB's recent reports to the Congress have shown that new statutory mandates have outpaced the burden reduction efforts the agencies have been making in areas within their discretion. This is should not be surprising. For we are, after all, in the information age, and without reliable, relevant information, we would all be less well off.

Yet, as I noted earlier, in discussions about the PRA, there has been very little attention to the benefits of information collection, and regrettably the drum beat of "reduce the burden" sends a message to both the agencies and to OMB that they will satisfy Congressional concerns only if they shut down new surveys, close off new inquires, and cut back new requests for information. So far as I know, there has been no empirical research on this issue, but I am aware of anecdotal information to the effect that agencies don't even bother to send new information collection requests to OMB for approval, unless they are statutorily mandated, because those who favor gathering the information believe that the pressure is so great from the reduce-burden side of the field, that their effort to proceed will be futile. If this is an accurate characterization of what is happening, I believe it is a most unfortunate development, and that your Subcommittee would do well to address it and right the balance – to speak of the utility of information in the same breath as you speak of reducing the burden.

For these reasons, and because the percentage government-wide reduction targets have been singularly ineffective in reducing burden, I would recommend that the legislatively imposed reduction goals in the 1995 Act be removed with the reauthorization. One size does not fit all, and a flat government-wide ordained cut will not achieve the desired results. There are, however, several additions and/or modifications to the 1995 Act which I believe would be not only appropriate but also highly salutary.

A modest measure would be to emphasize what is already referenced but not made explicit in the Act (see, e.g., Section 3501(7)) (although it has been the subject of subsequent legislation by the Congress), and that is encouraging the greater use of information technology in this area. During the last few years of the Clinton Administration, we saw significant progress as a result of agencies' increased reliance on electronic filings to reduce burden. The IRS 1040EZ was just beginning to be made available on line, but it was clear that the burden on many tax filers would be reduced significantly as more and more taxpayers use electronic filings. There were many other agencies, including, as I recall, the Environmental Protection Agency, the Securities and Exchange Commission, and the Social Security Administration, which were beginning to use technology to simplify filing requirements for individuals and businesses; these projects had the added benefit of making it easier for the agencies to compile and analyze the data collected, and also for the data collected to be disseminated to the public. I understand that the current Administration has taken some of our ideas and run with them, making very good progress in the areas of E-grants, E-procurement, and E-government generally. To be successful, however, these efforts require attention to security and privacy concerns, and they often require a significant up-front capital investment. Congress should be persuaded to support the requests for such funds, in the name of both the utility of information and the reduction of burden.

In addition, I would recommend several steps that would streamline the information clearance approval process for both the agencies and OMB. Starting first with OMB, there are a lot of ICRs which are simple, routine, straightforward and noncontroversial. Under the 1995 Act, OMB is nonetheless obliged to review them all – a labor intensive exercise that produces little, if anything, to show for it. I would urge this Subcommittee to replace that blanket obligation with an authorization for OMB to waive the right to review those ICRs which are not "significant." This is the distinction that was made in Executive Order 12866 (signed on September 30, 1993) concerning OMB review of regulations. There is a four-part test to define "significant regulatory action." (Section 3(f)) This Executive Order has been in effect for over 12 years and there has been virtually no dispute – either between OMB and the agencies or between the public and the agencies -- as to what constitutes a "significant regulatory action." Analogous criteria could be drafted by OMB – referencing the number of respondents affected, the estimate of the burden hours, the complexity of the proposed ICR, the nature of the issues addressed, and the like. OMB would then be able to devote its limited resources to those ICRs that really matter. That has been the experience under the Executive Order for reviewing regulations; there is every reason to believe the same would occur in this case.

Another provision to consider revising is that having to do with approval of renewals. The 1995 Act provides that OMB "may not approve a collection of information for a period in excess of 3 years." (Section 3507(g)) At the end of that period, the agency can (and most frequently does) seek an "extension" of the approval for another 3 years. I understand that roughly 35% of OMB's caseload consists of such requests for renewals, and I further understand that virtually all requests for renewals are

granted. Seems like a lot of work for very little difference. There is a provision in Section 3507 (h) governing this situation, which states that the agency shall "include an explanation of how the agency has used the information that is has collected." (Section 3507(h)(1)(B)) I would urge this Subcommittee to consider authorizing OMB to exercise discretion with respect to the length of the renewal period depending on the agency's submission on this issue. This would provide an agency an incentive (not now present) to document how the information collection is useful in enabling the agency to fulfill its statutory mandate. The stronger the showing, the greater the period of an extension – going to 5 or 7 or even 10 years.

Another aspect of the OMB clearance process that warrants reconsideration is the provision that, after OMB has received the package of materials from the agency, it provide an additional 30-day period for public comments (see Section 3507 (b)). (I say additional because the agencies will have already provided a 60-day comment period under Section 3506(c)(2)). These provisions in the 1995 Act were based on the idea that public participation in the process is good (an idea that I strongly endorse) and that therefore more public participation would be even better. The latter hypothesis has not proven to be the case. I understand that there has not been a noticeable up tick in the amount of public comments received by the agencies and, more to the point, that public comments during the OMB comment phase are few and far between. This may be because this is a rather esoteric area, or the government watchdogs have more important things to focus on, or because people do not believe that the agencies (or OMB) will take their comments seriously and do anything about them. Whatever the reason, the extended public comment period, including specifically what has been called the "second bite at the apple" – i.e, the 30-day period during OMB review -- is apparently not producing the intended benefit. By eliminating Section 3507(b), the process would be simplified and streamlined.

Some may respond to my suggestions by pointing out that the objective is to protect the public, not OMB, and they would ask, "How will the public benefit from these changes to the Act"? "If we make it easier for OMB to review ICRs," they will say, "won't there just be more of them and thus increase the burden on the public"? Not necessarily. In fact, based on my experience, I would assert the contrary: by allowing OMB to separate the wheat from the chaff, it can then concentrate on the ICRs that really matter and OMB's involvement can make a positive difference. Again, this was our experience with Executive Order 12866 and regulatory review; by focusing review on those regulations that were truly important, OMB review was more effective to the benefit of the American people.

With respect to the agencies, I have less direct experience and therefore less to contribute. Nonetheless, there is one feature of the agency review of ICRs that concerns me. In the 1995 Act, we wanted to ensure that there was a meaningful review of proposed ICRs within the agency – even before they were sent to OMB – and we thought it important that that review be done by someone not directly involved in the development of the ICR itself, because the programmatic office responsible for the ICR will inevitably be invested in gathering all the information that might be useful in

enabling the agency to fulfill its statutory mandate. We were looking for an entity that was somewhat detached and somewhat dispassionate, but at the same time knowledgeable about the agency's mission and with sufficient standing and clout to be able to challenge, if necessary, the programmatic office. At the time, we were beginning to empower the Chief Information Officers (CIOs) within each of the major agencies and, given the nexus with information, we thought it best to designate the CIO as the one under Section 3506 (a)(3) to:

> "head an office responsible for ensuring agency compliance with, and prompt and efficient and effective implementation of the information policies and information resource management responsibilities established under this chapter, <u>including the reduction of information collection burdens on the public</u>." (emphasis added)

The CIO's responsibilities with respect to "the collection of information" and the "control of paperwork" are spelled out more specifically in Section 3506 (c).

During our tenure, the CIOs had their hands full, first in organizing their offices and then, most importantly, in addressing the Y2K problem. Over the last five or six years, some CIOs have taken very seriously their responsibilities with ICRs; others have not been interested in, or able to do, the job effectively and, as a result, the certification process relied on by the drafters of the 1995 Act (see Section 3506(c)(3)) has had less than the intended beneficial impact. Accordingly, I believe this Subcommittee should consider reiterating the objective – namely, creating or designating an entity that is sufficiently independent of program responsibility but sufficiently familiar with the agency's mission to evaluate fairly whether proposed collections of information should be approved (or modified) – but afford the agencies flexibility is designing and implementing such an office. This Subcomittee could further provide that if an agency selects an entity other than the CIO, approval of OMB would be required.

I thank you again for inviting me to testify on this important subject, and I would be happy to try to answer any questions you may have.

Mrs. MILLER OF MICHIGAN. All right. Thank you so much. We appreciate that. I certainly agree with you, Ms. Katzen. We do have to look at, as you said, the three Bs, cost/benefit analysis, and sometimes it is difficult to make that kind of analysis strictly monetarily. As you mentioned, some of the food labeling and these kinds of things, we really do need to look at it all.

You know, it is interesting because we have had a number of hearings in this committee talking about the onerous burden of Government regulations, and both of you, I think, referenced cost of the burden. We have had testimony from the Small Business Association saying that they have done some studies that indicate that particularly in small businesses, the cost of compliance with all of these forms and all kinds of regulations and other kinds of burdens that are put on them could be interpolated to $7,000 or $8,000 an employee. We have had former Governor Engler from the great State of Michigan, testify—he, of course, now serves as the executive director of the National Association of Manufacturers—talking about their analyses which seem to indicate the structural costs of American-made goods to be 22, 23 points higher than any of our foreign competitors, principally due to burden and governmental regulations and what have you. So there are so many things that we have done in our society and as a Nation that are so important to protect the health, safety, and welfare of our citizens, and yet we do have to look at what is reasonable, I think, as well.

It is interesting, though, as both of you have talked, that you can't hardly talk about this issue without, obviously, looking at the IRS. As you mentioned, it is about 80 percent of all the burden. And it is an unfortunate reality when you see Members of Congress coming saying, "We are here from the Government. We are here to help you." And every time we think about tax reform—and I no longer am going to use those terms, "reform"—perhaps tax simplification is the way that we would focus on the kinds of things we may be able to do to assist. When you hear numbers, you know, over, I think, $225 billion last year annually just for the American citizens to comply with the tax forms, something needs to be looked at there.

I would ask my first question to Dr. Miller, you mentioned—I was taking some notes here—what I thought was interesting, a regulatory budget within the—and if you could expand on that a bit, are you suggesting that there would be a line item within the particular agencies and within the committees? Or how would that be structured?

Mr. MILLER. I would see a regulatory budget being put together by the President, which had an overall amount and would have the amounts by agency, and even perhaps by program, that they could impose on the American people, things coming up. I would, as I mentioned in my written statement, which I hope that you will accept for the record——

Mrs. MILLER OF MICHIGAN. Without objection.

Mr. MILLER. Thank you. I suggested that you treat existing regulations much as you treat entitlement programs, the financial ones. That is, the agencies continue to have those regulations, but new regulations would be analogous to discretionary spending that you

would have to appropriate every year. So Congress would have to appropriate. You could also review existing—just like Ways and Means and Finance reviews existing entitlement programs, you could review existing regulatory and paperwork requirements.

Madam Chairman, I would like to just comment on Ms. Katzen's observations. I agree that there are certainly important, legitimate uses of paperwork. I wouldn't take that back for a moment. I think that those are—many and varied paperwork requirements out there are very justified. There is no question that there is very important information. Just to touch base on the example she started off with, accountants and lawyers and firms applying for special dispensations, etc., she is making my point. My point is you need to simplify the Tax Code. You need a flat tax. You should not have all this. Those are real resources. If those lawyers and accountants were not doing that, they could be doing something useful. Right? And they are doing that instead of something useful because the Tax Code is established the way it is.

So if you simplified the Tax Code, if you had a flat tax, I think you would increase productivity a lot because you would have people doing productive things rather than those things today that are pushing notes around.

Mrs. MILLER OF MICHIGAN. You know, to followup a little bit on that, because this is a fascinating discussion, the concept of a flat tax, I think it may be too much of a huge change to go to that initially, but perhaps—and there has been some debate in Congress about whether you would actually offer an option to people either to do it the way we have always done it or do a flat tax and see how it would go. But there have been quite a few articles about that. I know we have had a lot of debate.

Mr. MILLER. Yes. Madam Chairman, I think that is an excellent idea. It was one of my most important things when I campaigned and lost for the U.S. Senate, saying that people should have an option. They could file under the existing Tax Code if they want, or file under a new flat tax if they want. And if you gave people the option, I suspect most people would elect to file under the flat tax because it would be, in effect, so much easier.

I was invited to be on a TV show 2 days ago, and I had to say no. You know why? Because I was working to put together all this stuff for the tax—my personal income tax and my wife's personal income tax. I mean, it is a big burden.

Mrs. MILLER OF MICHIGAN. It absolutely is.

One other question on that, not to keep getting off the subject, but this is a fascinating area, I think. Do you have any opinion on the President's commission on tax simplification, not tax reform, tax simplification? You know, everybody thought that would be of great benefit and that we were all very anxious to see what kinds of recommendations they would come forward with to get away from some of this burden, and immediately, when they started saying they were going to do away with the mortgage deductions and those kinds of things, off we all went.

Mr. MILLER. Right, right. Well, Madam Chairman, I am kind of reluctant to criticize it. I know some people who are on the Commission, some very, very smart people that I think work very hard. They probably, from the word go, realized or took to heart the point

you made, that going to a flat tax might be too radical, so they tried to do something to simplify the Tax Code and make it more efficient without going that far. So it is kind of a halfway measure, in that sense, and it is very important who thought what—I do not endorse either of their two alternatives that they came up with.

Mrs. MILLER OF MICHIGAN. I might ask a question of both of you, I suppose. I had the staff put up these graphs earlier about OIRA, since we have two experts here on that agency. When you were there—this is something we have heard, I have heard, since I have had this chairmanship, over and over and over again about the inadequate resources that OIRA has. When you were there, did they have adequate resources? Has this been sort of a common element there? Do you have any comment on where all of that is going, what you think it might need today to be able to do the job that we have asked them to do?

Ms. KATZEN. I think that OIRA has a lot of responsibilities, as does OMB, and they are physically and psychologically closer to the President than any of the other agencies, and they act as a watchdog, is I think the word you used, for the work of the Federal Government. And I don't think you could ever have too many resources there.

The idea is to use the resources that you have in the most efficient and effective way. One of the suggestions that I included in my written testimony was that, rather than reviewing all paperwork requests, the Congress authorize OMB to review only those that are significant so that they can focus their attention on the ICRs, the information collection requests, that are the most important and significant.

You cited the fact that the Reagan administration, I believe had something like 90. I think when I was there, we had 50, and in the most recent past, the Administrator has increased it by another 5 or 6.

Another body or two would undoubtedly help, but another body or two is not going to make a huge amount of difference. I think thinking about what it is you are trying to achieve and focusing the limited resources that you have would be better emphasis on the right syllable, as they say.

I would, if I could, use this opportunity to make two points about the previous conversation, the colloquy that you had with Mr. Miller. The first is that these many tax complications—the oil and gas depletion amounts, the accelerated depreciation forms, which I used, as examples—industry doesn't resist them. As far as I know, they are up here asking for them. They want them. They want them so that their lawyers and accountants can spend their time on those things, and it would be—as you said, once you start getting rid of a mortgage deduction, which affects a lot of people, or even a special interest, if I could use that term, tax provision, you are going to find that people, corporations, businesses, including sometimes small businesses that take advantage of accelerated depreciation, for example, will be very concerned because they want those complications.

The second point has to do with the regulatory budget. It sounds good, but—and it is a big "but"—analysis is only as good as the data is a truism in this field. You have a regulatory budget. You

put down a certain cost. Where is the information for that? The cost that everybody is talking about of the huge amount of $1 trillion in regulatory expenses, those are calculated under the basis of ex ante, estimates of what the cost will be if the regulation comes into effect. In fact, most of the empirical work shows that once the regulation is issued, American ingenuity kicks in, and it takes less cost.

Now, I am not saying that the cost is trivial. I am not saying that it is not seriously consequential. But while he cites $1.1 trillion, there are lots of other figures which are in the $30 and $40 billion range rather than trillion dollar range.

The disparity reflects the fact that the data is not that good. We do not have a really firm handle. That being the case, a regulatory budget based on that kind of data would be, I think, problematic.

Mrs. MILLER OF MICHIGAN. OK. Thank you very much.

I recognize Representative Lynch.

Mr. LYNCH. Thank you very much. And just to followup on that point, it is difficult. It sounds great about, you know, cost/benefit analysis on any one of these proposals, but when you get down to measuring that—and I know that Dr. Miller mentioned Professor Crain. But when we have tried to replicate his numbers to basically get what he got and go through the process that he implemented, it has been very difficult getting information from him in terms of allowing us, on this committee to basically parse out his whole process in arriving at this mass of numbers. So a lot of that is still very much in debate.

And, again, on a lot of this information that we get, it is totally the cost side. There is no calculation made for lives saved or accidents prevented or, you know, contamination to our environment or, you know, even in the nuclear regulatory sphere, the worst-case scenarios that could develop in the absence of some of these regulations.

So I am not so much sold on the idea that there is a quantifiable amount that we could point to and say we are going to save this and get rid of regulation. I do agree that there is a whole lot out there that is completely useless, and we need to figure out how to get rid of it, and that we ought to try to work on those parts of the regulatory framework in this country that could be eliminated with, I think, a bipartisan and fairly unanimous consensus. I think there is a lot that we agree on.

The other thing that I would like to see tapped into is some of the agencies themselves, if we could somehow incentivize cleaning up the regulatory framework that is out there—and these, you know, folks at the IRS know better than anyone the redundancy that is there, the complexity that is there, to no purpose, and things that we could actually get some of the folks in the agency to say—you know, somehow incentivize it, to have them reporting to us how they best can clean up their own shop, how we could reduce the regulatory burden for people who worked through those agencies. And I think we can do a lot to reduce the burden without ever—well, eventually we have to get to some of the issues that are contentious, but I think there is a whole lot of work that can be done right off the bat, right from the get-go, just to eliminate the regulatory burden without putting any of the controversial stuff in

play. I think it is just so burdensome out there and so complex, and some of it has just built over, you know, as a matter of time and from one administration to another. There seem to be layers and layers of bureaucracy and complexity that, you know, have built up like a residue over our entire economy.

What I would like to do is just ask you both, what do you think the best way of getting at the agencies to help us make the reporting easier, but retaining the quality of the data and the value of information that we are getting through these ICRs? And you mentioned, Ms. Katzen, about the fact that we have a lot that we are doing on, let's call them, insignificant—ICRs that are not really going to give us the bang for their buck in terms of the number of people or the number of requests or the number of—the degree of scope for these different information collection requests. How do we approach that issue within the wider question, which is, how do we get the agencies to help?

Ms. KATZEN. One suggestion that I make in the written testimony that I would like to emphasize is that currently OMB approval last 3 years, so at the end of a current information collection request, the agency comes back in and it says they would like to extend it for another 3 years, and there is a little rubber stamp that says "Granted," and then they come back 3 years later.

What I suggest is building on a phrase that is in the act now that says the agency shall show how it is useful. You incentivize the agencies by saying: We are going to take that seriously. You make a showing, a compelling showing, that it is used and useful. And we will give you not a 3-year extension but a 5-year extension or a 7-year extension or a 10-year extension.

It then is to their benefit to make the showing and, by the way, knowing that this will happen, maybe they should be focusing on how they are using the information that they are getting.

It also would have the salutary effect of reducing or streamlining OMB's processes so, again, the routine ones that are being used and useful would not clutter up and take the time from the others. I think that is one way of doing it.

Another way of doing it is pure anecdotal, and that is, one moment when I was Administrator of OIRA, a staff member complained about a particular form, that it was incomprehensible and that it just—you could not follow it. And so almost—I am not sure why I did this, I picked up the phone and I called the person who had certified this. And I said, "I do not understand Question 17 here. What are you getting at or why are you getting at it?" And there was silence at the other end of the phone as the person scurried to figure out, what form is she talking about?

I then said, "I tell you what. Let me fax this over to you. You have estimated this will take 20 minutes to fill out. Let me fax it to you and then call me in 20 minutes and tell me how you are doing."

I did get a call within 20 minutes to withdraw the form.

Now, that is just one incident, but I think if you can reach the people who are responsible at the agencies, that is where—it does not have to all be at OMB. It should start with the culture at the agencies. And one of the other suggestions I make—I am sorry I seem to be running on, but one of the other suggestions I make is

that we vested this in the CIO's office in the 1995 act, that they should be the internal agency watchdog, because we wanted an office that was dispassionate, not attached to the programmatic office, so that they could say, "Hey, why do you really need that?" And have the stature and the clout within the agency to be able to say that.

CIOs have had a mixed—and I think GAO has said CIOs have had mixed results. Some of them have taken the job seriously. Some of them are more interested in the technology side. Some of them are more interested in other aspects. And I think that one ought to consider giving the agencies some flexibility from an internal office that would really do the job right and have, if you want, OMB approve their other kinds of operations.

Those kinds of ways to get to the agency would, I think, be very beneficial.

Mr. LYNCH. Yes. Well, I agree with your first and last assessments that creating that incentive, giving them a waiver from the 3-year review, if they can show that, you know, a given regulation is necessary and is rock solid and, you know, there is general consensus that it is necessary and it serves a valuable purpose. I also think the idea of having that—and I do not know if you call it a task force or whatever it is, if you want to take it out of the CIO's office and give it to a task force that is going to say, "You know what, we are going to help ourselves." We are going to jettison these regs that are just absolutely slowing productivity or just, you know, stopping us from doing our job.

Those are two great ideas. I don't think there is much cost in that either, in going through that process. One is merely, as I say, incentivizing through the process, and the other is really an organizational function, just shifting it and giving it to somebody who will actually do the job.

Thank you for your testimony.

Mrs. MILLER OF MICHIGAN. Thank you. Before we move on to the next panel, Dr. Miller, when I had asked the question previously about whether or not you thought there were adequate resources in OIRA when you were there, Ms. Katzen answered but you did not. Could you for the record tell me what your thoughts were on that?

Mr. MILLER. Well, I thought we did. I thought we did. Again, the role of OIRA is not to do all the analysis but to review the analysis. Just like an editor of a major law journal or an economics journal or statistical journal is not supposed to perform all the analysis themselves, but to basically review the analysis presented to them and decide which is worth publishing.

The high number at the beginning of the Reagan administration is a reflection of the fact that, if I am not mistaken, there was a statistical group that came over from Commerce that was attached to OIRA and then was later moved, I think to Labor or back to Commerce. So that 90 figure is somewhat inflated. They were not really doing this OIRA kind of thing, so that moved.

You know, as Ms. Katzen was saying, they could certainly use a few more people there, but I don't think there is a tremendous shortage of personnel at OIRA. But I would like to respond on the

question of incentives, if I might, that Mr. Lynch, Congressman Lynch raised.

Mrs. MILLER OF MICHIGAN. Certainly.

Mr. MILLER. If you had a regulatory budget, even without a regulatory budget, if you allow the agency to zero sum, that is to say, you tell the agency you have a burden of such and such on such and such, but you would like to issue a new regulation, new paperwork burden, if you can reduce the paperwork burden, the regulatory burden in this area, you can increase it here. And so allow them to prioritize—just like agencies when they come to OMB with their budgets during the budget season, you know, they have to justify these things, and they tradeoff. You know, they say, well, the President has agreed you can increase your budget 0.1 percent, or something like that. Well, they have to have priorities and they make those kinds of judgments. So I think that would be helpful.

On the question of Mark Crain, I must admit to a little favoritism here because Mark is not only—he is the Simon professor of economics at Lafayette College. He is a former colleague of mine at George Mason University. He is a former student of mine when I taught economics at Texas A&M. And if Ms. Boyd could give him a call—I talked to him 2 days ago—I am sure that he would be more than happy to respond, and his telephone number is 610–330–5315. He would be more than happy to respond to any question you might have. I am, of course, looking at the paper he did, I guess for the Small Business administration.

Mrs. MILLER OF MICHIGAN. OK. Well, I certainly want to thank you on behalf of the entire committee very, very much for coming. We certainly appreciate it, and we will ask you to move aside for the next panel.

Mr. MILLER. Thank you.

Ms. KATZEN. Thank you.

Mrs. MILLER OF MICHIGAN. Thank you both so very, very much.

[Witnesses sworn.]

Mrs. MILLER OF MICHIGAN. Thank you very much. We are going to probably be called for votes here. It could be in 10 minutes, it could be in 20 minutes, at which time we will be voting for quite a long time. So I would like to start with the panel and see if we cannot get all the testimony on before that happens, and I would ask you to sort of keep an eye on the timers that you have before you and try to adhere to our 5-minute rule, if you could, in this circumstance.

Our next witness is Mr. William Kovacs, who is the vice president of Environment, Technology, and Regulatory Affairs for the U.S. Chamber of Commerce. Mr. Kovacs is the primary officer responsible for developing the Chamber's policy on environment, energy, natural resources, agriculture and food safety, regulatory and technology issues, and we are certainly glad to have you join the committee today, Mr. Kovacs. We look forward to your testimony, sir.

STATEMENTS OF WILLIAM L. KOVACS, VICE PRESIDENT, ENVIRONMENT, TECHNOLOGY, AND REGULATORY AFFAIRS, U.S. CHAMBER OF COMMERCE; ANDREW M. LANGER, MANAGER, REGULATORY POLICY, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; LINDA D. KOONTZ, DIRECTOR, INFORMATION MANAGEMENT ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; AND J. ROBERT SHULL, DIRECTOR OF REGULATORY POLICY, OMB WATCH

STATEMENT OF WILLIAM KOVACS

Mr. KOVACS. Thank you, Madam Chairman, Congressman Lynch, and the committee for inviting the Chamber to testify here today. I am going to submit my testimony for the record and just summarize some of the key points.

As we all know and we have heard, the Paperwork Reduction Act is more than about reduction. It is really about the reduction of paperwork, the collection of necessary paperwork, and it is also about the use and dissemination of good quality data, which is something that really is the highlight of what the Chamber has been focusing on.

When we talk about paperwork reduction, this has really been a burden and a challenge that the Congress and OMB have had to deal with. It started with the Federal Reports Act, and since then, Congress and OMB have seen the Paperwork Reduction Act in 1980, 1986, 1995. We have seen the Data Quality Act, which was an amendment to the Paperwork Reduction Act. We have seen Data Access. We have seen a number of regulatory reform efforts out of OMB, which is both peer review, risk assessment, good guidance, as well as Executive orders. Just to followup on a question that Congressman Lynch asked, we have also seen efforts by Congress to really get the agencies to do exactly what you ask: identify those regulations that are really no longer needed. And we have seen that through Section 610 of the Regulatory Flexibility Act. We have seen it in the nomination process. And we have seen it in Executive orders. And so where are we after 64 years of effort? I think that is really what the question is.

I think on the paperwork reduction side, it is a very mixed bag. You do have Congress putting more and more requirements on agencies, and you will see at this point in time about 10 billion hours, so that is going to be the largest in history.

On the information colleague side, I think where we, you can really make a difference, there is an enormous amount of frustration. GAO is here and they are going to talk about it, but they have done the analysis on what the CIOs do, and the CIOs are to certify that the efforts taken by the agencies are really efforts to get at the kind of data that they need and that is necessary. And there are actually 10 criteria, and GAO found that in 2005 that 98 percent of the CIOs certified the eight—98 percent of the 8,211 certifications requested were actually approved by the agencies and accepted by OMB. However, when GAO decided to do a review, they found 65 percent of those actually had missing or no data at all to support it. So that really is a problem, and I will be back to that in my recommendations.

And, finally, what we think is the most important is the Data Quality Act. Here is an example where Congress in 2001 said to the agencies we do have the kind of burden that we have, whether it is $1.1 trillion or maybe it is $500 billion, who cares? The fact is it is enormous. There are 4,000 regulations a year, 102,000 regulations out there, and they cannot all be necessary, and no human being can read them. That is the problem. And so the Data Quality Act took the position that the agencies were to use the best quality data, the objective data, the most useful data. And 2 days ago, as I think you know by this time, the Fourth Circuit Court of Appeals ruled that the Data Quality Act was not enforceable, that there was absolutely no human being on Earth that had the standing to pursue it, and that it is an act that is solely between OMB and the agencies. So if you are looking for guidance as to how to move forward, you have to keep that process in mind.

So what do we do? Well, we have three options that I think are practical. One is if you want private parties to really support you on it and take action against the agencies to deal with the paperwork issue, then you have to put judicial review at the center. It is just that simple.

If you want this to continue to be between OMB and the various agencies, several things have to happen. OMB has to be serious about the process. This is the first thing. And it can be serious in two ways. One, it can tell the agencies, look, you have—when you file these certifications or when you do this data quality request, you have to have a mechanism of somewhat independent review, and that can be either an administrative law judge or—we don't care, but it has to be someone independent of the agency.

In terms of the certification process, I think you have a serious chance there of doing something that really could be monumental, and that is, if you have all the CIOs rubber-stamping all of these issues, there seems to be just a complete lack of concern, and if anyone has ever looked at one of the paperwork submission requests, it actually gives you the criteria on the back side in very simple, plain English, and yet the CIOs rubber-stamp it. You know, if a corporate official did this—you know, they worry about Sarbanes-Oxley. Even if you were a small builder in Michigan and you worried about storm water and you didn't—let's say you didn't have your Zip Code on it. Well, if you didn't have your Zip Code on the submission, they would hit you for $50. If you did not talk about weather conditions, just omitted it the day you filed the form, that is $500. And if you did not pay it within 30 days, the fine then would be $32,500 a day.

So what I am saying is the simple answer is I think you need to make the CIOs accountable, and I think you can do that through the Office of Personnel Management. Anyway, I think my time has expired, but I would be glad to answer any questions.

Thank you.

[The prepared statement of Mr. Kovacs follows:]

STATEMENT OF WILLIAM L. KOVACS
VICE PRESIDENT
U.S. CHAMBER OF COMMERCE
BEFORE THE
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON THE SUBJECT OF
THE PAPERWORK REDUCTION ACT AT 25: OPPORTUNITIES TO STRENGTHEN AND IMPROVE THE LAW
MARCH 8, 2006

I. INTRODUCTION

Madam Chairman and members of the committee, thank you for the opportunity to testify before you today on the topic of "The Paperwork Reduction Act at 25: Opportunities to Strengthen and Improve the Law." I am William Kovacs, Vice President for Environment, Technology, and Regulatory Affairs at the U.S. Chamber of Commerce. The U.S. Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

As a business federation, the U.S. Chamber is all too familiar with the overwhelming paperwork burdens our members face at the hands of government regulators. My testimony today will focus on a brief review of the historical efforts by Congress to ensure the quality and integrity of the information collected and disseminated by federal agencies and the agencies failings to implement congressional intent, and the U.S. Chamber's recommendations to help make the Paperwork Reduction Act of 1980[1] (PRA) more effective.

I would like to begin my testimony today by briefly discussing historical congressional efforts to ensure the quality and integrity of information collected and disseminated by the federal government, what the U.S. Chamber views as the principal difficulties with the PRA, and several recommendations that could help make it more effective.

II. HISTORY OF THE PRA

[1] The Paperwork Reduction Act of 1980, 94 Stat. 2812, P.L. 96-511, 44 USC §3501; Dec. 11, 1980.

Since at least 1942, with the passage of the Federal Reports Act, we know that Congress has been interested in promoting the quality, integrity, and utility of information collected and disseminated by the federal government. That act made it the policy of Congress not only to minimize the paperwork burden on U.S. businesses, but also to assure the necessity and maximize the usefulness of information collected from the public and used or disseminated by the government.[2]

Congress authorized the Bureau of the Budget (which, in 1970, became the Office of Management and Budget) through the Federal Reports Act to determine whether a collection of information by the federal government was really necessary and useful in reducing burden. This review function essentially created a gatekeeper that would screen out any information collections that did not meet the Federal Reports Act's quality standards. Over the years, however, the efficacy of the act was eroded as more and more exemptions were created to circumvent the act's stringent requirements. By 1979, more than 80% of the federal paperwork burden had become exempt from the now ineffectual Federal Reports Act.

Criticism of government red tape continued to grow in direct proportion to the ever-increasing federal paperwork demands placed on the public each year. In 1980, Congress again took steps to reduce the paperwork burden on U.S. businesses and to promote the utility and quality of data collected and disseminated by federal agencies. Passage of the PRA marked the first broad-scale effort by Congress to manage the federal government's information activities. The PRA was enacted for the primary purpose of minimizing the federal paperwork burden on the public, and maximizing the utility of collected and disseminated information.[3] Through a diverse range of provisions, the PRA established a process intended to simplify and reduce the duplicative, onerous, and often unnecessary, information collection requests from the federal government.

The PRA also created the Office of Information and Regulatory Affairs (OIRA) to oversee agency efforts to reduce the paperwork burden. OIRA would be the final arbiter of whether an "information collection request" (ICR) complied with the PRA, including whether the information would have a "practical utility" for the agency.[4] Six years later, Congress reauthorized and amended the PRA (1986 amendments) and strengthened the act by including an additional charge to…*maximize the usefulness of information collected and disseminated by the Federal Government.*[5]

It became clear, however, that the PRA and the 1986 amendments failed to stem the growing tide of paperwork that was drowning the American public. Despite best efforts, the number of paperwork burden hours continued to rise at an alarming rate each year.

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[2] "It is hereby declared to be the policy of the Congress that information which may be needed by the various Federal agencies should be obtained with a minimum burden on business enterprises…that all unnecessary duplication of efforts in obtaining such information…should be eliminated as rapidly as practicable; and that information collected and tabulated by any Federal agency should insofar as is expedient be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public." Federal Reports Act of 1942, 56 Stat. 1078, P.L. 831-811; Dec. 24, 1942.

[3] "The purpose of this [Act] is (1) to minimize the federal paperwork burden…; (2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information; and (3) to maximize the usefulness of information collected by the Federal Government" 44 USC §3501.

[4] 44 USC § 3504(c)(2).

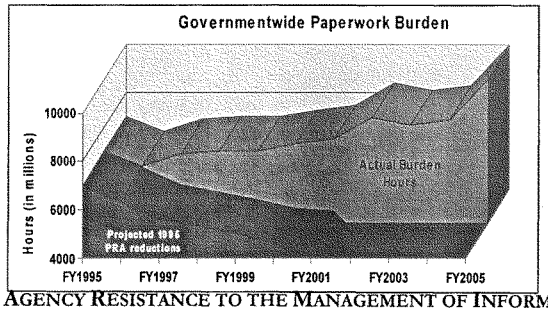
[5] P.L. 99-591, Oct. 30, 1986.

Therefore, in 1995, Congress revised, reauthorized, and codified the PRA in an attempt to enhance its overall effectiveness. The 1995 amendments to the PRA (1995 amendments)[6] added new language addressing the need for improved utility, quality, and integrity in the information collection process.[7]

Perhaps the two most significant additions to the PRA from the 1995 amendments were that each agency's Chief Information Officer certify that every ICR complies with the paperwork burden reduction requirements of the PRA,[8] and that federal agencies meet mandatory burden reduction levels each year.[9]

These two new safeguards offered a strengthened opportunity to effectively reduce the paperwork burden on the public. By requiring agency CIO's to certify that each ICR comport with the burden reduction provisions of the PRA—such as reducing duplicative requests and by ensuring that the request is necessary to the purposes of the agency—Congress mandated that agencies engage in a rigorous analytical process before approving any ICR. Likewise, by mandating yearly burden reduction levels, Congress, for the first time since the enactment of the PRA, required that the paperwork burden decrease.

Unfortunately, things did not work out as planned. The new safeguards put into place by the 1995 amendments were blatantly disregarded by the agencies, and as a result, last year alone, the number of burden hours on the public exceeded an extraordinary 10 billion hours—the highest in history.



Information compiled from the 1995 PRA Amendments, the Annual Information Collection Budget, and agency paperwork burden projections.

III. AGENCY RESISTANCE TO THE MANAGEMENT OF INFORMATION

It is a common misperception that federal attempts to manage the flow of information in-and-out-of government agencies were limited to the PRA. In fact, executive

[6] "The purposes of this [Act] are to…ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government…[to] improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society…[and] provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public…." P.L. 104-13, 44 USC § 3501(2), May 22, 1995.

[7] "The purposes of this [Act] are to…ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government…[to] improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society…[and] provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public…." P.L. 104-13, 44 USC § 3501(2), May 22, 1995.

[8] Id. at § 3506.

[9] Id. at § 3505.

orders, presidential initiatives, legislation, and information quality guidelines, have all been used in an attempt to improve the collection, reliability, and dissemination of information.

More often than not, though, congressional directives were met with resistance from OMB as it struggled to develop information management processes. Case in point, Congress had repeatedly urged OMB to develop procedural guidelines for ensuring the quality of data disseminated by federal agencies. In fact, there were no fewer than four congressional directives given to OMB requesting such guidelines. OMB simply chose to ignore these four requests, forcing Congress to mandate OMB's issuance of guidance to the agencies. Specifically:

A. 1995

The PRA directed OMB to…*ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.* [10]

B. 1998

House Report on the Treasury, Postal Service, and General Government Appropriations Bill,[11] urged OMB to develop…*rules providing policy and procedural guidance* for ensuring the quality of information disseminated by federal agencies.[12]

C. 1999

The House incorporated a data quality provision in the report that accompanied H.R. 4104, the Treasury and General Government Appropriations Act of 1999, requesting that OMB develop policy and procedural guidance to federal agencies in order to ensure and maximize the quality, objectivity, utility, and integrity of information that the federal government disseminates to the pubic. Following the House's lead, the Senate included similar data quality language in the conference report related to this legislation. This non-binding report language was then enacted as part of Public Law 105-277.

D. 2000

The Treasury and General Government Appropriations Bill, approved by the House Subcommittee, contained a requirement for OMB to issue rules on information quality. Representative Jo Ann Emerson subsequently sent a letter to

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[10] 44 CFR, Chapter 35, Sec. 3501(2).
[11] House Report No. 105-592
[12] "The Committee urges the Office of Management and Budget (OMB) to develop, with public and Federal agency involvement, rules providing policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies, and information disseminated by non-Federal entities with financial support from the Federal government, in fulfillment of the purposes and provisions of the Paperwork Reduction Act of 1995 (P.L. 104-13). The Committee expects issuance of these rules by September 30, 1999." House Report No. 105-592.

OMB seeking an explanation as to why the agency had continually ignored congressional requests to issue data quality guidance. OMB responded that it was reluctant to issue one-size-fits-all regulations to enhance data quality.[13]

It was not until the passage of the Information Quality Act (IQA)[14] that OMB finally took action and developed the procedural guidelines Congress wanted.

To put it simply, the PRA is the filter through which information flows **into** the federal government, and the IQA is the filter through which information flows **out**. Together they represent the sentinels of the information management process that reduce paperwork burdens and increase the integrity of the federal government's information management system.

IV. RECOMMENDATIONS TO FIX THE PAPERWORK REDUCTION ACT

While it is certain that Congress has long been committed to minimizing the federal paperwork burden on the public, it is also certain that it has failed to achieve that goal. In the 26 years since the PRA was enacted, the paperwork burden level on U.S. businesses and the public has skyrocketed.

It appears that the two primary reasons for this failure are the breakdown in the certification process and the lack of enforcement of mandatory paperwork reduction goals.

A. CIO Certification Process

As mentioned above, agency CIO's are required to review each ICR and certify that it comports with the strictures of the PRA.[15] Congressional intent behind this requirement was to create a rigorous analytical process whereby CIO's would review the evidence supporting an agency's contention that an ICR was necessary and that it complied with the PRA. Any collection request that failed to meet PRA standards—that is, failed to meet paperwork reduction goals—would not be certified, nor sent to OMB for approval. Unfortunately, the rigorous analytical process envisioned by Congress failed to materialize and the CIO certification process has become nothing more than a routine administrative procedure. All too often an ICR is simply "rubber stamped" by a CIO without any analysis of the underlying documentation that shows it reduces burden.

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[13] "At the present time, OMB is not convinced that new 'one-size-fits-all' rules will add much to the existing OMB guidance and oversight activity and the procedures followed by individual agencies. We are reluctant to issue more regulations without a clear sense that they would be useful in promoting data quality. We are also concerned that new regulations might prove counterproductive to the goal of increasing data quality. The Report suggests that agencies be required to establish a new 'petition' process under which persons could file formal 'complaints' over the quality of information. These administrative requirements could consume significant agency resources. An adversarial petition process also might discourage the type of free and open dialogue between the agency and the public that is crucial for identifying and addressing data quality issues." April 18, 2000, letter from John T. Spotila, OIRA Director, to Representaive Jo Ann Emerson.

[14] Section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (P.L. 106-554).

[15] Under the PRA, agency CIO's must ensure that every ICR is: (1) necessary; (2) not duplicative; (3) reduces burden; (4) clearly written; (5) compatible with the existing reporting and recordkeeping practices; (6) indicates length of time persons are required to maintain the records; (7) contains certification language; (8) useful to the agency and public; (9) uses effective and efficient statistical survey methodology; and (10) uses technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

That this assertion is correct is well understood by Congress. According to a recent study by the Government Accountability Office (GAO),[16] federal agency CIO's had certified that PRA standards were met in 98% of that year's 8,211 collections. Yet, when the GAO randomly sampled these ICRs it found that support for that certification was missing or inadequate in 65% of the cases. The reason for this shocking disparity was clear—CIO's were not analyzing the underlying documentation to ensure burden reduction standards were being met.

But why should agency CIO's take the time and effort to ensure the integrity of the certification process? After all, there are no penalties for not doing so.

The current CIO review and certification process required under the 1995 amendments is broken because the PRA lacks any enforcement mechanism or penalty provisions for noncompliance. As such, the certification process is an ineffective tool for verifying paperwork burden reductions.

In order to rectify this problem there needs to be an enforceable penalty provision in the PRA for unsubstantiated certifications. If U.S. businesses can be held strictly accountable for recordkeeping and reporting requirements under a vast array of laws and regulations, then the federal government should be held to the same certification standards.

For example, under Sarbanes-Oxley, CEOs face civil and criminal penalties for any false or misleading statement reported to the federal government. Likewise, under the Clean Water Act, businesses have been found civilly liable for tens of thousands of dollars in fines **per day** for mere clerical errors in their filings—like a missing zip code—because it was automatically deemed to be a false statement.[17] Strict penalties for the improper certification of hazardous waste are incorporated into the Solid Waste Disposal Act,[18] and similar provisions can be found in the Clean Air Act,[19] the Toxic Substances Control Act,[20] and in many other laws that operate to impose tens and hundreds of thousands of dollars in penalties for paperwork violations.

If the federal government were held to similarly draconian standards for every unsubstantiated certification—that is, those certifications that lack underlying support —then it is very likely that far fewer ICR's would be approved. As a result, the

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[16] "Paperwork Reduction Act: Burden Reduction May Require a New Approach," Testimony Before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives, GAO, June 14, 2005.

[17] CWA, 33 USC §1318(c)(4): "False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document…shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both."

[18] SWDA, 42 USC §6928(d): "Any person who…knowingly omits material from any information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations…shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years…."

[19] CAA, 42 USC §7413(c) and (d).

[20] TSCA, 15 USC §2614(a) and (b).

American business community would almost certainly witness a real reduction in paperwork burden hours inflicted on it.

Therefore, the U.S Chamber recommends that Congress amend the PRA to include penalty provisions and enforcement mechanisms—similar in strength of consequences to those imposed on most U.S. businesses—to ensure the integrity of the information collection process. The penalty should be monetary and paid for by the CIO that signed the certification. Al penalties could be paid to OIRA to help offset the cost of administering a more stringent ICR certification process. An additional penalty, such as a reduction in personnel levels for the CIO's agency, should also be considered. Federal agency CIO's must recognize that it is just as important for government to file accurate reports as it is for the business community.

B. Mandatory Burden Reduction Levels

The 1995 amendments to the PRA included annual **mandatory** paperwork reduction levels. Specifically, federal agencies were required to reduce their collection burdens by 10% in fiscal years 1996 and 1997, and then by 5% in each fiscal year from 1998 through 2001. Meeting these goals would reduce the amount of federal paperwork by 35%, from about 7 billion burden hours at the end of fiscal year 1995 to approximately 4.6 billion hours at the end of fiscal year 2001. Thereafter, federal agencies were to set annual reduction goals to limit the paperwork burden on the public to the maximum extent possible. In this manner, paperwork reductions would be guaranteed to occur so that, by today, the American business community could expect the number of burden hours on the public to have been significantly pared down.

The mandatory reductions levels, however, were enforced with the same lack of stringency as the CIO certification process—that is to say, not at all. In fact, since the passage of the 1995 amendments the paperwork burden in this country has increased annually and exponentially. Last year, there were more paperwork burden hours on the American public than ever before.

Again, the problem with achieving the PRA's mandatory reduction levels is the lack of an enforcement mechanism or penalty provision. The only way a federal agency will take steps to mitigate its paperwork burden will be if penalties are imposed for failure to meet specified reduction goals.

It must be noted that many agencies contend that they cannot reduce their paperwork requirements without changes in their authorizing statutes, many of which require the collection of certain types of information. Congress should examine the validity of this claim as part of its effort to address paperwork reduction. Nevertheless, the PRA is meant to discourage the unnecessary collection of information and, ultimately, strictly enforcing the PRA will force agencies to be more efficient in their operations. If an agency cannot meet a congressionally mandated reduction because of a statutory obligation, it should immediately report that conflict to Congress. Otherwise, the agency must obey congressional mandates or face a penalty, e.g. a reduction in budget or personnel.

V. OTHER RECOMMENDATIONS TO STRENGTHEN THE PRA

There are other additional options that Congress could take to ensure the quality and integrity of the regulatory process.

A. Increase Resources to OIRA

In order to properly enforce the provisions of the PRA, as discussed above, additional resources will be needed by OIRA. As such, the U.S. Chamber recommends that Congress increase the budget of OIRA to allow for the hiring of new personnel who can focus specifically on the paperwork reduction efforts of federal agencies.

B. Codify Executive Order 12866

When Executive Order 12866 was issued in 1993, it imposed on agencies an affirmative duty to assess the costs and benefits of potential regulations and to maximize the net benefits to the public. In developing only those regulations that were necessary to interpret the law, agencies were admonished to avoid unduly burdening the public. When collecting information on which to base its regulatory decisions, agencies were directed to collect only…*the best reasonably obtainable scientific, technical, economic, and other information*…[21] Presumably, the purpose behind this language was to prevent agencies from unduly burdening the public with excessive, duplicative, and onerous requests for information. In this manner, it parallels the objectives of the PRA.

By codifying Executive Order 12866, Congress would lend additional credence—as well as the force of law—to a Presidential Order that has been continually hailed under Democratic and Republican administrations as both far-sighted and effective. As such, the U.S. Chamber believes that codifying Executive Order 12866 would help to further reduce the growing paperwork burden on U.S. businesses in this country.

[21] Executive Order 12866; Fed. Reg. Vol. 58, No. 190, Sec. 1(b)(7).

C. Look-back Provisions

One of the best conceived, but most poorly utilized, concepts for reducing government paperwork burdens is the "look-back" provision. Look-back provisions were designed to force federal agencies to periodically review their existing regulations and determine whether those regulations should be continued, modified, or rescinded. In this way, an agency's regulatory program would be streamlined as ineffective regulations were eliminated or modified to be less burdensome to the regulated community.

There are several examples of these look-back provisions in various presidential executive orders, statutory provisions, and OMB directives. It is worth briefly examining some of these provisions in order to understand their potential utility for reducing paperwork burdens for the business community.

1. Executive Orders

a. Executive Order 12044

President Carter issued Executive Order 12044, "Improving Government Regulations," in 1978. This Executive Order established requirements for the centralized review of regulations, the preparation of regulatory analyses, and the consideration of alternatives, and also required federal agencies to periodically review their existing regulations.[22]

Following this theme, President George H.W. Bush sent a memorandum to all federal agencies in 1992 calling for a 90-day moratorium on new regulations. During this time the agencies were to...*evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth.*[23]

b. Executive Order 12866

In 1993, President Clinton enhanced this deregulatory process by issuing Executive Order 12866, "Regulatory Planning and Review." Section 5 of the order requires each federal agency to submit a program to OIRA to...*periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated...*[24]

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[22] Executive Order 12044, *Improving Government Regulations*, stated that the periodic review of regulations was necessary to ensure that agencies do not impose unnecessary burdens on the economy, individuals, private organizations, or State and local government. 43 Fed. Reg. 12661 (March 24, 1978)
[23] Memorandum titled "Reducing the Burden of Government Regulation," by Pres. George W. Bush to All Federal Agencies, dated January 28, 1992.
[24] 58 Fed. Reg. 51735 (September 30, 1993)

President Clinton also ordered a "page by page" review of all regulations in 1995, in an effort to eliminate or revise those that were outdated or in need of reform.

Despite these attempts to make regulatory reviews a regular practice by federal agencies, most agencies failed to develop any systematic review process. As a result, presidential calls for periodic look-backs have proven largely ineffective.

2. Section 610 of the Regulatory Flexibility Act

The most widely cited statutory look-back requirement for federal agencies is Section 610 of the Regulatory Flexibility Act of 1980 (RFA).[25] Section 610 of the RFA specifically requires each federal agency to develop a plan for the periodic review of regulations that have, or will have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether each rule should be retained, amended, or rescinded (consistent with the objectives of the underlying statute) to minimize its impact on small entities.

Unfortunately, Section 610 has been widely perceived as ineffective for reviewing existing regulations. Agency confusion about how and when to assess the economic impact of rules and how to provide proper public notice about the reviews being conducted served to undercut the effectiveness of this provision. Few rules in existence are actually reviewed, and even fewer are retired or eliminated through this provision.[26]

3. OMB's Regulatory Reform Nominating Process

Under the current Bush Administration, OMB has sought to identify regulatory reform suggestions through a process of direct public nominations. OMB relied on the authority granted by Congress under the Regulatory Right-to-Know Act to initiate this call for reform.[27] The Regulatory Right-to-Know Act requires OMB to issue an annual report to Congress on the costs and benefits of regulations, including recommendations for reform.

On three separate occasions OMB requested and received public nominations of regulations in need of reform. These efforts, however, met with limited success due to a lack of follow-up, a lack of enforcement, and a lack of penalties.

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[25] 5 U.S.C. 601 et seq

[26] In the Fall 2005 Unified Agenda of Federal Regulatory and Deregulatory Actions, there were less than 30 rules that had been designated for §610 Review by all the federal agencies *combined.*

[27] 31 U.S.C § 1105, Pub. L. 106-554 (December 21, 2000).

There is little question that look-back provisions would have significant utility in reducing paperwork burdens for the American business community. Unless and until Congress begins to stringently enforce these provisions, we are unlikely to realize their full potential in addressing the growing paperwork and regulatory burden.

4. Look Back on Cost Benefit Analysis

The federal government and the public rely on cost/benefit analyses to determine the potential impact of regulations, which in turn helps companies to make informed business decisions. While agencies routinely prepare cost/benefit analyses for major rules, they do so before a regulation goes into effect. These pre-regulatory forecasts are notoriously inaccurate. Therefore, to better ensure the workability of the regulatory process, Congress should establish a pilot program for agencies to study the real cost and benefits of regulations at certain intervals, such as five and ten years. These types of post-validation studies would provide solid information on how the utility and effectiveness of a particular rule or regulation.

VI. CONCLUSION

The Chamber remains hopeful that the PRA will at last become an effective tool for reducing the paperwork burden on U.S. businesses and for promoting the integrity and utility of information collected and disseminated by the federal government.

I thank the committee for the opportunity to present the Chamber's views and recommendations about the Revising the Paperwork Reduction Act.

Mrs. MILLER OF MICHIGAN. Thank you very much.

Our next witness is Andrew Langer, who is the manager of Regulatory Policy for the National Federation of Independent Business. He is in charge of making the voices of small businesses heard whenever new regulations would have a negative impact on Main Street. Mr. Langer.

STATEMENT OF ANDREW M. LANGER

Mr. LANGER. Thank you. I want to thank you for the opportunity to testify on this. I have testified before this committee and several congressional committees on this issue a number of times, and we are really at a crossroads here in terms of reducing paperwork and the paperwork burden on small businesses. So I am really thankful that I have the opportunity today.

NFIB, of course, is the Nation's largest small business trade association with 600,000 members whose average employee size is five employees. So we represent the smallest of the small.

The problem of paperwork is two-pronged. We focus on two sides of the issue: we focus on paperwork that has to do with regulations that are coming down the pipeline, and we focus on the problem of paperwork from regulations that are already on the books. We have a great many tools available to deal with reducing the burden of regulations that are coming down the pipeline, and those systems, when they work, work fairly well. They do need improvement. But we spend very little time dealing with the issue of the paperwork that is already on the books, which is the vast preponderance of the problem, frankly, as Bill said.

Everyone involved in regulations—the regulated community, activist stakeholders, Members of Congress and their staffs, the Federal agencies and their personnel—all must ask the same question: What is it that we want from the regulated community in the end? After all, I am not here, NFIB is not here, we are not here engaged in this discussion on an academic basis. I have not grown frustrated with the regulatory process and the paperwork caused by it on mere philosophical grounds. We are here to talk about real solutions to a real problem, a problem that has real impacts for real people. You have called this hearing because you want to explore real solutions, meaningful relief for those small businesses. So I repeat the question: What is it that we want?

The answer, at least in NFIB's estimation, is simple: we want the regulated community to understand what their responsibilities are, what paperwork they need to fill out, in as simple and as easy a manner as possible. We want them to spend as little time as possible having to figure out what their responsibilities are, what they need to do to comply, and then going out and complying with them.

What is more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a Government inspector to show up at their offices to fine them for some minor transgression.

But, unfortunately, we have created a regulatory state that is so complex that it is next to impossible for any business, any small business, to be in compliance with 100 percent of the law 100 percent of the time. It is a grossly unfair situation. It creates the situ-

ation where any small business could become the victim of an erstwhile Federal regulator interested in playing a game of "gotcha." And in an era where an increasing number of Federal inspections are being driven by disgruntled former employees filing meritless complaints against their employers, small businesses are growing more vulnerable each and every day with each and every new regulation that comes out. And the stakes are much higher because of the way the laws work.

Consider for a moment the fact that most Federal environmental regulations—and Mr. Lynch talked about TRI. For most Federal environmental regulations, they carry criminal penalties. And these criminal penalties are under what is called strict liability, the concept that you need not know that what you are doing is a crime in order for you to be charged as a criminal. Instead, under strict liability, all the Government needs to do is prove that you knew that you were doing the act that you were doing at the time you were doing it.

So what does this mean for paperwork? Let's say you are a small business owner filling our Clean Water Act paperwork forms and you make a mistake. You leave off your Zip Code, you make some clerical error, you transpose two numbers, and you sign the bottom. And all of a sudden a Federal inspector comes out and looks through your paperwork—paperwork you have spent blind hours doing, you have been doing other paperwork as well. You can be charged criminally under the Clean Water Act for making that mistake under strict liability because all the inspector would have to do is say, "You knew you were filling out a form, right?" "Of course, I did. I signed the bottom of it." You are guilty. And this is not an abstract thing. People have gone to jail because of this.

So I want you to consider this as we think about going about reducing the amount of paperwork. Because the regulatory state continues to grow and the paperwork continues to increase, it is ever more important that we strengthen those gatekeeping roles, which is why NFIB, in my written comments, I said—and I want to submit those for the record, obviously—that OIRA needs to be fully funded. And I don't think I need to repeat the arguments of those that came before me because I agree with all of them as to why OIRA needs to be fully funded, obviously because one of the reasons, the main reasons, is because as the number of regulations and those writing them continues to grow, the resources at OIRA have continued to shrink.

I think clearly—and I have spoken on this before—something needs to be done about tax paperwork, and I can talk about that as we move forward. But one of the things I want to focus on very, very briefly—and it is absolutely important—is one of these real solutions, and I talk about it extensively in my testimony. It is the issue of the business compliance one-stop, or business.gov or the Business Gateway, as it is called, the idea being very, very simple, and it really gets to the heart of the matter. We want small businesses to be able to go to a Web site, those that use computers—and about 92 percent of small businesses use computers in some aspect of their business. And so if they choose to do so, they go to a Web site, they enter in some very simple plain-English data about their business, maybe their industrial classification code, the

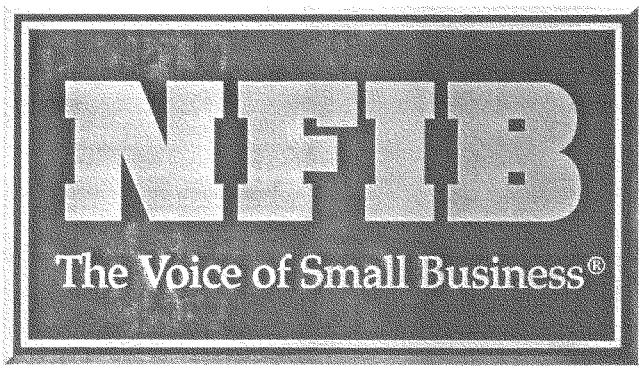
number of employees, and their Zip Code, and a data base spits out every Federal regulation that applies to them. It spits out everything that they need to do to comply with that regulation in very simple—no more than two pages of information. And if we are lucky, it walks them through how they go about complying. It allows them, if they so voluntarily choose to do so, to fill out that information on the computer itself. And it spits edit, gets all the information organized for them and it sends it out.

Now, the SBA has been working on this for a number of years. We supported them through it, and we have something called business.gov that is out there. But it is just in its infant stages, and the time is now to take that seriously. We have an opportunity on our hands as you move forward with reducing Federal paperwork, through the reauthorization of the Paperwork Reduction Act, to take this in hand, and it is going to take congressional leadership and leadership from the executive branch in order to do this. But we have to start somewhere, and we have to start now.

I look forward to taking any questions, especially if you have any on the Toxics Release Inventory, and I will conclude with that.

[The prepared statement of Mr. Langer follows:]

Testimony before the United States Congress on behalf of the



Testimony of

Andrew M. Langer
Manager, Regulatory Policy

Before the

The House Government Reform Committee
Subcommittee on Regulatory Affairs
Hearing on Small Business Paperwork Burdens

on the date of

March 8, 2006

Chairman Miller and Members of the House Government Reform Committee, Subcommittee on Regulatory Affairs:

On behalf of the 600,000 small-business owners represented by the National Federation of Independent Business, I would like to thank you for the opportunity to discuss with you the burden of regulatory paperwork imposed by the federal government and to offer NFIB's insights about how to improve the way in which the federal government goes about reducing the amount of paperwork filled out by America's small businesses each year.

Nearly a year ago, I offered testimony on regulatory burdens faced by small business at a roundtable chaired by you. A year later the reauthorization of PRA is a good opportunity to update you, and to offer some possible solutions to those problems.

NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Ninety percent of NFIB members have fewer than 20 employees. While there is no standard definition for a small business, the typical NFIB member employs five people and reports gross sales of around $350,000 per year. However, all NFIB members have one thing in common; their businesses are independently owned.

Being a small business owner means, more times than not, you are responsible for everything (ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments). That is why simple government regulations, particularly when it comes to the paperwork they generate, are so important. The less time our members spend with "government overhead," the more they can spend growing their business, employing more people and growing America's economy.

As I have said before, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change. Last year, I discussed with you a report commissioned by the Small Business Administration's Office of Advocacy, estimating the regulatory compliance costs for firms with fewer than 20 employees. At that time, the cost was nearly $7,000 per employee, per year.[1] .

But that seminal piece of research has been updated. Not only updated, but updated now with a peer review process that lends even greater credence to the research. Unfortunately for small business owners, however, the new data isn't good —the cost of

[1] Report for the SBA Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, Crain and Hopkins, 2001 (http://www.sba.gov/advo/research/rs207tot.pdf)

regulation for small businesses has risen by nearly 10 percent, to $7,647 per employee, per year.[2]

This means that for one of NFIB's average members, with five employees, those costs now approach a total of $40,000 annually. For a business operating on a shoestring, such costs can be devastating.

My testimony is going to cover a number of different things. First, I'd like for members of the committee to get an understanding of the regulatory burden in the form of paperwork, and reiterate the results of a survey from 2004 by NFIB's Research Foundation regarding Paperwork and Recordkeeping.

Then, I will focus on specific areas where Congress has the opportunity to change the status quo and strengthen federal laws addressing this paperwork burden, and other potential solutions to this crippling problem.

These suggestions will fall into three basic areas—the pillars of true regulatory reform. The first is a proper assessment of the problem: just what is the burden? If you have not assessed or cannot assess the problem, then any solutions you propose will, in all likelihood, fall short of the goals. Then, once assessed, what is it that needs to be done? How do we get maximum benefit? And finally, what are some simpler fixes that can be made in the short term to achieve real results for small business.

In terms of the paperwork burden imposed by regulations themselves, NFIB's own Research Foundation has engaged in in-depth studies of the problem being faced by small businesses. The NFIB Research Foundation is a non-profit 501(c)(3) organization, and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion was that the best thing for small businesses is simplicity—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them, and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below).

Measuring the Burden of Paperwork: The NFIB Research Foundation's Recent Polling on Paperwork Costs

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly $50 per hour. In addition, the following conclusions were reached[3]:

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[2] Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms, 2005, http://www.sba.gov/advo/research/rs264.pdf*

[3] NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners most frequently handle paperwork and record-keeping related to licenses and permits (55% of firms), purchases (46%), and clients/customers (46%). They least frequently deal with financial (27%) and tax (12%) records. Three of four pay to have someone (another firm) outside handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases. (And, as is discussed below, in the case of TRI reporting, owners do it more often themselves, or use consultants.)

2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher. (This confirms the findings of the informal survey above).

3. The estimated average per hour cost of paperwork and record-keeping for small businesses is $48.72. By subject matter the average per hour cost is: $74.24 for tax-related, $62.16 for financial, $47.96 for licenses and permits, $43.50 for government information requests, $42.95 for customers/clients, $40.75 for personnel, $39.27 for purchases, and $36.20 for maintenance (buildings, machines, or vehicles).

4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.

5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29%). The second most frequently cited difficulty is the volume of paperwork (24%). Duplicate information requests (11%) place third, followed by maintenance of records that ordinarily would not be kept (10%) and requests for inaccessible or non-existent information (9%). Twenty (20) percent could not decide.

While the use of computers by small businesses and small business owners has certainly helped reduce the burden of regulations, technology alone cannot solve the problem. More than filing forms and storing copies, paperwork requirements involve understanding the what the government wants and how they want it, gathering the necessary information and organizing it properly, determining what to keep and for how

long, etc. And, then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. People must organize and input the necessary data, and people are expensive.

According to research by The NFIB Research Foundation, 92% of small businesses use computers in some aspect of their business. 82% of small businesses have internet access, and of those, 57% have high-speed internet access. Half of the businesses that use the internet use it to find out regulatory information, and the smaller of small businesses are more likely to use the internet to educate themselves. They use it for specific searches, and to sift through information.[4]

Because of this, I believe that the Business Gateway program undertaken by the Small Business Administration is a good step towards alleviating the problem of using computers. That program would allow small-business owners to input simple data regarding their businesses, and they would immediately receive all of the information necessary to fulfill their regulatory burdens. It is an ambitious program, but one that ought to be supported fully by Congress, and is discussed in greater detail below.

As to the issue of paperwork costs associated with tax preparation, it has been recognized in the past that the requirements levied by the Internal Revenue Service represent a significant portion of the burden faced by small businesses. Currently, the IRS has no mandate to reduce paperwork burdens, as there exists a Memorandum of Understanding between IRS and the OMB regarding the application of SBREFA to the tax collecting agency. The Department of the Treasury hasn't designated a single point of contact on paperwork, nor has it completed the required reporting on enforcement of paperwork reduction laws.

In order to take a significant bite at the paperwork apple, some oversight must be made regarding the burdens levied by the IRS. The MOU ought to be examined, and there ought to be a reconsideration of the current policy agreements between OMB and the IRS. Tax paperwork costs nearly $75 per hour and small businesses can ill-afford to have such resources siphoned off. Some consideration should be given to new legislation aimed at holding the IRS accountable to paperwork reduction laws already applying to other agencies.

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[4] NFIB National Small Business Poll Volume 4, Issue 8, "Telecommunications," http://www.nfib.com/object/telecomm.html

Specific Legislative Recommendations

Full-funding for OIRA

Key in the fight to produce regulations that make sense, that address real public policy problems, whose benefits outweigh their costs, and are presented to the regulated public in the least-burdensome manner possible is the Office of Information and Regulatory Affairs at the Office of Management and Budget (OIRA). OIRA acts as a gatekeeper for all new regulations, and has been particularly instrumental in ensuring that the most burdensome regulations are re-thought by the agencies proposing them.

Unfortunately, almost immediately since its founding, OIRA's resources have been ham-strung. Budgets and staff have, over the years, been cut back. This has had the effect of hampering OIRA's ability to do all that needs to be done in the realm of ensuring a sensible regulatory state with minimized paperwork burdens. At the same time that the OIRA has been experiencing cut-backs, the population of those who create new regulations has continued to increase dramatically.

The lack of viable resources to OIRA comes at a high price to the regulated public (e.g.- NFIB members and small-business owners as a whole). For instance, in prior testimony to the House Government Reform Committee, there has been a great deal of discussion regarding "bootleg" regulatory forms. These are forms that individual agency offices create for the regulated community to use, but are not vetted through the required paperwork processes. The regulated public is unsophisticated as to the intricacies of federal paperwork law, so when they see a form from a federal agency, by and large they are not going to question the legality of that form or their obligations in completing this paperwork.

An OIRA that is crippled by a lack of resources cannot adequately assess paperwork burdens, let alone ferret out which agencies might be surreptitiously adding to that paperwork burden through the use of bootlegs. As the agency that acts as a gatekeeper to ensure that regulatory actions and activities are both meaningful and appropriate, it is reasonable to expect that OIRA have the funding and support necessary to carry out its activities.

Congress must act to rebuild OIRA's resources. A reinvigorated OIRA can once again expand its review of regulations and the burdens imposed by them. A reinvigorated OIRA can comprehensively assess the impact of regulations on small business on an annual basis, instead of focusing on a narrow slice or subset of those regulations, as is currently the case. Advocates for small business and other groups have repeatedly voiced their concerns in recent years over this, and OIRA has responded by saying that because their resources are limited, they have to focus on the regulatory burden in this way.

As I said above, for regulatory burdens to be reduced, a number of things have to happen. Step one is a proper assessment of those burdens, and a proper reassessment on an annual basis. Responsibility for that falls squarely on OIRA's shoulders.

Strengthen Provisions on Unnecessary Duplication

The issue of duplication goes hand-in-hand with the issue of ease of access to regulatory compliance information. Currently, it is next-to-impossible for the federal government to ascertain what information is duplicatively required from one agency to the next. Because it is so difficult, despite mandates that inquiries into duplicative requirements be done by agencies during the promulgation of rules or during the collection of information, agencies are hard-pressed to do it.

These rules have to be strengthened. It is maddening for a small business owner to fill out a series of regulatory forms for one agency, and then transfer that information in a similar, but slightly different form, for another agency. It is frustrating, and it is time consuming – and time is the most precious commodity that a small business owner has.

If Congress takes a leadership role on the implementation of the Business Gateway System, then it should put rules into place which would address the issue of duplication, before and during the Business Gateway development process. Part and parcel of any electronic system should be the recognition that information being collected and used for one agency as part of the regulatory process should be checked, and if possible, translated for use by another agency.

Limit the Number of Information Collection Requests

Small businesses are constantly being bombarded by requests for information from federal agencies. These "Information Collection Requests" or "ICRs" add greatly to the paperwork burden associated with regulation, and ought to be limited sharply. Were Congress to limit the number of ICRs agencies could put forth in any given year, it would force agencies to prioritize the use of ICRs, and therefore only bother small business owners when it was absolutely necessary.

Small business owners cannot do everything that they want to do within a given year. They are limited by time and by resources. Therefore, they have to prioritize which things are essential or important for their business' success. So it should be with federal agencies and their requests for information.

As Congress explores how to lessen the impact of paperwork burdens on small business, it is worthwhile to encourage the regulatory agencies to examine more closely how to reduce the burdens imposed by ICRs. Some have suggested limiting agencies to a specific number of collection requests each year. Others have recommended that OIRA develop stricter criteria that ICRs must meet before being approved for use. Still, others have suggested that like the small businesses which will have to comply with the ICR,

that agencies prioritize which ICRs are of the most significance or the highest priority. This suggestion is certainly reasonable and would be worthy of additional discussion as Congress moves forward with this process.

Of further help would be some demonstration on the part of federal agencies that when they have decided to seek information from small businesses, that they have made an effort to minimize that ICRs impact. This could be done in a variety of ways, but NFIB suggests that the agency demonstrate this through some certification to OIRA or the SBA's Office of Advocacy that it has been done.

Once the Business Gateway is created, all ICRs should be made available therein. In the interim, at the very least, ICRs ought to be put on the Regulations.Gov website for public availability.

Guidelines for Paperwork Impact Analyses and Mandates for Reduction

Agencies must do a better job at gauging the impact of paperwork on individuals and small businesses. Much in the same way that agencies are required to measure economic impacts, impacts on property rights, etc, NFIB suggests that Paperwork Impact Analyses ought to be conducted. If new regulations require reporting, then a measurement of the impact of the paperwork associated with the regulations should be done.

But because of disparities in the application of current mandates throughout the federal government, set guidelines must be created. These guidelines would mandate that agencies set out:

(a) the quantity of paperwork that might be generated from the regulation;
(b) the amount of time dedicated to paperwork associated with the regulatory compliance;
(c) the cost of compliance (financial) to meet the paperwork burden resulting from the regulation;
(d) An assessment if the paperwork burden will impose a significant/unique hardship for small business.

If so, the agency proposing the regulation will be required to send a statement of justification to the SBA's Office of Advocacy so that it can be a part of a Regulatory Flexibility Analysis.

Congress should also set meaningful goals for agencies to reduce paperwork, based in no small part on those impact analyses.

Application of Data Quality Act to SBREFA and PRA Requirements

The Small Business Regulatory Enforcement Fairness Act (SBREFA) created a series of tools that have proved invaluable in the effort to craft regulations that are fairer for small business. A number of these provisions are judicially reviewable.[5]

But challenging agency determinations under the Administrative Procedures Act has been somewhat elusive for small businesses negatively impacted by new regulations. Agencies are still given tremendous deference in the defense of their reviews. A vital tool in that regard would be the Data Quality Act.

Ensuring that the Data Quality Act applies to all aspects of regulatory and paperwork certifications and reviews means that challengers to agency action can question the underlying analytical assumptions surrounding decisions, in addition to the analyses and the decisions themselves.

Regulatory Sunsetting

As stated earlier, as important as effectively dealing with regulations "coming down the pipeline" is, something must be done to deal with the myriad of regulations currently on the books. Currently, Section 610 of the Regulatory Flexibility Act mandates that agencies review "economically significant" regulations within ten years of their implementation.

But the problem isn't limited to regulations of economics significance. No, the problem has always been more of the myriad of regulations a small business is subjected to—individually, they may not amount to much, but taken together they pose a tremendous burden. Unfortunately, agencies have little incentive and little guidance to do proper "610 reviews."

It is up to Congress to create those incentives, and NFIB suggests that Congress consider the mandate that every federal regulation be reviewed for their impact and effectiveness within ten years of its implementation, and create guidance as to what those reviews ought to constitute. Any regulation that is not reviewed at that ten-year point would automatically sunset, and for a regulation to remain in place, its existence would have to be justified.

In the real world, businesses are constantly reviewing their "best" practices, to see what works, what doesn't, what is a drain on the business, etc. Not only is there no reason for the federal government to not be doing this, it is a disservice to the American people that they do not do it. Improving on the way government impacts the private sector should be a top priority.

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[5] A list of those is available at http://www.sba.gov/advo/archive/sum_sbrefa.html.

Technological Responses: E-Docketing and the Business Gateway

To its credit, the federal government has recognized that, as in industry, technology can provide a number of solutions to the burdens posed by regulation. Two separate tracks, very different, and important in their own way, are being pursued. Unfortunately, the federal government has emphasized a single- track perspective at the outset, focusing mainly on e-docketing and e-democracy rather than comprehensively focusing on the compliance side of things as well.

A mainstay principle of NFIB and its membership has been addressing the burden posed by current regulations, and finding ways to minimize that burden. Too frequently, however, the tools available to small businesses have focused on those regulations that are coming down the pipeline. Make no mistake, this is important—we absolutely have to stem the tide of the burden posed by new regulations.

But we must do something to focus on the burden of regulations that are on the books. I have already discussed some of the procedural tools that would assist in this regard, including sunsetting, but would like to go into greater detail as to some of the technological possibilities mentioned earlier.

The promise of e-docketing is that it will make it easier for small businesses and individuals to offer their thoughts on proposed rules. By offering a "real world" perspective, career civil servants can make regulations that are smarter and more meaningful. What's more, electronic docketing is an excellent tool for those doing the regulatory decision-making, in that it makes it easier for regulators to break down and analyze comments.

Yes, this is important. But the problem is that too many small businesses are spending too much time doing federal paperwork already, and it is simply too much to ask of them right now to take additional time and resources to comment on a complex regulatory proposal. Sure enough, there are some businesses and individuals that will comment, and the regulatory state can only benefit from their expertise, but the executive branch must reduce burdens elsewhere if they hope to invest a more substantial set of the population in the rulemaking process.

As mentioned earlier, the Business Gateway is a good step in this direction, and a greater emphasis must be placed on the continued development and implementation of this system. Everyone involved in regulation: the regulated community, activist stakeholders, members of Congress and their staffs, the federal agencies and their personnel, all must ask the same question—what is it that we want from the regulated community, in the end?

The answer, at least in our estimation, is simple: we want the regulated community (again, our members and the small business community as a whole) to understand its responsibilities when it comes to regulatory compliance and comply with those

regulations that apply to them. What's more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a government inspector to show up at their offices and fine them for some transgression.

Unfortunately, the regulatory state is so complex (consider in your minds, for a moment, the wide expanse that is the Code of Federal Regulations, and just what a small business owner would need to do to figure out his responsibilities) that it is next-to-impossible for any small business to be in compliance with 100% of the law 100% of the time.

But imagine a system in which a small business owner could enter some simple information about his business: his industrial classification code, for instance, a zip-code, number of employees, etc. As discussed above, 92% of small businesses have computers, most with internet access (the majority of it high-speed), so the vast majority of businesses could do this if they so chose to do it.

Then the system takes that information and spits out each and every regulation that applies to this business, along with simple compliance information (no more that a few pages of easy-to-understand English, I would hope). It would be even better if this system could provide an on-line access for small businesses to submit forms, should they choose to submit them that way (the operative word being "choose" – not mandate).

Yes, this is am ambitious idea. But in an era in which huge databases can be accessed from thousands of miles away in a safe, secure, and fast manner, it is not an impossible task. The current iteration of the Business Gateway, Business.Gov, is a solid step in the right direction. But it must do more, far more, in terms of offering a simple way for businesses to determine what their regulatory responsibilities are, and to make living up to those responsibilities as easy as possible.

What it will take is leadership from Congress. Funding, oversight, and the political will to see it happen.

If Congress is serious about reducing paperwork, then it must do something about making the fully-functional, fully-realized Business Gateway a reality. Once that is established, and businesses know their responsibilities, and compliance is made as simple as possible, then businesses will not only have the time and resources to devote to helping the government craft smarter regulations, they will have an incentive to be invested in the process.

Not all businesses would do it (not all businesses have computers), so the option to find out about regulations in the traditional manner would still have to be in place. But such a system would be far superior than that which is available to small business owners today, and a tremendous leap in seeking greater regulatory compliance.

Until then, however, the benefits of technology, whose primary purpose is e-docketing accrue mostly to those who work in government.

Conclusion

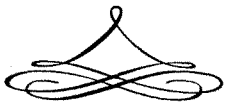
The broad distribution across various possible answers to our poll suggests that there is no single regulatory paperwork problem. There are many problems and that implies the need for many solutions. The result is regulations, and the paperwork resulting from those regulations, continue to represent a major aggravation for small-business owners. But it is also a place where they can use sweat equity to save cash. When asked how much they would be willing to pay to have someone take over all the paperwork they must complete, 17 percent said nothing and 5 percent indicated less than $10 per hour. Still, it is better to neither pay someone to handle paperwork nor to put in this type of sweat equity. That situation would occur if the demands for records were not made in the first place.

Regulations, therefore, become particularly burdensome for those who do not have the resources to hire someone to handle them. Among that group are people just starting businesses, those who could use the greatest asset they have, themselves, for higher purposes than completing and maintaining forms.

Simple, easy-to-understand requirements, and fewer of them, are the keys to real relief from the paperwork burden plaguing small business. Agencies that are currently reluctant to fulfill their paperwork reduction requirements must be made to do so. Their hesitation bleeds small businesses dry by diverting precious resources, both in the form of manpower and cash, away from doing their business to working for the federal government. Given the importance of small business job creation to economic health, it is never more important to address this issue than now.

NFIB appreciates the opportunity to comment on the possibility for reducing the regulatory burden faced by small businesses. Clearly, paperwork represents a costly burden in terms of money spent on reporting, the time taken to fill out forms, and the overall drain on manpower in the process. It is our hope that some significant steps can be taken to reduce this burden and that EPA and other agencies will adopt some of the recommendations suggested by NFIB. We believe that these suggestions address the issue of simplifying the burden, while still maintaining the integrity of information required by statute and regulation.

Thank you once again for the opportunity to testify on this important issue.



NFIB CORE VALUES

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

An informed, educated, concerned and involved public is the ultimate safeguard.

Members determine the public policy positions of the organization.

Our employees, collectively and individually, determine the success of the NFIB's endeavors, and each person has a valued contribution to make.

Honesty, integrity, and respect for human and spiritual values are important in all aspects of life, and are essential to a sustaining work environment.

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Mrs. MILLER OF MICHIGAN. I thank you. I think what we are going to do is recess at this time. We have a series of six votes, so we will probably be, I would say, a good hour. We need to recess for about an hour, with your indulgence. I don't know if you can stay until we come back. If you could do that, that would be very much appreciated, and thank you very much. We will adjourn for an hour.

[Recess.]

Mrs. MILLER OF MICHIGAN. Calling the hearing back to order, our next witness is Linda D. Koontz, Director, Information Management Issues at the Government Accountability Office. At the GAO she is responsible for issues concerning the collection, the use, and the dissemination of Government information in an era of rapidly changing technology. She has been heavily involved in directing studies concerning the Paperwork Reduction Act's implementation, information access and dissemination, e-government, electronic records management, data mining, and privacy. And in addition to all of this, she has lead responsibility for information technology management issues at various agencies, including the Department of Veterans Affairs and Housing and Urban Development and the Social Security Administration as well.

We certainly welcome you to the committee today, and the floor is yours.

STATEMENT OF LINDA KOONTZ

Ms. KOONTZ. Thank you very much for inviting us here today to participate in the subcommittee's hearing on the Paperwork Reduction Act. I will be very brief.

Last year, we reported to you the results of our study on implementation of agency review requirements. We found, quite simply, that agencies have not implemented the rigorous review process envisioned by the Congress. Specifically, we reported that governmentwide agency CIOs generally reviewed information collections before they were submitted to OMB and certified that the required standards in the act were met. However, our review of 12 case studies shows that CIOs provided these certifications despite often missing or inadequate support from the program offices sponsoring the collections. Further, although the law requires CIOs to provide support for certifications, agency files contained little evidence that CIO reviewers had made efforts to get program offices to improve the support they offered. Numerous factors had contributed to these problems, including a lack of management support and weaknesses in OMB guidance. As a result, we concluded that OMB, agencies, and the public had reduced assurance that the standards in the act were consistently met.

To address these weaknesses, we recommended that OMB and the agencies take steps to improve review processes and compliance with the act. The agencies we reviewed have since taken action to respond to each of our recommendations.

In our report, we also noted that IRS and EPA had established additional evaluative processes that focused specifically on reducing burden. In contrast to the CIO reviews, which did not reduce burden, both IRS and EPA have reported reductions in actual bur-

den as a result of their targeted efforts. There appeared to be a number of factors contributing to their success.

First, these efforts specifically focused on results, reducing burden, and maximizing the utility of the information collected.

Second, they benefited from high-level executive support within the agency, extensive involvement of program office staff with appropriate expertise, and aggressive outreach to stakeholders.

In our report, we concluded that these approaches to burden reduction were promising alternatives to the current process outlined in the PRA, and we suggested that the Congress consider mandating pilot projects to target some collections for rigorous review along these lines.

We also cautioned, however, that such approaches would probably be more resource-intensive than the current process and might not be warranted at all agencies since not all had the level of paperwork issues that face agencies like IRS and EPA. Consequently, we advised that it was critical that any efforts to expand the use of these approaches consider these factors.

In summary, Madam Chairman, the information collection review process appeared to have little effect on information burden. As our review showed, the CIO review process as currently implemented tended to lack rigor, allowing agencies to focus on clearing an administrative hurdle rather than on performing substantive analysis. Although we made recommendations in our report regarding specific process improvements, the main point that I would like to make today is that it is not enough to tweak the process. Instead, we would like to refocus agency and OMB attention away from the current concentration on administrative procedures and toward the goals of the act, minimizing burden while maximizing utility. By doing this, we could help to move toward the outcomes that the Congress intended.

I look forward to further discussion on how the law and its implementation can be improved. This completed my statement, and I will be happy to answer questions at the appropriate time.

[The prepared statement of Ms. Koontz follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EST
Wednesday, March 8, 2006

PAPERWORK REDUCTION ACT

New Approaches Can Strengthen Information Collection and Reduce Burden

Statement of Linda D. Koontz, Director
Information Management

GAO-06-477T

March 8, 2006

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-06-477T, a report to the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives

PAPERWORK REDUCTION ACT

New Approaches Can Strengthen Information Collection and Reduce Burden

Why GAO Did This Study

Americans spend billions of hours each year providing information to federal agencies by filling out forms, surveys, or questionnaires. A major aim of the Paperwork Reduction Act (PRA) is to minimize the burden that these information collections impose on the public, while maximizing their public benefit. Under the act, the Office of Management and Budget (OMB) is to approve all such collections. In addition, agency Chief Information Officers (CIO) are to review information collections before they are submitted to OMB for approval and certify that these meet certain standards set forth in the act.

GAO was asked to testify on the implementation of the act's provisions regarding the review and approval of information collections. For its testimony, GAO reviewed previous work in this area, including the results of an expert forum on information resources management and the PRA, which was held in February 2005 under the auspices of the National Research Council. GAO also drew on its earlier study of CIO review processes (GAO-05-424) and alternative processes that two agencies have used to minimize burden. For this study, GAO reviewed a governmentwide sample of collections, reviewed processes and collections at four agencies that account for a large proportion of burden, and performed case studies of 12 approved collections.

www.gao.gov/cgi-bin/getrpt?GAO-06-477T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda Koontz at (202) 512-6240 or koontzl@gao.gov.

What GAO Found

Among the PRA provisions aimed at helping to achieve the goals of minimizing burden while maximizing utility is the requirement for CIO review and certification of information collections. GAO's review of 12 case studies showed that CIOs provided these certifications despite often missing or inadequate support from the program offices sponsoring the collections. Further, although the law requires that support be provided for certifications, agency files contained little evidence that CIO reviewers had made efforts to get program offices to improve the support they offered. Numerous factors have contributed to these problems, including a lack of management support and weaknesses in OMB guidance. Because these reviews were not rigorous, OMB, the agency, and the public had reduced assurance that the standards in the act—such as minimizing burden—were consistently met. To address the issues raised by its review, GAO made recommendations to the agencies and OMB aimed at strengthening the CIO review process and clarifying guidance. OMB and the agencies report making plans and taking steps to address GAO's recommendations.

Beyond the collection review process, the Internal Revenue Service (IRS) and the Environmental Protection Agency (EPA) have set up processes that are specifically focused on reducing burden. These agencies, whose missions involve numerous information collections, have devoted significant resources to targeted burden reduction efforts that involve extensive public outreach. According to the two agencies, these efforts led to significant reductions in burden. For example, each year, IRS subjects a few forms to highly detailed, in-depth analyses, reviewing all data requested, redesigning forms, and involving stakeholders (both the information users and the public affected). IRS reports that this process—performed on forms that have undergone CIO review and received OMB approval—has reduced burden by over 200 million hours since 2002. In contrast, for the 12 case studies, the CIO review process did not reduce burden.

When it considers PRA reauthorization, the Congress has the opportunity to promote new approaches, including alternatives suggested by the expert forum and by GAO. Forum participants made a range of suggestions on information collections and their review. For example, they suggested that OMB's focus should be on broad oversight rather than on reviewing each individual collection and observed that the current clearance process appeared to be "pro forma." They also observed that it seemed excessive to require notices of collections to be published twice in the *Federal Register*, as they are now. GAO similarly observed that publishing two notices in the *Federal Register* did not seem to be effective, and suggested eliminating one of these notices. GAO also suggested that the Congress mandate pilot projects to target some collections for rigorous analysis along the lines of the IRS and EPA approaches. Such projects would permit agencies to build on the lessons learned by the IRS and EPA and potentially contribute to true burden reduction.

Madam Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Paperwork Reduction Act (PRA) and federal information collections.[1] As you know, one of the goals of the PRA is to help ensure that when the government asks the public for information, the burden of providing this information is as small as possible and the information itself is used effectively. In other words, the goal is to minimize the paperwork burden while maximizing the public benefit and utility of the information collected. To achieve this goal, the PRA includes provisions that establish standards and procedures for effective implementation and oversight of information collections.[2] Among these provisions is the requirement that agencies not establish information collections without having them approved by the Office of Management and Budget (OMB), and that before submitting them for approval, agencies' Chief Information Officers (CIO) certify that collections meet 10 specified standards—including that they avoid unnecessary duplication and reduce burden as much as possible.

As you requested, I will discuss results from a May 2005 report that we issued on PRA processes and compliance.[3] In that work, we reviewed agencies' processes to certify that information collections meet PRA standards, and we described alternative processes that two agencies have used to minimize burden. I will also discuss various suggestions for alternative approaches to burden reduction that the Congress may wish to consider.

In preparing this testimony, we reviewed our previous work on PRA issues, including the results of an expert forum on information

[1] The Paperwork Reduction Act was originally enacted into law in 1980 (Pub. L. 96-511, Dec. 11, 1980). It was reauthorized with minor amendments in 1986 (Pub. L. 99-591, Oct. 30, 1986) and was reauthorized a second time with more significant amendments in 1995 (Pub. L. 104-13, May 22, 1995).

[2] Such collections may have a range of purposes: applications for government benefits, program evaluation, general purpose statistics, audit, program planning or management, research and regulatory or compliance all of which may occur in a variety of forms, including questionnaires and telephone surveys.

[3] GAO, *Paperwork Reduction Act: New Approach May Be Need to Reduce Government Burden on Public*, GAO-05-424 (Washington, D.C.: May 20, 2005).

resources management and the PRA, which was held in February 2005. To convene this forum, we contracted with the National Academies' National Research Council, which recruited panelists with expertise in the PRA and related areas. The 1½ day legislative forum was attended by observers from our agency, OMB, the Congressional Research Service, and staff of the House Government Reform Committee. (Attachment 1 lists the participants.)

In reviewing our previous work, we focused particularly on our May 2005 report and a subsequent June testimony.[4] For this report and testimony, we performed detailed reviews of paperwork clearance processes and collections at four agencies: the Department of Veterans Affairs (VA), the Department of Housing and Urban Development (HUD), the Department of Labor, and the Internal Revenue Service (IRS). Together, these four agencies represent a broad range of paperwork burdens, and in 2003, they accounted for about 83 percent of the 8.1 billion hours of estimated paperwork burden for all federal agencies. Of this total, IRS alone accounted for about 80 percent.[5] We also selected 12 approved collections as case studies (three at each of the four agencies) to determine how effective agency processes were. In addition, we analyzed a random sample (343) of all OMB-approved collections governmentwide as of May 2004 (8,211 collections at 68 agencies) to determine compliance with the act's requirements regarding agency certification of the 10 standards and consultation with the public. We designed the random sample so that we could determine compliance levels at the four agencies and governmentwide. Finally, although the Environmental Protection Agency (EPA) was not one of the agencies whose processes we reviewed, we analyzed documents and interviewed officials concerning the agency's efforts to reduce the burden of its information collections. Further details on our scope and methodology are provided in our report.

[4] GAO, *Paperwork Reduction Act: Burden Reduction May Require a New Approach*, GAO-05-778T (Washington, D.C.: June 14, 2005).

[5] Although IRS accounted for about 80 percent of burden, it did not account for 80 percent of collections: it accounted for 808 out of the total 8,211 collections governmentwide as of May 2004.

All work on which this testimony is based was conducted in accordance with generally accepted government auditing standards.

Results in Brief

Among the PRA provisions aimed at the goal of minimizing burden while maximizing utility is the requirement for CIO review and certification of information collections. Governmentwide, agency CIOs generally reviewed information collections before they were submitted to OMB and certified that the required standards in the act were met. However, our review of 12 case studies showed that CIOs provided these certifications despite often missing or inadequate support from the program offices sponsoring the collections. Further, although the law requires CIOs to provide support for certifications, agency files contained little evidence that CIO reviewers had made efforts to get program offices to improve the support that they offered. Numerous factors contributed to these problems, including a lack of management support and weaknesses in OMB guidance. Because these reviews were not rigorous, OMB, the agency, and the public have reduced assurance that the standards in the act—such as avoiding duplication and minimizing burden—were consistently met. In light of these findings, we recommended (among other things) that agencies strengthen the support provided for CIO certifications and that OMB update its guidance to clarify and emphasize this requirement. OMB and the agencies report making plans and taking steps to address GAO's recommendations.

In relation to information collections, IRS and EPA have developed and used additional evaluative processes that focus specifically on reducing burden. These processes are targeted, resource-intensive efforts that involved extensive outreach to stakeholders. According to these agencies, their processes led to significant reductions in burden on the public while maximizing the utility of the information collections. In contrast, for the 12 case studies, the CIO review process did not reduce burden.

When it considers PRA reauthorization, the Congress should consider some new approaches, including alternatives suggested by the expert forum and by our findings. Forum participants developed several suggestions regarding the review of information collections. For example, they suggested that OMB should focus on broad oversight rather than on reviews of each individual collection; they described this approach as a "retail" process that appeared to have become "pro forma." They also observed that it seemed excessive to require notices of collections to be published twice in the *Federal Register*, as they are now. We too observed that publishing two notices in the *Federal Register* seemed to be ineffective, as they elicited very little public comment; we suggested eliminating one of them. In addition, we suggested that the Congress mandate pilot projects to target some collections for rigorous analysis along the lines of the IRS and EPA approaches. Such projects would permit agencies to build on the lessons learned by the IRS and EPA and potentially contribute to true burden reduction.

Background

Collecting information is one way that federal agencies carry out their missions. For example, IRS needs to collect information from taxpayers and their employers to know the correct amount of taxes owed. The U.S. Census Bureau collects information used to apportion congressional representation and for many other purposes. When new circumstances or needs arise, agencies may need to collect new information. We recognize, therefore, that a large portion of federal paperwork is necessary and serves a useful purpose.

Nonetheless, besides ensuring that information collections have public benefit and utility, federal agencies are required by the PRA to minimize the paperwork burden that they impose. Among the provisions of the act aimed at this purpose are requirements for the review of information collections by OMB and by agency CIOs.

Under PRA, federal agencies may not conduct or sponsor the collection of information unless approved by OMB. OMB is required

to determine that the agency collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.[6] Consistent with the act's requirements, OMB has established a process to review all proposals by executive branch agencies (including independent regulatory agencies) to collect information from 10 or more persons, whether the collections are voluntary or mandatory.

In addition, the act as amended in 1995 requires every agency to establish a process under the official responsible for the act's implementation (now the agency's CIO[7]) to review program offices' proposed collections. This official is to be sufficiently independent of program responsibility to evaluate fairly whether information collections should be approved. Under the law, the CIO is to review each collection of information before submission to OMB, including reviewing the program office's evaluation of the need for the collection and its plan for the efficient and effective management and use of the information to be collected, including necessary resources.[8] As part of that review, the agency CIO must ensure that each information collection instrument (form, survey, or questionnaire) complies with the act. The CIO is also to certify that the collection meets 10 standards (see table 1) and to provide support for these certifications.

[6] 44 U.S.C. 3508.

[7] The 1995 amendments used the 1980 act's reference to the agency "senior official" responsible for implementation of the act. A year later, Congress gave that official the title of agency Chief Information Officer (the Information Technology Management Reform Act, Pub. L. 104-106, Feb. 10, 1996, which was subsequently renamed the Clinger-Cohen Act, Pub. L. 104-208, Sept. 30, 1996).

[8] 44 U.S.C. 3506(c)(1)(A).

Table 1: Standards for Information Collections Set by the Paperwork Reduction Act

Standards
The collection is necessary for the proper performance of agency functions.
The collection avoids unnecessary duplication.
The collection reduces burden on the public, including small entities, to the extent practicable and appropriate.
The collection uses plain, coherent, and unambiguous language that is understandable to respondents.
The collection will be consistent and compatible with respondents' current reporting and recordkeeping practices to the maximum extent practicable.
The collection indicates the retention period for any recordkeeping requirements for respondents.
The collection informs respondents of the reasons the information is collected; the way it is used; an estimate of the burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that no person is required to respond unless a valid OMB control number is displayed.
The collection was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.
The collection uses effective and efficient statistical survey methodology (if applicable).
The collection uses information technology to the maximum extent practicable to reduce burden and improve data quality, agency efficiency, and responsiveness to the public.

Source: Paperwork Reduction Act, Pub. L. 104-13, 109 Stat. 173-4, sec. 3506(c)(3).

The paperwork clearance process currently takes place in two stages. The first stage is CIO review. During this review, the agency is to publish a notice of the collection in the *Federal Register*. The public must be given a 60-day period in which to submit comments, and the agency is to otherwise consult with interested or affected parties about the proposed collection. At the conclusion of the agency review, the CIO submits the proposal to OMB for review. The agency submissions to OMB typically include a copy of the data collection instrument (e.g., a form or survey) and an OMB submission form providing information (with supporting documentation) about the proposed information collection, including why the collection is necessary, whether it is new or an extension of a currently approved collection, whether it is voluntary or mandatory, and the estimated burden hours. Included in the submission is the certification by the CIO or the CIO's designee that the collection satisfies the 10 standards.

The OMB review is the second stage in the clearance process. This review may involve consultation between OMB and agency staff.

During the review, a second notice is published in the *Federal Register*, this time with a 30-day period for soliciting public comment. At the end of this period, OMB makes its decision and informs the agency. OMB maintains on its Web site a list of all approved collections and their currently valid control numbers, including the form numbers approved under each collection.

The 1995 PRA amendments also require OMB to set specific goals for reducing burden from the level it had reached in 1995: at least a 10 percent reduction in the governmentwide burden-hour estimate for each of fiscal years 1996 and 1997, a 5 percent governmentwide burden reduction goal in each of the next 4 fiscal years, and annual agency goals that reduce burden to the "maximum practicable opportunity." At the end of fiscal year 1995, federal agencies estimated that their information collections imposed about 7 billion burden hours on the public. Thus, for these reduction goals to be met, the burden-hour estimate would have had to decrease by about 35 percent, to about 4.6 billion hours, by September 30, 2001. In fact, on that date, the federal paperwork estimate had increased by about 9 percent, to 7.6 billion burden hours. As of March 2006, OMB's estimate for governmentwide burden is about 10.5 billion hours[9]—about 2.5 billion hours more than the estimate of 7.971 billion hours at the end of fiscal year 2004.[10]

Over the years, we have reported on the implementation of PRA many times.[11] In a succession of reports and testimonies, we noted that federal paperwork burden estimates generally continued to increase, rather than decrease as envisioned by the burden reduction goals in PRA. Further, we reported that some burden reduction claims were overstated. For example, although some

[9] Some of this increase may have arisen because IRS adopted a new technique for estimating burden. As the IRS accounts for about 80 percent of burden, as mentioned earlier, any change in IRS estimates has a major impact on governmentwide totals. The IRS previously changed its formula for calculating burden hours in 1989. At that time, the change resulted in major increases: the agency's paperwork burden estimate increased by 3.4 billion hours, and the governmentwide burden-hour estimate nearly tripled.

[10] The 7.971 billion hours as of the end of fiscal year 2004 was a slight decrease (1.6 percent) from the previous year-end estimate of about 8.099 billion.

[11] We have included a list of related GAO products at the end of this statement.

reported paperwork reductions reflected substantive program changes, others were revisions to agencies' previous burden estimates and, therefore, would have no effect on the paperwork burden felt by the public. In our previous work, we also repeatedly pointed out ways that OMB and agencies could do more to ensure compliance with PRA. In particular, we have often recommended that OMB and agencies take actions to improve the paperwork clearance process.

Agency Processes for Reviewing Information Collections Were Not Effective

Governmentwide, agency CIOs generally reviewed information collections before they were submitted to OMB and certified that the 10 standards in the act were met. However, in our 12 case studies, CIOs provided these certifications despite often missing or partial support from the program offices sponsoring the collections. Further, although the law requires CIOs to provide support for certifications, agency files contained little evidence that CIO reviewers had made efforts to get program offices to improve the support that they offered. Numerous factors have contributed to these conditions, including a lack of management support and weaknesses in OMB guidance. Without appropriate support and public consultation, agencies have reduced assurance that collections satisfy the standards in the act.

Support for Certifications Was Often Missing or Partial, Despite CIO Reviews

Among the PRA provisions intended to help achieve the goals of minimizing burden while maximizing utility are the requirements for CIO review and certification of information collections. The 1995 amendments required agencies to establish centralized processes for reviewing proposed information collections within the CIO's office. Among other things, the CIO's office is to certify, for each collection, that the 10 standards in the act have been met, and the CIO is to provide a record supporting these certifications.

The four agencies in our review all had written directives that implemented the review requirements in the act, including the

requirement for CIOs to certify that the 10 standards in the act were met. The estimated certification rate ranged from 100 percent at IRS and HUD to 92 percent at VA. Governmentwide, agencies certified that the act's 10 standards had been met on an estimated 98 percent of the 8,211 collections.

However, in the 12 case studies that we reviewed, this CIO certification occurred despite a lack of rigorous support that all standards were met. Specifically, the support for certification was missing or partial on 65 percent (66 of 101) of the certifications.[12] Table 4 shows the result of our analysis of the case studies.

[12] The total number of certifications does not total 120 (12 cases times 10 standards) because some standards did not apply to some cases.

Table 2: Support Provided by Agencies for Paperwork Reduction Act Standards in 12 Case Studies

Standards	Total[a]	Support provided		
		Yes	Partial	No
The collection is necessary for the proper performance of agency functions.	12	6	6	0
The collection avoids unnecessary duplication.	11	2	2	7
The collection reduces burden on the public, including small entities, to the extent practicable and appropriate.	12	5	7	0
The collection uses plain, coherent, and unambiguous language that is understandable to respondents.	12	1	0	11
The collection will be consistent and compatible with respondents' current reporting and recordkeeping practices to the maximum extent practicable.	12	3	0	9
The collection indicates the retention period for any recordkeeping requirements for respondents.[b]	6	3	3	0
The collection informs respondents of the reasons the information is collected; the way it is used; an estimate of the burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that no person is required to respond unless a valid OMB control number is displayed.[b]	12	4	8	0
The collection was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.	11	2	0	9
The collection uses effective and efficient statistical survey methodology (if applicable).	1	1	0	0
The collection uses information technology to the maximum extent practicable to reduce burden and improve data quality, agency efficiency, and responsiveness to the public.	12	8	4	0
Totals	**101**	**35**	**30**	**36**

Sources: Paperwork Reduction Act, GAO.

[a]The total number of certifications is not always 12 because not all certifications applied to all collections.

[b]For these two standards, the presence on the forms of the information indicated was categorized as support, the absence of some elements was categorized as partial support, and the absence of all elements was categorized as no support.

For example, under the act, CIOs are required to certify that each information collection is not unnecessarily duplicative. According to OMB instructions, agencies are to (1) describe efforts to identify duplication and (2) show specifically why any similar information already available cannot be used or modified for the purpose described.

In 2 of 11 cases, agencies provided the description requested; for example:

Program reviews were conducted to identify potential areas of duplication; however, none were found to exist. There is no known Department or Agency which maintains the necessary information, nor is it available from other sources within our Department.

In an additional 2 cases, partial support was provided. An example is the following, provided by Labor:

> [The Employer Assistance Referral Network (EARN)] is a new, nationwide service that does not duplicate any single existing service that attempts to match employers with providers who refer job candidates with disabilities. While similar job-referral services exist at the state level, and some nation-wide disability organizations offer similar services to people with certain disabilities, we are not aware of any existing survey that would duplicate the scope or content of the proposed data collection. Furthermore, because this information collection involves only providers and employers interested in participating in the EARN service, and because this is a new service, a duplicate data set does not exist.

While this example shows that the agency attempted to identify duplicative sources, it does not discuss why information from state and other disability organizations could not be aggregated and used, at least in part, to satisfy the needs of this collection.

In 7 cases, moreover, support for these certifications was missing. An example is the following statement, used on all three IRS collections:

> We have attempted to eliminate duplication within the agency wherever possible.

This assertion provides no information on what efforts were made to identify duplication or perspective on why similar information, if any, could not be used. Further, the files contained no evidence that the CIO reviewers challenged the adequacy of this support or provided support of their own to justify their certification.

A second example is provided by the standard requiring each information collection to reduce burden on the public, including small entities,[13] to the extent practicable and appropriate. OMB guidance emphasizes that agencies are to demonstrate that they have taken every reasonable step to ensure that the collection of

[13] OMB's instructions to agencies state that a small entity may be (1) a small business, which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization, which is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

information is the least burdensome necessary for the proper performance of agency functions. In addition, OMB instructions and guidance direct agencies to provide specific information and justifications: (1) estimates of the hour and cost burden of the collections and (2) justifications for any collection that requires respondents to report more often than quarterly, respond in fewer than 30 days, or provide more than an original and two copies of documentation.

With regard to small entities, OMB guidance states that the standard emphasizes such entities because these often have limited resources to comply with information collections.[14] The act cites various techniques for reducing burden on these small entities,[15] and the guidance includes techniques that might be used to simplify requirements for small entities, such as asking fewer questions, taking smaller samples than for larger entities, and requiring small entities to provide information less frequently.

Our review of the case examples found that for the first part of the certification, which focuses on reducing burden on the public, the files generally contained the specific information and justifications called for in the guidance. However, none of the case examples contained support that addressed how the agency ensured that the collection was the least burdensome necessary. According to agency CIO officials, the primary cause for this absence of support is that OMB instructions and guidance do not direct agencies to provide this information explicitly as part of the approval package.

For the part of the certification that focuses on small businesses, our governmentwide sample included examples of various agency

[14] "Particularly for small businesses, paperwork burdens can force the redirection of resources away from business activities that might otherwise lead to new and better products and services, and to more and better jobs. Accordingly, the Federal Government owes the public an ongoing commitment to scrutinize its information requirements to ensure the imposition of only those necessary for the proper performance of an agency's functions." H. Report 104-37 (Feb. 15, 1995) p. 23.

[15] These include (a) establishing different compliance or reporting requirements or timetables for respondents with fewer available resources; (b) clarifying, consolidating, or simplifying compliance and reporting requirements; and (c) exempting certain respondents from coverage of all or part of the collection.

activities that are consistent with this standard. For instance, Labor officials exempted 6 million small businesses from filing an annual report; telephoned small businesses and other small entities to assist them in completing a questionnaire; reduced the number of small businesses surveyed; and scheduled fewer compliance evaluations on small contractors.

For four of our case studies, however, complete information that would support certification of this part of the standard was not available. Seven of the 12 case studies involved collections that were reported to impact businesses or other for-profit entities, but for 4 of the 7, the files did not explain either

- why small businesses were not affected or
- even though such businesses were affected, that burden could or could not be reduced.

Referring to methods used to minimize burden on small business, the files included statements such as "not applicable." These statements do not inform the reviewer whether there was an effort made to reduce burden on small entities or not. When we asked agencies about these four cases, they indicated that the collections did, in fact, affect small business.

OMB's instructions to agencies on this part of the certification require agencies to describe any methods used to reduce burden only if the collection of information has a "significant economic impact on a substantial number of small entities." This does not appropriately reflect the act's requirements concerning small business: the act requires that the CIO certify that the information collection reduces burden on small entities in general, to the extent practical and appropriate, and provides no thresholds for the level of economic impact or the number of small entities affected. OMB officials acknowledged that their instruction is an "artifact" from a previous form and more properly focuses on rulemaking rather than the information collection process.

The lack of support for these certifications appears to be influenced by a variety of factors. In some cases, as described above, OMB guidance and instructions are not comprehensive or entirely

accurate. In the case of the duplication standard specifically, IRS officials said that the agency does not need to further justify that its collections are not duplicative because (1) tax data are not collected by other agencies, so there is no need for the agency to contact them about proposed collections, and (2) IRS has an effective internal process for coordinating proposed forms among the agency's various organizations that may have similar information. Nonetheless, the law and instructions require support for these certifications, which was not provided.

In addition, agency reviewers told us that management assigns a relatively low priority and few resources to reviewing information collections. Further, program offices have little knowledge of and appreciation for the requirements of the PRA. As a result of these conditions and a lack of detailed program knowledge, reviewers often have insufficient leverage with program offices to encourage them to improve their justifications.

When support for the PRA certifications is missing or inadequate, OMB, the agency, and the public have reduced assurance that the standards in the act, such as those on avoiding duplication and minimizing burden, have been consistently met.

Two Agencies Have Developed Processes to Reduce Burden Associated with Information Collections

IRS and EPA have supplemented the standard PRA review process with additional processes aimed at reducing burden while maximizing utility. These agencies' missions require them both to deal extensively with information collections, and their management has made reduction of burden a priority.[16]

In January 2002, the IRS Commissioner established an Office of Taxpayer Burden Reduction, which includes both permanently assigned staff and staff temporarily detailed from program offices

[16] "IRS is committed to reducing taxpayer burden and established the Office of Taxpayer Burden Reduction (OTBR) in January 2002 to lead its efforts." Congressional testimony by the IRS Commissioner, April 20, 2004, before the Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, House Committee on Government Reform.

that are responsible for particular information collections. This office chooses a few forms each year that are judged to have the greatest potential for burden reduction (these forms have already been reviewed and approved through the CIO process). The office evaluates and prioritizes burden reduction initiatives by

- determining the number of taxpayers impacted;
- quantifying the total time and out-of-pocket savings for taxpayers;
- evaluating any adverse impact on IRS's voluntary compliance efforts;
- assessing the feasibility of the initiative, given IRS resource limitations; and
- tying the initiative into IRS objectives.

Once the forms are chosen, the office performs highly detailed, in-depth analyses, including extensive outreach to the public affected, the users of the information within and outside the agency, and other stakeholders. This analysis includes an examination of the need for each data element requested. In addition, the office thoroughly reviews form design.[17]

The office's Director[18] heads a Taxpayer Burden Reduction Council, which serves as a forum for achieving taxpayer burden reduction throughout IRS. IRS reports that as many as 100 staff across IRS and other agencies can be involved in burden reduction initiatives, including other federal agencies, state agencies, tax practitioner groups, taxpayer advocacy panels, and groups representing the small business community.

The council directs its efforts in five major areas:

- simplifying forms and publications;

[17] In congressional testimony, the IRS Commissioner stated that OMB had referred another agency to IRS's Office of Taxpayer Burden Reduction as an example of a "best practice" in burden reduction in government.

[18] The Director reports to the IRS Commissioner for the Small Business and Self-Employed Division.

- streamlining internal policies, processes, and procedures;
- promoting consideration of burden reductions in rulings, regulations, and laws;
- assisting in the development of burden reduction measurement methodology; and
- partnering with internal and external stakeholders to identify areas of potential burden reduction.

IRS reports that this targeted, resource-intensive process has achieved significant reductions in burden: over 200 million burden hours since 2002. For example, it reports that about 95 million hours of taxpayer burden were reduced through increases in the income-reporting threshold on various IRS schedules.[19] Another burden reduction initiative includes a review of the forms that 15 million taxpayers use to request an extension to the date for filing their tax returns.[20]

Similarly, EPA officials stated that they have established processes for reviewing information collections that supplement the standard PRA review process. These processes are highly detailed and evaluative, with a focus on burden reduction, avoiding duplication, and ensuring compliance with PRA. According to EPA officials, the impetus for establishing these processes was the high visibility of the agency's information collections and the recognition, among other things, that the success of EPA's enforcement mission depended on information collections being properly justified and approved: in the words of one official, information collections are the "life blood" of the agency.

[19] In addition, the office reports that IRS staff positions could be freed up through its efforts to raise the reporting threshold on various tax forms and schedules. Fewer IRS positions are needed when there are fewer tax forms and schedules to be reviewed.

[20] We did not verify the accuracy of IRS's reported burden-hour savings. We have previously reported that the estimation model that IRS has used for compliance burden ignored important components of burden and had limited capabilities for analyzing the determinants of burden. See GAO, *Tax Administration: IRS Is Working to Improve Its Estimates of Compliance Burden,* GAO/GGD-00-11 (Washington, D.C.: May 22, 2000). IRS has recently begun to introduce a revised methodology for computing burden that may result in different estimates of burden-hour savings.

According to these officials, the CIO staff are not generally closely involved in burden reduction initiatives, because they do not have sufficient technical program expertise and cannot devote the extensive time required.[21] Instead, these officials said that the CIO staff's focus is on fostering high awareness within the agency of the requirements associated with information collections, educating and training the program office staff on the need to minimize burden and the impact on respondents, providing an agencywide perspective on information collections to help avoid duplication, managing the clearance process for agency information collections, and acting as liaison between program offices and OMB during the clearance process. To help program offices consider PRA requirements such as burden reduction and avoiding duplication as they are developing new information collections or working on reauthorizing existing collections, the CIO staff also developed a handbook[22] to help program staff understand what they need to do to comply with PRA and gain OMB approval.

In addition, program offices at EPA have taken on burden reduction initiatives that are highly detailed and lengthy (sometimes lasting years) and that involve extensive consultation with stakeholders (including entities that supply the information, citizens groups, information users and technical experts in the agency and elsewhere, and state and local governments). For example, EPA reports that it amended its regulations to reduce the paperwork burden imposed under the Resource Conservation and Recovery Act. One burden reduction method EPA used was to establish higher thresholds for small businesses to report information required under the act. EPA estimates that the initiative will reduce burden by 350,000 hours and save $22 million annually. Another EPA program

[21] These officials added that in exceptional circumstances the CIO office has had staff available to perform such projects, but generally in collaboration with program offices.

[22] EPA Office of Environmental Information, Collection Strategies Division, *ICR Handbook: EPA's Guide to Writing Information Collection Requests Under the Paperwork Reduction Act of 1995*, draft (revised March 2005).

office reports that it is proposing a significant reduction in burden for its Toxic Release Inventory program.[23]

Both the EPA and IRS programs involve extensive outreach to stakeholders, including the public. This outreach is particularly significant in view of the relatively low levels of public consultation that occur under the standard review process. As we reported in May 2005, public consultation on information collections is often limited to publication of notices in the *Federal Register*.[24] As a means of public consultation, however, these notices are not effective, as they elicit few responses. An estimated 7 percent of the 60-day notices of collections in the *Federal Register* received one or more comments. According to our sample of all collections at the four agencies reviewed, the number of notices receiving at least one comment ranged from an estimated 15 percent at Labor to an estimated 6 percent at IRS. In contrast, according to EPA and IRS, their efforts at public consultation are key to their burden reduction efforts and an important factor in their success.

Overall, EPA and IRS reported that their targeted processes produced significant reductions in burden by making a commitment to this goal and dedicating resources to it. In contrast, for the 12 information collections we examined, the CIO review process resulted in no reduction in burden. Further, the Department of Labor reported that its PRA reviews of 175 proposed collections

[23] We did not verify the accuracy of EPA's burden reduction estimates.

[24] In our May 2005 report, we reported that agencies were only publishing notices and performing no further consultation, and we took the position that the PRA requires agencies both to publish a *Federal Register* notice and to otherwise consult with the public. We recommended that OMB clarify its guidance on this point and that agencies increase public consultation. OMB, the Treasury, Labor, and HUD disagreed with our position on the grounds that it was not a good use of agency resources to consult on every collection; in their view, additional consultation should occur only on those collections that are particularly important. We consider, however, that the PRA's language is unambiguous: agencies shall "provide 60-day notice in the *Federal Register*, and otherwise consult with members of the public and affected agencies concerning each proposed collection..." Pub. L. 104-13, 109 Stat. 173, 44 U.S.C. 3506(c)(2). We believe that agencies should comply with current law. However, we are also concerned that public consultation be efficient and effective; accordingly, we suggested that pilot projects be developed to test and review alternative approaches to achieving the PRA's goals.

over nearly 2 years did not reduce burden.[25] Similarly, both IRS and EPA addressed information collections that had undergone CIO review and received OMB approval and nonetheless found significant opportunities to reduce burden.

Agencies Could Strengthen CIO Review

In our 2005 report, we concluded that the CIO review process was not working as Congress intended: It did not result in a rigorous examination of the burden imposed by information collections, and it did not lead to reductions in burden. In light of these findings, we recommended (among other things) that agencies strengthen the support provided for CIO certifications and that OMB update its guidance to clarify and emphasize this requirement.

Since our report was issued, the four agencies have reported taking steps to strengthen their support for CIO certifications:

- According to the HUD CIO, the department established a senior-level PRA compliance officer in each major program office, and it has revised its certification process to require that before collections are submitted for review, they be approved at a higher management level within program offices.
- The Treasury CIO established an Information Management Sub-Council under the Treasury CIO Council and added resources to the review process.
- According to the VA's 2007 budget submission, the department obtained additional resources to help review and analyze its information collection requests.
- According to the Office of the CIO at the Department of Labor, the department intends to provide guidance to components regarding the need to provide strong support for clearance requests and has met with component staff to discuss these issues.

[25] These reviews did result in a 1.3 percent reduction in calculated burden by correcting mathematical errors in program offices' submissions.

OMB reported that its guidance to agencies will be updated through a planned automated system,[26] which is expected to be operational by the end of this year. According to the acting head of OMB's Office of Information and Regulatory Affairs, the new system will permit agencies to submit clearance requests electronically, and the instructions will provide clear guidance on the requirements for these submissions, including the support required. This official stated that OMB has worked with agency representatives with direct knowledge of the PRA clearance process in order to ensure that the system and its instructions clearly reflect the requirements of the process. If this system is implemented as described and OMB withholds clearance from submissions that lack adequate support, it could lead agencies to strengthen the support provided for their certifications.

According to PRA Experts, the Current Approach to Paperwork Reduction Could Be Improved

In considering PRA reauthorization, the Congress has the opportunity to take into account ideas that were developed by the various experts at the PRA forum that we organized in 2005. These experts noted, as we have here, that the burden reduction goals in the act have not been met, and that in fact burden has been going up. They suggested first that the goal of reducing burden by 5 percent is not realistic, and also that such numerical goals do not appropriately recognize that some burden is necessary. The important point, in their view, is to reduce unnecessary burden while still ensuring maximum utility.

Forum participants also questioned the level of attention that OMB devotes to the process of clearing collections on what they called a "retail" basis, focusing on individual collections rather than looking across numerous collections. In their view, some of this attention

[26] The new system, ROCIS (the RISC/OIRA Consolidated Information System), is operated for OMB's Office of Information and Regulatory Affairs (OIRA) by the Regulatory Information Service Center (RISC) of the General Services Administration.

would be better devoted to broader oversight questions. In their discussion, participants mentioned that the clearance process informs OMB with respect to its other information resource management functions, but that this had not led to high-level integration and coordination. It was suggested that the volume of collections to be individually reviewed could impede such integration.

Participants made a number of suggestions regarding ways to reduce the volume of collections that OMB reviews, with the goal of freeing OMB resources so that it could address more substantive, wide-ranging paperwork issues. Options that they suggested including limiting OMB review to significant and selected collections, rather than all collections. This would entail shifting more responsibility for review to the agencies, which they stated was one of the avowed purposes of the 1995 amendments: to increase agencies' attention to properly clearing information collection requests. One way to shift this responsibility, the forum suggested, would be for OMB to be more creative in its use of the delegation authority that the act provides. (Under the act, OMB has the authority to delegate to agencies the authority to approve collections in various circumstances.) Also, participants mentioned the possibility of modifying the clearance process by, for example, extending beyond 3 years the length of time that OMB approvals are valid, particularly for the routine types of collections. This suggestion was paired with the idea that the review process itself should be more rigorous; as the panel put it, "now it's a rather pro forma process." They also observed that two *Federal Register* notices seemed excessive in most cases.

To reduce the number of collections that require OMB review, another possibility suggested was to revise the PRA's definition of an information collection. For example, the current definition includes all collections that contact 10 or more persons; the panel suggested that this threshold could be raised, pointing out that this low threshold makes it hard for agencies to perform targeted outreach to the public regarding burden and other issues (such as through customer satisfaction questionnaires or focus groups). However, they had no specific recommendation on what the number should be. Alternatively, they suggested that OMB could be given

authority to categorize types of information collections that did not require clearance (for example, OMB could exempt collections for which the response is purely voluntary).

Finally, the forum questioned giving agency CIOs the responsibility for reviewing information collections. According to the forum, CIOs have tended to be more associated with information technology issues than with high level information policy.

Our previous work has not addressed every topic raised by the forum, so we cannot argue for or against all these suggestions. However, the work in our May 2005 report is consistent with the forum's observations in some areas, including the lack of rigor in the review process and the questionable need for two *Federal Register* notices. I would like to turn here, Madam Chairman, to the matters for congressional consideration that we included in that report.

Our Work Suggests Ways to Explore New Approaches

We observed that to achieve burden reduction, the targeted approaches used by IRS and EPA were a promising alternative. However, the agencies' experiences also suggest that to make such approaches successful requires top-level executive commitment, extensive involvement of program office staff with appropriate expertise, and aggressive outreach to stakeholders. Indications are that such an approach would also be more resource-intensive than the current process. Moreover, such an approach may not be warranted at all agencies, since not al agencies have the level of paperwork issues that face IRS and similar agencies.

On the basis of the conclusions in our May 2005 report, we suggested that the Congress consider mandating the development of pilot projects to test and review the value of approaches to burden reduction similar to those used by IRS and EPA. OMB would issue guidance to agencies on implementing such pilots, including criteria for assessing collections along the lines of the process currently employed by IRS. According to our suggestion, agencies participating in such pilots would submit to OMB and publish on their Web sites (or through other means) an annual plan on the

collections targeted for review, specific burden reduction goals for those collections, and a report on reductions achieved to date. We also suggested that in view of the limited effectiveness of the 60-day notice in the *Federal Register* in eliciting public comment, this requirement could be eliminated.

Under a pilot project approach, an agency would develop a process to examine its information collections for opportunities to reduce burden. The experiences at IRS and EPA show that targeted burden reduction efforts depend on tapping the expertise of program staff, who are generally closely involved in the effort. That is, finding opportunities to reduce burden requires strong familiarity with the programs involved.

Pilot projects would be expected to build on the lessons learned at IRS and EPA. For example, these agencies have used a variety of approaches to reducing burden, such as

- sharing information—for example, by facilitating cross-agency information exchanges;
- standardizing data for multiple uses ("collect once—use multiple times");
- integrating data to avoid duplication; and
- re-engineering work flows.

Pilot projects would be most appropriate for agencies for which information collections are a significant aspect of the mission. As the results and lessons from the pilots become available, OMB may choose to apply them at other agencies by approving further pilots.[27] Lessons learned from the mandated pilots could thus be applied more broadly.

[27] OMB currently has this authority under PRA. As mentioned earlier, OMB also has the authority to delegate to agencies the authority to approve collections in various circumstances. It may choose to delegate such authority at agencies whose pilot projects demonstrate success in reducing burden through information management improvements of the types mentioned.

In developing processes to involve program offices in burden reduction, agencies would not have to impose a particular organizational structure for the burden reduction effort. For instance, the burden reduction effort might not necessarily be performed by the CIO. For example, at IRS, the Office of Burden Reduction is not connected to the CIO, whereas at EPA, CIO staff are involved in promoting burden reduction through staff education and outreach. However, the EPA CIO depends on program offices to undertake specific initiatives. Under a mandate for pilot projects, agencies would be encouraged to determine the approach that works best in their own situations.

Finally, both IRS and EPA engaged in extensive outreach to the public and stakeholders. In many cases, this outreach involves contacts with professional and industry organizations, which are particularly valuable because they allow the agencies to get feedback without the need to design an information collection for the purpose (which would entail its own review process, burden estimate, and so on). According to agency officials, the need to obtain OMB approval for an information collection if they contact more than nine people often inhibits agencies' use of questionnaires and similar types of active outreach to the public.[28] Agencies are free, however, to collect comments on information posted on Web sites. OMB could also choose to delegate to pilot project agencies the authority to approve collections that are undertaken as part of public outreach for burden reduction projects.

The work we reported in May and June 2005 strongly suggested that despite the importance of public consultation to burden reduction, the current approach is often ineffective. *Federal Register* notices elicit such low response that we questioned the need for two such notices (the 60-day notice during the agency review and the 30-day notice during the OMB review). Eliminating the first notice, in our

[28] In certain instances, agencies may be able to get "generic clearances" if they routinely conduct information collections using very similar methods. For example, an agency may want to develop a generic customer satisfaction survey that can be customized for use with different groups. See Memorandum to the President's Management Council from the Administrator, Office of Information and Regulatory Affairs, OMB, "Guidance on Agency Survey and Statistical Information Collections" (Washington, D.C.: Jan. 20, 2006).

view, is thus not likely to decrease public consultation in any significant way. Instead, our intent was for agencies, through pilot projects, to explore ways to perform outreach to information collection stakeholders, including the public, that will be more effective in eliciting useful comments and achieving real reductions in burden.

In summary, Madam Chairman, the information collection review process appeared to have little effect on paperwork burden. As our review showed, the CIO review process, as currently implemented, tended to lack rigor, allowing agencies to focus on clearing an administrative hurdle rather than on performing substantive analysis. Going further, the expert forum characterized the whole clearance process as "pro forma." The forum also made various suggestions for improving the clearance process; many of these were aimed at finding ways to reduce its absorption of OMB resources, such as by changing the definition of an information collection. Both we and the forum suggested removing one of the current administrative hurdles (the 60-day *Federal Register* notice).

Although these suggestions refer to specific process improvements, the main point is not just to tweak the process. Instead, the intent is to remove administrative impediments, with the ultimate aim of refocusing agency and OMB attention away from the current concentration on administrative procedures and toward the goals of the act—minimizing burden while maximizing utility. To that end, we suggested that the Congress mandate pilot projects that are specifically targeted at reducing burden. Such projects could help to move toward the outcomes that the Congress intended in enacting PRA.

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

Contacts and Acknowledgments

For future information regarding this testimony, please contact Linda Koontz, Director, Information Management, at (202) 512-6420, or koontzl@gao.gov. Other individuals who made key contributions to this testimony were Timothy Bober, Barbara Collier, David Plocher, Elizabeth Powell, J. Michael Resser, and Alan Stapleton.

Attachment 1. Forum: The Legislative Framework for Information Resources Management

Forum Participants

Prudence S. Adler	Associate Executive Director Association of Research Libraries
William Barron	Princeton University; formerly National Opinion Research Center
Gary Bass	Founder and Executive Director, OMB Watch
Maya Bernstein	Administrative Law & Information Policy; formerly OMB and IRS Privacy Officer
Daniel Chenok	Vice President, SRA International; formerly OMB
Sharon S. Dawes	Director, Center for Technology in Government, University at Albany, State University of New York
James Flyzik	Partner, Guerra, Kiviat, Flyzik and Associates; formerly Department of Treasury and Secret Service
Robert M. Gellman	Privacy & Information Policy Consultant; formerly counsel to the House of Representatives' Subcommittee on Information, Justice, Transportation and Agriculture

Harry A. Hammitt	Editor of Access Reports, FOIA Journal
Jefferson Hill	Independent Consultant; formerly OMB
Sally Katzen	Professor and Independent Consultant; formerly OMB
Andrew Langer	Manager, Regulatory Policy National Federation of Independent Business
David LeDuc	Director, Public Policy, Software & Information Industry Association
Herb Lin	Senior Scientist, Computer Science and Telecommunications Board, The National Academies
Jeffrey Lubbers	Fellow in Law and Government, American University, Washington College of Law; formerly Administrative Conference of the U.S.
Charles McClure	Francis Epps Professor and Director, Information Use Management & Policy Institute, Florida State University
David L. McClure	Research Director Gartner; formerly Council for Excellence in Government and GAO
Bruce McConnell	President and Founder, McConnell International; formerly OMB
Patrice McDermott	Deputy Director, Office of Government Relations, American Library association
Michael McGill	McGill Associates and Internet2
Lynn McNulty	Consultant, McConnell International, LLC; formerly NIST

Doug Robinson	Executive Director, National Association of State Chief Information Officers
J. Timothy Sprehe	President, Sprehe Information Management Associates
Ari Schwartz	Associate Director, Center for Democracy and Technology
Miron Straf	Deputy Director, Division of Behavioral and Social Sciences and Education, The National Academies
Jeanne Young	Independent Consultant; formerly Federal Reserve Board of Governors Records Officer and NAGARA officer

Others in Attendance

At the forum, others attending included GAO staff and a number of other observers:

Donald Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs
Michelle Ash	Minority Senior Legislative Counsel, House Committee on Government Reform
Krista Boyd	Minority Counsel, House Committee on Government Reform
Curtis Copeland	Congressional Research Service
Dan Costello	Policy Analyst, Office of Information and Regulatory Affairs
Michael Formica	Director of Energy and Environment, U.S. Chamber of Commerce

Eva Kleederman	Senior Policy Analyst, Office of Management and Budget
Kristy Lalonde	Policy Analyst, Office of Management and Budget
David McMillen	Minority Professional Staff Member, House Committee on Government Reform
Jim Moore	Counsel, House Committee on Government Reform
Kim Nelson	Policy Analyst, Office of Management and Budget
Lew Oleinick	Office of Information and Regulatory Affairs
Kenneth Peskin	U.S. Chamber of Commerce
Victoria Proctor	Senior Professional Staff Member, House Committee on Government Reform
Edward Schrock	House Committee on Government Reform
Katherine Wallman	Branch Chief, Statistics Branch, Office of Information and Regulatory Affairs

In addition, staff of the National Academies' National Research Council, Computer Science and Telecommunications Board, helped to develop and facilitate the forum: Charles Brownstein, Director; Kristen Batch, Research Associate; and Margaret Huynh, Senior Program Assistant.

Related GAO Products

Paperwork Reduction Act: Subcommittee Questions Concerning the Act's Information Collection Provisions. GAO-05-909R. Washington, D.C.: July 19, 2005.

Paperwork Reduction Act: Burden Reduction May Require a New Approach. GAO-05-778T. Washington, D.C.: June 14, 2005.

Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on Public. GAO-05-424. Washington, D.C.: May 20, 2005.

Paperwork Reduction Act: Agencies' Paperwork Burden Estimates Due to Federal Actions Continue to Increase. GAO-04-676T. Washington, D.C.: April 20, 2004.

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Electronic Government: Government Paperwork Elimination Act Presents Challenges for Agencies. GAO/AIMD-00-282. Washington, D.C.: September 15, 2000.

Tax Administration: IRS Is Working to Improve Its Estimates of Compliance Burden. GAO/GGD-00-11. Washington, D.C.: May 22, 2000.

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EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims. GAO/GGD-00-59. Washington, D.C.: March 16, 2000.

Federal Paperwork: General Purpose Statistics and Research Surveys of Businesses. GAO/GGD-99-169. Washington, D.C.: September 20, 1999.

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Paperwork Reduction: Governmentwide Goals Unlikely to Be Met. GAO/T-GGD-97-114. Washington, D.C.: June 4, 1997.

Paperwork Reduction: Burden Reduction Goal Unlikely to Be Met. GAO/T-GGD/RCED-96-186. Washington, D.C.: June 5, 1996.

Environmental Protection: Assessing EPA's Progress in Paperwork Reduction. GAO/T-RCED-96-107. Washington, D.C.: March 21, 1996.

Paperwork Reduction: Burden Hour Increases Reflect New Estimates, Not Actual Changes. GAO/PEMD-94-3. Washington, D.C.: December 6, 1993.

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Mrs. MILLER OF MICHIGAN. All right. Thank you very much.

The final witness of the day is Mr. Robert Shull, who joined OMB Watch in 2004 as its director of Federal regulatory policy. Prior to going to OMB Watch, Mr. Shull was a training specialist and child advocate where he worked at Children's Rights, which is a nonprofit organization in New York. This organization works nationwide filing class action civil rights suits on behalf of abused and neglected children in order to reform foster care. He holds degrees from the University of Virginia as well as Stanford Law, and we certainly welcome you to the committee today and look forward to your testimony as well, Mr. Shull. The floor is yours.

STATEMENT OF ROBERT SHULL

Mr. SHULL. Now it is on. All right. All those fancy degrees, and I can't get a mic on.

I want to say it is actually easy for me to come here and fumble about with the mic, because Professor Katzen came in and gave such a nuanced and very thorough discussion of many of the same points that I would like to raise.

I would like to pick up on something that Mr. Langer said. He said that these issues that we are talking about today—information and burden—are not an abstract thing because people have been arrested. And I want to add my wholehearted agreement that these are not abstract issues, because in addition to the people who have been arrested, people have died. Think about all the people who built their homes in Love Canal who did not know where their homes were being built and what was underneath them. Or think today about the first responders who rushed to the World Trade Center after September 11th not knowing what they were breathing and not knowing that they needed to bring certain protective equipment with them.

Information does come with a burden, but information comes with benefits. And that is the point that Professor Katzen wanted to make, and it is the point that I want to underscore.

I think that there is cause for alarm, not because of the reports of burden hour increase, but because we have come here to talk about reauthorization of the Paperwork Reduction Act, and I have heard at least three panelists talk about issues beyond regulation, talking about regulatory policy and changes to the regulatory process that would be very controversial, and I say very harmful to the public.

The first point that I would like to stress is that the reports of burden hour increases may be exaggerated, in large part because, as the GAO pointed out in its testimony last time, there is no science that goes into the calculation of these burden hours. They may not be a reliable estimate of anything.

Professor Katzen also elaborated very thoroughly some other issues that need to be raised if we are going to assess burden hours, at least from a governmentwide perspective. I would like to stress that the causes for burden hour increases can be things like changing priorities. After September 11th, the Nation realized we need to put more attention on the security of the food supply and the safety of our ports, and that is going to mean more information

and that will in turn mean more burden that gets calculated in these burden hour increases.

Additionally, there are outside factors like Hurricane Katrina. There are more people who are filing for national flood insurance benefits or public benefits, and those people who file—when the populations who file increase, the reported burden hour increase governmentwide will also increase. That particular factor has already been designated by OMB every year in its adjustments category, but the program changes, although OMB stresses that new statutes and such factors can be responsible for those burden hour increases, they are not always precisely measuring just how much a factor that is. And so I just want to caution that when we consider burden hour increases, that is another very important factor.

I also need to say that burden hours, above all, without context, cannot be the basis of our policy discussions because they can lead to misguided policy. Mr. Miller spoke about changing to a flat tax, and it is absolutely true that changing from our progressive income tax to a flat tax or even eliminating Federal income taxes altogether would absolutely drive down governmentwide reports of burden hours. But that would also mean less revenue to the Federal Government to do the things that we expect the Federal Government to do. It would mean losing something really valuable like the progressive income tax that protects people at the low end and asks people at the high end of the economic strata to pony up their fair share in a fair way.

Another point that needs to be stressed is that we need this information for a purpose, and if we focus on burden hour reductions above all, we could be just shifting this informational burden. Because we need this information, we need food safety labeling, we need information to protect the public, the States might have to pick up the role that the Federal Government might be abdicating in the event of across-the-board burden reduction targets.

Another problem that has not been brought up is that the PRA itself is an act that comes with its own bureaucracy. It really is in many ways the worst—it brings out the worst of Government. There is paperwork involved in the Paperwork Reduction Act. There are technicalities of all sorts that I explain my written statement and would be happy to submit more information on.

I would like to stress that the real focus should be shifting to information resources management. There are many fixes, even just simply changing the name of the bill that gets put forward to reauthorize the PRA, that could refocus OIRA's attention on the "I" of OIRA, on information technology and information resource management, which could reduce burden in many ways without reducing the quality or level of information that we receive.

I have gone over time. I apologize. I would be happy to answer questions.

[The prepared statement of Mr. Shull follows:]

Testimony of J. Robert Shull,
Director of Regulatory Policy, OMB Watch,
before the
Subcommittee on Regulatory Affairs
of the House Committee on Government Reform
on
"The Paperwork Reduction Act at 25:
Opportunities to Strengthen
and Improve the Law"

March 8, 2006

Thank you, Madame Chairwoman and members of the Subcommittee on Regulatory Affairs, for this opportunity to testify today about reauthorizing the Paperwork Reduction Act. My name is Robert Shull, and I am the Director of Regulatory Policy for OMB Watch, a nonprofit, nonpartisan research and advocacy center that for over 20 years has promoted an open, accountable government responsive to the public's needs.[1] I also coordinate Citizens for Sensible Safeguards, a coalition of labor, environmental, consumer, and other public interest groups with millions of members nationwide, which formed in the 1990s to stop the anti-regulatory components of the Contract With America and has remained active ever since to address policies that affect the government's ability to protect the public.

OMB Watch's particular interests in federal capacity to protect the public through regulatory policy, free access to government information, and the public's right to know about the risks to which it is exposed have led us repeatedly to the Paperwork Reduction Act, the OMB Office of Information and Regulatory Affairs created by that act, and OIRA's implementation of paperwork and regulatory review powers. Accordingly, OMB Watch has followed issues related to the PRA and OIRA for more than twenty years. In that time, we have repeatedly documented an OIRA that has wielded great power in impenetrable secrecy, as the federal government equivalent of a star chamber. A single office, operated by a relative handful of people, exerted inordinate power to control government operations by shaping the outcome of regulations and the collection and dissemination of information, in a style of operations proudly proclaimed in the news as "Leave no fingerprints."[2]

OIRA has taken important steps over the last ten years to increase the transparency of its operations, although it has not stepped down its assumption of power over government policy. In fact, the office has arrogated even more power in recent years, as it has cited the PRA and other tenuous statutory authorities to exert control over yet more areas of policy making such as risk assessment, guidance documents, and agency science. The office created to manage information resources has instead been obsessed with substantive policy in ways that Congress never intended.

We have paid such close attention to the PRA and OIRA's activities because the public has so much at stake in the nexus of information and substantive policy. OMB Watch approaches these issues from a few simple premises:

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[1] OMB Watch, incorporated as Focus Project, Inc., does not take federal grants or contracts. In response to the subcommittee's request, I certify that OMB Watch has not accepted any federal grants or contracts in the current fiscal year or the previous two fiscal years.

[2] *See* Gary D. Bass, Testimony before the Senate Gov'tal Affs. Comm., May 19, 1994, *available on Westlaw at* 1994 WL 233378 (F.D.C.H.).

(1) Government in America serves the public. We use government institutions to pool our collective resources into institutions strong enough to act against the larger forces that isolated individuals cannot surmount. FDR explained it best in a July 1933 fireside chat: "It goes back to the basic idea of society and of the nation itself that people acting in a group can accomplish things which no individual acting alone could even hope to bring about."[3] The federal government is a powerful way for the public to "act[] in a group" on a national basis to meet national needs.

(2) The unparalleled aggregation of resources that we have in our federal government entails a responsibility to use those resources to identify the public's unmet needs for public health, safety, environmental, consumer, and other protections, as well as to ensure that long-addressed needs do not reemerge as new problems.

(3) Information is critical to the fulfillment of that responsibility. Effective use of government resources is dependent on information about the needs of the citizenry and the consequences of government decisions. Without the proper information, we cannot make informed decisions on how best to serve the vast and complex web of public needs. Information is necessary in order to know how well existing government programs are functioning as well as what work is left to be done.

(4) Information is also valuable for government accountability. Armed with information, the public can better identify needs for government action and hold its elected representatives to address those needs. Sophisticated accountability systems, such as performance management tools, can only work with rich information about real world conditions revealing the effectiveness (or lack thereof) of government programs.

(5) Sound information resource management must coordinate and manage the vast universe of information activities performed by federal agencies without limiting the flow of critical information to the agencies and to the public. It should limit "burden" by making use of new technologies to simplify and streamline the collection and dissemination of information, not by leaving policymakers and the public in the dark.

With these principles in mind, I would like to address three major points:

1. Reauthorization should refocus OIRA priorities on information resources management. Although the GAO has testified recently about burden hour increases over time, the truth is that the data on burden hours are meaningless and ignore too much about the value of information. Instead of focusing on burden reduction, Congress should refocus the PRA on the neglected but critically important issues of information resources management.

[3] FDR, Fireside Chat, July 24, 1933.

2. Reauthorization is an important opportunity to take the PRA into the information age. The very name—the *Paperwork* Reduction Act—signifies the law's origins in the pre-Internet era. Now is a perfect opportunity to promote the use of information technology to improve transparency in OMB and to reduce reporting burden without reducing information the public needs.

3. Reauthorization should not, however, be used as an opportunity to distort regulatory policy or otherwise promote non-germane proposals. In order to preserve the historically bipartisan support for the law, reauthorization should be clean of such extraneous riders.

I. REAUTHORIZATION SHOULD REFOCUS OIRA PRIORITIES ON INFORMATION RESOURCE MANAGEMENT.

This subcommittee could best serve the public in the PRA reauthorization by refocusing OIRA resources beyond paperwork reduction alone and back on the larger universe of information resource management activities. In particular, OIRA should be focused on identifying government-wide methods to streamline and automate information collection without sacrificing quality and timeliness of information. The 1995 PRA attempted to address some of these issues:

- Several of the 1995 reauthorization provisions focus on effective use of resources to accomplish agency missions and improve agency performance. The Director of OMB was instructed to develop and use common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability. Congress added the responsibility for development and utilization of standards in recognition of the critical need for some commonality in interfaces, transparency of search mechanisms, and standardized formats for sharing and storing electronic information.

- Agency responsibilities for IRM also expanded. The head of each agency became responsible for "carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness." Agencies were directed to develop and maintain an ongoing process to ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions and, in consultation with the OMB Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management of about information resources management.

These goals are actually more meaningful for the public than burden hour reductions, in large part because "burden hour" quantifications are fatally flawed, and because these goals have taken on new relevance since 9/11. Instead of an overly simplified and crude percentage reduction in paperwork, Congress should make effective and efficient management of information the goal of a reauthorized PRA.

A. There is no need to make burden reduction the primary focus of PRA reauthorization.

I urge this subcommittee not to take recent reports of increases in paperwork burden hours as the basis for discussion of PRA reauthorization. I am, of course, aware that the Government Accountability Office recently testified that the 1995 PRA reauthorization's burden reduction goals would have resulted in approximately three billion fewer burden hours at the end of September 2001 than were actually imposed. Three billion: it is a striking observation, but it does not begin to tell us anything meaningful about government collection of information, much less paperwork "burden."

1. Reports of burden hour increases alone fail to reveal a problem.

The observed increase in estimated burden hours does not necessarily mean that there has been an increase in *unnecessary* burden. As OIRA itself has observed, burden hour increases can reflect changing priorities, such as the post-9/11 imperative to improve national security in such key areas as the security of the food supply. Any burden increase resulting from efforts to address the new post-9/11 reality certainly is not a problem that demands more burden reduction initiatives.

The post-9/11 context is not the only limitation that precludes any meaningful inferences from observations of burden hour increases:

- A significant factor for burden hour increases may be factors completely beyond all government control. The burden hour is a function of not just the time spent complying with an information collection but also the number of people participating in it. In the aftermath of Hurricane Katrina, for example, larger than normal numbers of people will complete applications for the National Flood Insurance Program and public assistance programs. The result will be an observed increase in burden hours, *even if the forms themselves are unchanged.*

- Another significant factor is beyond agency control: new statutes passed by Congress, requiring new or revised information collections that result in burden hour increases. As GAO observed, agency burden reduction initiatives decreased burden by 96.84 million burden hours from 2003 to 2004, but that burden *reduction* was offset by a burden *increase* resulting of 119 million burden hours because of new statutory mandates.[4]

In the former case, burden hour increases do not result from increases in paperwork burden but, rather, from the burden of circumstances beyond anyone's control. In the latter case, there is an increase in the number of information collections but not an increase in *unnecessary* burden, because the public itself, acting through its elected representatives, declared the need for the information. OIRA helpfully distinguishes the first of these in its annual reports as "adjustment" increases, but the second kind is routinely noted but not carefully measured as distinct from other government-directed "program changes" in burden hours.

[4] Linda D. Koontz, GAO, *Paperwork Reduction Act: Burden Reduction May Require a New Approach* (GAO-05-778T), Testimony before the Subcomm. on Reg. Affs., House Cmte. on Gov. Reform, June 14, 2005, at 8.

2. *The "burden hour" figure is a case of garbage in, garbage out.*

Another reason not to draw too many conclusions from estimates of increased burden hours is that the numbers themselves—the "burden hour"—are meaningless. There is no science or real-world experience applied to the quantification of a burden hour; accordingly, the burden hour figure does not reliably measure anything:

> [B]urden hour estimates are not a simple matter. . . . [I]t is challenging to estimate the amount of time it will take for a respondent to collect and provide the information or how many individuals an information collection will affect. Therefore, the degree to which agency burden-hour estimates reflect real burden is unclear. . . .[5]

Burden hour estimates are, incidentally, *estimates*. Any empirical studies or surveys to measure the time burden of an information collection would themselves be subject to the PRA and burden hour estimation.

For the benefit of the subcommittee, we are submitting with this testimony a detailed discussion of the deficiencies of quantifying burden hours. In short, the methodologies for quantifying burden hours differ not just from agency to agency but also within agencies. The only noteworthy consistencies are the flaws in burden hour quantification methodologies: among them, the failure to acknowledge that any new information collection, even a time-saving computerized process replacing an old paper form, will take a certain amount of time the first time it is used and then will require much less time to complete as users become familiar with the process. The estimates have historically been increased or decreased for no apparent reason at all.[6] In all probability these burden hours are skewed too high.

3. *Burden numbers tell only half the story.*

Even if reports of burden hour increases actually told us something meaningful, they still cannot be the basis of an informed discussion of reauthorization because they exclude too much about the value of the information at stake. The PRA mandates disclosure of only the estimated burden hour and is agnostic about both the benefits derived from the information and the democratic values that inhere in information collections mandated by law. As a result, when PRA debates are based on the burden hour estimate, the debates inevitably are one-sided. Those who supply information subject to the PRA can readily engage in debate against perceived weaknesses of the law, because all that is disclosed about information collection activity is the estimated *burden*. Congress seldom hears from those who benefit from the collection of the information, mostly because they know little about the PRA.

The observation of burden hour increases may tell us something about the amount of information flowing into government, but it tells us nothing about the enormous benefits the public gains from that information. It cannot tell us, for instance, how information impacts important policy decisions or how information is used to keep us safe. Inspecting a nuclear plant for vulnerabilities or meat products for signs of mad cow disease involve collecting information. Government decisions to remove arsenic from drinking water or lead from gasoline rely on information about the levels of existing pollutants and their impacts on the population. Car safety features such as air bags and seat belts require extensive trials

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[5] *Id.* at 9-10.

[6] For example, in May 1989, OIRA decided to raise an IRS burden estimate—and then upped its own re-estimate. By the time OIRA finally decided to reject the information collection altogether, the burden estimate had grown nearly 2,000 percent, from 2.5 million burden hours to 39 million burden hours, with no accounting for the dramatically revised estimate. *See* OMB Watch, *Monthly Review*, June 30, 1989, at 3.

before going to market and then further information collections to gauge their impact. Collecting flood insurance benefits or deciding when and where to build a levee depends on information collections, as does forestalling against a natural disaster, disease epidemic, or terrorist attack. All of these require the collection of massive amounts of information, ranging from the preparedness of state and local governments to assessments of various risks. On this point, OMB Watch can actually agree with OMB, which routinely spends several pages in its annual Information Collection Budget report outlining the enormous benefits this information can provide.[7]

B. Information resource management is too important to neglect.

Instead of burden hour estimates, I recommend this subcommittee focus on a different number: $60 billion. That's the amount the federal government spends annually on information technology—and it is an amount which OIRA cannot, according to the GAO, determine is being spent effectively.

The number is critically important, not least because it is a significant amount of taxpayer dollars, but also because it underscores the value of information resources management. From the beginning, the Paperwork Reduction Act concerned much more than paperwork, despite the name of the law. The PRA charges OIRA and federal agencies to collaborate on a wide range of activities beyond the reduction of information collection burden:

- Developing information resources management policies
- Promoting public access to information
- Coordinating statistical policies and systems
- Implementing records management activities
- Overseeing information privacy and security policies
- Overseeing the development of major information technology systems

OIRA has not, however, paid sufficient attention to these information resource management responsibilities. In 1982 and 1983—the very beginning of the PRA—the GAO reported that a significant portion of OIRA's resources had been devoted to non-PRA regulatory reviews, to the detriment of the Act's information resources management requirements. For example, of the 13 tasks to be completed by April 1, 1983, OIRA had completed only four. GAO concluded that OIRA was basically ignoring its responsibilities for information policy, statistics, and the management of information resources.[8] OIRA has not broken with that early trend: as recently as 2002, GAO was again reporting an OIRA failure to take seriously its wider responsibilities under the PRA, in this case a failure to develop and maintain a government-wide strategic plan for information resource management.[9]

Two information resource management issues of vital importance in a post-9/11 world dramatize the critical need for refocusing OIRA beyond paperwork: information security, and information technology.

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[7] *See, e.g.*, OFFICE OF INFO. & REG. AFFS., OMB, 2002 MANAGING INFORMATION COLLECTION AND DISSEMINATION 5-10, *available at* <http://www.whitehouse.gov/omb/inforeg/paperwork_policy_report_ final.pdf>.

[8] *See* Gary D. Bass, Testimony before the Legisl. & Nat'l Sec. Subcomm. of House Gov't Operations Comm., July 25, 1989, at 6.

[9] *See generally* GAO, "Information Resources Management: Comprehensive Strategic Plan Needed to Address Mounting Challenges," Rep. No. GAO-02-292 (Feb. 2002).

Information Security

The PRA requires OMB, in conjunction with the agencies to develop and implement information security policies, including identifying and affording "security protections commensurate with the risk and magnitude of the harm resulting from" a breach of information security."[10] GAO reports, however, have identified several information security issues that merit the attention of OMB.

For instance, in June 2005, GAO identified information security gaps at the Department of Homeland Security. According to the report, "DHS has not fully implemented a comprehensive, departmentwide information security program to protect the information and information systems that support its operations and assets."[11] GAO found that DHS has not completed information system security plans or the risk assessments necessary "to determine what controls are necessary and what level of resources should be expended on them."[12]

According to GAO, weaknesses in information security systems are pervasive throughout the federal government, putting government information at serious risk. Agencies suffer from "pervasive weaknesses" in information security "because agencies have not yet fully implemented information security management programs. As a result, federal operations and assets are at increased risk of fraud, misuse and destruction."[13] These deficiencies are immediately relevant, because OMB is given the responsibility under the PRA for developing and overseeing policies and guidelines on information security, privacy, and disclosure.[14]

OMB has frequently left the agencies in the dark on how to handle information security issues. For instance, a GAO report found major security flaws in agencies' implementation of wireless technology. Federal agencies have not secured many of the risks associated with wireless networks. "For example, nine federal agencies reportedly have not issued policies on wireless networks. In addition, 13 agencies reported not having established requirements for configuring or setting up wireless networks in a secure manner."[15] GAO recommended that OMB "instruct agencies to ensure that wireless network security is addressed in their agencywide information security programs."[16]

Information Technology

The PRA also instructs OIRA to develop and institute cross-agency information technology initiatives and to ensure agencies integrate information technology into their information resources management plans. Agencies are also required to account for their information technology expenditures to OMB. Each year, agencies submit to OMB exhibit 300—a Capital Asset Plan and Business Case—which provides justification, including analysis and documentation, to support investment decisions.

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[10] 44 U.S.C. § 3504(g).

[11] GAO, "Information Security: Department of Homeland Security Needs to Fully Implement Its Security Programs," Rep. No. GAO-05-700 (June 2005), at 2.

[12] *Id.*

[13] GAO, "Information Security: Weaknesses Persist at Federal Agencies Despite Progress Made Implementing Related Statutory Requirements," Rep. No. GAO-05-552 (July 2005), at 2.

[14] *See* 44 U.S.C. § 3504(g).

[15] GAO, "Information Security: Federal Agencies Need to Improve Controls over Wireless Networks," Rep. No. GAO-05-383 (May 2005), at 2.

[16] *Id.*

According to GAO, however, agencies have not adequately justified their information technology expenditures. Exhibit 300s often did not include the proper analysis of costs and projected benefits of the investments, as required by OMB. "Agency officials attributed the shortcomings in support to lack of understanding of a requirement or how to respond to it."[17]

While OMB spends ample time assessing costs and benefits for regulatory proposals not governed by the PRA, it has failed to provide the same exacting scrutiny to the $60 billion spent annually on information technology. Not only did GAO find that agency justification for information technology investments were inadequate, GAO also found that OMB was not effectively using its management reviews to make cross-agency assessments of information technology strengths and weaknesses. Despite developing a Management Watch List to track IT investments, OMB "did not develop a structured, consistent process for deciding how to follow up on these actions," according to GAO.[18] "Because it did not consistently monitor the follow-up performed, OMB could not tell us which of the 621 projects identified on the fiscal year 2005 list received follow-up attention, and it did not know whether the specific project risks that it identified through its Management Watch List were being managed effectively. This approach could leave resources at risk of being committed to poorly planned and managed projects."[19]

GAO has also identified a number of specific information technology failures, some of which also pose security risks. For instance, GAO found last year that no federal agencies, with the exception of the Department of Defense, had begun to plan for the transition to Internet Protocol version 6. According to GAO, "[t]ransitioning to IPv6 is a pervasive and significant crosscutting challenge for federal agencies that could result in significant benefits to agency services. But such benefits may not be realized if action is not taken to ensure that agencies are addressing key planning consideration and security issues."[20] Under the PRA, OMB is charged with initiating cross-agency information technology initiatives;[21] accordingly, GAO recommended that OMB "instruct agencies to begin addressing key planning considerations for IPv6 transition."[22]

Poor information resources management planning also impacts specific government initiatives that rely on information to function properly. GAO identified weakness in the application of information technology in specific agencies and programs, including in many information programs necessary to protect our public health. GAO found that the CDC's public health surveillance tool, Biosense, which gathers data in order to detect early signs of disease outbreaks, was underutilized by state and local governments "primarily because of limitations in the data it currently collects."[23] GAO identified several challenges to improving public health infrastructure, most dealing with the implementation of information

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[17] GAO, "Information Technology: Agencies Need to Improve Accuracy and Reliability of Investment Information," Rep. No. GAO-05-250 (Jan. 2006), at 3.

[18] GAO, "Information Technology: OMB Can More Effectively Use Its Management Reviews," No. GAO-05-571T (April 21, 2005), at 2.

[19] *Id.*

[20] GAO, "Information Protocol Version 6: Federal Agencies Need to Plan for Transition and Manage Security Risks," No. GAO-05-845T (June 29, 2005), at 3.

[21] *See* 44 U.S.C. § 3504(h).

[22] GAO, "Information Protocol Version 6," *supra*, at 3.

[23] GAO, "Information Technology: Federal Agencies Face Challenges in Implementing Initiatives to Improve Public Health Infrastructure," Rep. No. GAO-05-308, at 3.

technology, including weaknesses in "IT planning and management" at CDC and DHS, and poor coordination among various federal, state, and local public health agencies.[24]

As that last example makes clear, information resources management is not an issue of concern reserved for Washington policy wonks: the public has an acute interest. The apparent failure to move Hurricane Katrina-related crisis information effectively through federal, state, and local government information channels is a vivid case in point of the high stakes in information management. The contrast between the existence of a hotline for business leaders to stay in touch with government in times of crisis[25] and the ongoing failure to create first-responder communication systems in the years since 9/11 is another. Now more than ever, the public needs effective management of information resources for its safety, health, and security. It is long past time for OIRA to devote its resources to these critical needs.

C. Reauthorization is an opportunity to reestablish the right focus.

Reauthorization is a prime opportunity to focus OIRA on the information resources management issues that are so critical for the public but receive too little attention and coordination. The following are suggestions for amendments that would help the current law better serve the public's needs.

1. Signal the importance of information resource management in the name of the reauthorization bill.

One simple, costless, uncontroversial, but powerful step that Congress could take to refocus OIRA's importance on the importance of information resource management would be to use a different name for the bill to reauthorize OIRA's role: instead of Paperwork Reduction Act, a name that draws attention to one limited subset of OIRA's responsibilities, use a name that refers to the entire universe of information management responsibility, such as the Information Resources Management Act. With no radical change in any legal authority, Congress could nonetheless powerfully signal its intention to focus OIRA's attention on the larger task at hand.

2. Reduce unnecessary reviews of information collections.

The PRA requires agencies and OIRA to undertake an elaborate review process for all information collections that pose the same questions to ten or more people—in other words, almost every information collection that the federal government ever decides to undertake. Congress could free up OIRA's time to concentrate on information resources management by focusing this review responsibility in more strategic ways:

- *Distinguishing Unnecessary from Necessary "Burden":* No one is asking for the federal government to demand information without a need for it. That being said, some information collections *must* impose a "burden" to ensure that the proper health and safety precautions are

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[24] *Id.*

[25] The hotline is called CEO COMLINK, touted as being able to "within five minutes link every one of the Business Roundtable's 150 CEOs with the federal government to coordinate disaster responses involving their industries." Nat'l Conf. of States on Bldg. Codes & Stands., *Homeland Security Summit Summary: Not If, But When, Where, How! Are We Prepared?, available at* < http://www.ncsbcs.org/newsite/Association %20 services/committee%20items/Article_Homeland_Security.htm>.

taken, that recipients receive due payments from government entities, that government programs are effective, or that government services are not being stolen by ineligible people. Congress could clarify that the law is not meant to mandate elimination of information that the public needs by making either of two simple fixes: (1) dropping section 3505(a), which crudely mandates percentage reductions in burden hour without regard for the value of information; or (2) simply changing all mentions of "burden" to "*unnecessary* burden."

- *Fixing the Problem of Low Thresholds:* Agencies are required to go through the same level of scrutiny whether their information collection will require 10 respondents or 10 million respondents. In fact, a substantial fraction of the information collection reviews completed by OIRA last month covered collections from very small numbers of respondents:

  - 11.49% collected information from fewer than 25 respondents;
  - 16.17% collected information from fewer than 50 respondents;
  - 23.83% collected information from fewer than 100 respondents; and
  - fully 41.70% collected information from fewer than 1,000 respondents.[26]

  Although one possibility for focusing the information collection review process could import the "economically significant" category from Executive Order 12,866, an easier fix—one less likely to require significant new additions to the law, and less likely to trigger the suspicions of the public interest community—would be simply to raise the threshold in section 3502(3)(A)(i) from ten to some more reasonable number, such as one thousand or even just one hundred.

- *Eliminating Coverage of Voluntary Information Collections:* The PRA also requires the same time-intensive (and, incidentally, *paper*-intensive) information collection review process even when information is being collected on an entirely *voluntary* basis. When agencies want to get voluntary feedback from recipients of government services, for instance, their proposed information collection receives the same level of scrutiny as if they were collecting data on chemical emissions or automobile accidents. If an agency is not mandating responses from individuals, the collected information is hardly a burden. Viewing it as such is akin to viewing a Gallup poll or customer satisfaction survey as a burden on respondents. An easy fix would be to amend 44 U.S.C. § 3502(3)(A) to strike the words "obtaining, causing to be obtained, soliciting, or " (thus leaving only the word *requiring*).

- *Eliminating Coverage of Information Needed to Measure Program Performance:* sections 115 and 116 of the Government Performance and Results Act require agencies to provide quantifiable indicators and measures in assessing agency performance. To properly implement GPRA, agencies inevitably must collect new information. Yet the mandated annual reductions in information collections under the PRA put a damper on the collection of this needed information. As a result, GPRA's objective of having publicly trusted performance indicators may be seriously falling short. Likewise, agencies may be suffering unnecessarily under the White House's Program Assessment Rating Tool, a duplicative performance appraisal mandate imposed by the executive branch (sometimes in conflict with GPRA), because the PRA imposes significant burdens on their ability to collect information demonstrating their results. Congress can reconcile this conflict—and, simultaneously, free up more of OIRA's time to devote to information resources management—by amending 44

[26] Data taken from OIRA's website, "Reviews Completed in Last 30 Days" with rundate of March 2, 2006, available on the Internet at <http://www.whitehouse.gov/omb/library/OMBPPWKC.html>.

U.S.C. § 3518(c)(1) to add an exemption for information collected during the conduct of establishing the effectiveness of a program or measuring program outcomes in order to carry out the activities described in 31 U.S.C. § 1115, prepare program performance reports required in 31 U.S.C. § 1116, or participate in any performance assessment process.

4. Order staffing allocations that reflect information resource needs.

If Congress decides to maintain the law's longstanding interest in information collection reviews, it can better focus OIRA's implementation of that responsibility by correcting the office's staff allocations. OIRA has historically focused greater oversight and review on the paperwork of agencies such as the Environmental Protection Agency, the Department of Housing and Urban Development and the Occupational Safety and Health Administration than it did on the paperwork of others (such as the IRS). Agencies such as EPA, USDA, DOL, HHS, DOT, and Dept. of Education have a disproportionate number of OIRA desk officers overseeing their work compared to the amount of paperwork they actually produce.

For instance, the USDA's 1999 paperwork burdens accounted for 0.9 percent of the total burden imposed by government paperwork, yet six of 34 desk officers at OIRA (18 percent) were assigned to the agency in 2001. Similarly, EPA's paperwork burden consisted of 1.7 of the total government paperwork, yet it also has six desk officers overseeing its work. In contrast, the Treasury Department, which constituted over 82 percent of government paperwork burden, only had one assigned desk officer. (Data based on GAO FY 1999 estimates and the list of OIRA desk officers' assignments as of October 15, 2001.)

OMB Watch recommends Congress eliminate this imbalance of attention by mandating in any PRA reauthorization that OIRA must assign desk officers in proportion to the amount of paperwork burden associated with each agency.

II. REAUTHORIZATION SHOULD TAKE FEDERAL INFORMATION RESOURCE MANAGEMENT INTO THE INFORMATION AGE.

The PRA was a pre-Internet law. Even its name—the *Paperwork* Reduction Act—signifies its interest in paper forms, a vehicle for collecting information that is decreasing in importance as the Internet and new technologies, such as the fabled "smart dust" of nanotechnology, make supplying information easier than ever. Even in 1995, the last reauthorization, we had barely begun to exploit the opportunities of the Internet. Since then we have seen an explosion of applications, and the amount of computing capacity available to individuals and business has grown exponentially. Each year we produce, distribute, and save more information than the year before, and we actively search for yet more information that will enable us to set and manage priorities. Chief Information Officers have become a standard position in many corporations, which are increasingly savvy to the integration of information and management. The government is not apart from these trends. Taking into consideration the tremendous growth our society has experienced in the creation of information, the government's fairly stable to low growth in paperwork burden is actually quite surprising.

The PRA has yet to catch up with the new environment. As discussed above, the information resource management activities that correspond most closely with advances in information technology are

precisely the activities that OIRA has least addressed. Congress can and should use reauthorization as an opportunity to update the PRA.

A. Congress should update the burden reduction section to accommodate the possibilities of information technology.

We continue to develop better and more effective tools for gathering, delivering, organizing and analyzing information. The U.S. government is only beginning to explore these options. In 2003, Congress passed the first E-Government Act, which agencies only now are beginning to implement. The question for reauthorization should not be how the government can reduce the amount of information it collects but, rather, how it can harness information technology to make it easier than ever to collect the information we need to protect the public.

The TRI-ME software developed by EPA to streamline TRI reporting provides us with a good example of the kind of advance that reauthorization can promote. The electronic reporting software has reduced the reporting burden for submitters by hundreds of thousands of hours without reducing the quantity or quality of information at all. The Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory Program, written by Cody Rice in EPA's Office of Environmental Information in 2002, estimated an even higher level of burden reduction than reported in EPA's 2003 ICRs. A sample of facilities testing TRI-ME estimated a 25 percent reduction in calculations, form completion, and recordkeeping/mailing activities. The report projected 283,000 hours of reduced burden with just 60 percent of facilities using the program.

The burden reduction imperative in section 3505(a) is an example of the pre-Information Age approach. It should be supplanted with a new mandate for the Information Age: as a requirement for OIRA to work with agencies on identifying ways to use information technology to reduce the burden of information collection without reducing the quantity, quality, or frequency of information for the public.

B. Reauthorization should expand government obligations to disseminate information.

Unlike information collection and burden reduction, the issues of dissemination and public access have received too little attention in the PRA. Prior to the 1995 reauthorization, the PRA did not contain a definition of public information, nor was dissemination included in the purpose of the law. The 1995 reauthorization changed all that and included a new purpose: to "provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology." This theme is indicative of a significant change in thinking about the purposes and uses of government information.

The last PRA reauthorization also included a definition for public information, which covered "any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public." The most important aspect of the 1995 definition language was the phrase "regardless of form or format." In this phrase, the Act laid down as a fundamental principle that it does not matter whether "public information" is print, electronic or otherwise (e.g., microfiche); the requirements for dissemination and public access will be the same. As the government began conducting more of its business electronically, Congress recognized the importance of maintaining a level of access to new formats for information. This language (echoed in the responsibilities of the Director of OMB) ensures not only current access but also—as it is reinforced in agency records management responsibilities for

archiving information maintained in electronic format—ongoing access to historically (and otherwise) valuable data and information.

The last reauthorization also gave the Director of OMB the added responsibility to provide direction and oversee "agency dissemination of and public access to information." Agency responsibilities also expanded for information dissemination and provision of public access. Under the earlier versions of the PRA, agencies had no direct responsibilities—and hence no mandate and no incentive—for information dissemination. Provisions under section 3506 not only require each agency to "ensure that the public has timely and equitable access to the agency's public information" but also lay out some critically important principles. Unfortunately, this section only addresses what agencies *should* do as they disseminate public information. It does not mandate public access to government information.

As Congress goes forward with reauthorization, the issue of public access must be taken up anew and established more firmly as a national priority. The Freedom of Information Act, a powerful safety net in requiring disclosure of government records, should become a vehicle of last resort in the Internet age we live in. Congress should modify the PRA to include a new and innovative provision that creates an affirmative responsibility for agencies to publicly disseminate, in a timely manner, any and all information collected by government agencies except for information that is exempt from disclosure under FOIA.

In the 1995 reauthorization Congress mandated the creation of the Government Information Locator Service (GILS) to assist agencies and the public in locating information and promoting information sharing and equitable access by the public. However, the legislation only required a GILS to "identify the major information systems, holdings, and dissemination products of each agency" and failed to require the program to provide access to the information. Moreover, GILS has been by-passed by the ubiquity of the Internet and the growth of information on agency web sites. Congress should revise the GILS program, building on the E-Government Act, and mandate creation on a public access system that allows the public to integrate information and databases from multiple programs and agencies.

It is time for the United States to have a law that requires public access to government information—and the PRA is the best vehicle to make that happen.

C. Congress should improve transparency of information collection reviews.

Another concern about the PRA has been its susceptibility for manipulation by administrations as a backdoor for achieving politically motivated goals with regards to the regulatory process. With oversight authority residing at OMB, which is a political office of the White House, concerns have been raised that PRA can be too easily used as a tool for political abuse. Given the amount of time and resources OIRA devotes to little else beyond paperwork reduction goals and a form-by-form review process, these concerns are well founded.

Many believe that OIRA has used its paperwork authority, in combination with regulatory review powers granted by executive order, to interfere with substantive agency decision-making about policies and programs. Jim Tozzi, who worked as a Deputy Director at OIRA during the 1980s, acknowledged this to the *Washington Post*: "I have to plead guilty to that. The paperwork is a way in, you know?" We urge Congress to discourage this misuse of the PRA by requiring OIRA to publicly explain and justify any information collection requests it alters, declines or delays. These explanations should be published in the *Federal Register* as well as compiled and reported annually to Congress.

Additionally, Congress should empower the public to know more about OMB's actual implementation of the PRA, to make sure that OMB is not using the information clearance process as "a way in" to distorting regulatory priorities. OMB is required by law to maintain a docket room for information clearance decisions and related records, which it does do. That docket is only available, however, in OMB's offices here in Washington, D.C. OMB's PRA decisions have enormous consequences for the entire nation, not just the people of Washington, D.C., so people outside of Washington should be given access to those records. We are not calling for anything innovative or even difficult to do; right now, most federal agencies, in compliance with the E-Government Act, maintain Internet-accessible versions of their rulemaking dockets, and people all over the world can download documents from those dockets and hold the agencies accountable. OMB should do the same. We also recommend that OMB link the online disclosure of its rulemaking activity with that of the PRA activities since many of the actions are related.

III. REAUTHORIZATION SHOULD NOT UNDERMINE PUBLIC PROTECTIONS.

Given the importance of information resources management, it is critically important that reauthorization stay focused on that subject. Above all, we need Congress to take this opportunity to ensure that the public receives the information it needs, without creating any new threats to the quantity, quality, or frequency of that information. Moreover, in order to preserve the historically bipartisan character of support for the PRA, this opportunity for improving the government's management of information resources should not be endangered by non-germane riders that could distort science or weaken public protections.

A. EPA burden reduction initiatives are the wrong model for other government programs.

Although GAO has testified that EPA's burden reduction initiatives may be a model for the rest of the government, it is important to stress that there is more to the story beyond "burden hours." EPA has made a substantial effort to reduce information collection burden, expending considerable resources in the process. Yet the result of EPA's efforts has been a reduction not simply in burden but in important information about toxics that is necessary to keep communities safe and informed.

Most notably, EPA recently proposed reducing the accuracy of reporting under the Toxic Release Inventory, letting companies produce ten times the pollution before requiring them to report the details of the release. Furthermore, EPA announced its intention to switch to biennial reporting, significantly reducing the level of accountability the program provides over facilities and making it impossible for communities to get timely information on toxic releases and trends.

Each of these burden reduction proposals would accomplish its goal by sacrificing either the quantity or quality of information collected. Burden reduction by any means necessary—reducing burden by reducing the amount and accuracy of the information reported—is inappropriate.

This is not to say that there aren't legitimate actions that could be taken to help reduce reporter burden while maintaining benefit to the public. However, EPA is not considering these types of options, such as strengthening use of electronic reporting. Such an option would seem most reasonable given the importance of the TRI program and the demonstrable progress it has spurred. In a period when the government is continually advancing use of the Internet through e-government and e-rulemaking policies, this option seems like an obvious choice to explore. In fact, EPA's TRI-ME reporting software, though

still a relatively new effort, has already proven successful at reducing burden without eliminating any collection of information.

Nonetheless, EPA has yet to establish key identifiers to allow industry to submit certain types of information such as name and address only once. Creation of key identifiers not only would significantly reduce reporting burden, but it would also enhance utility of the information collected since the public and government could begin linking disparate data sets based on these common identifiers. The PRA should be breaking ground in these types of constructive efforts to better manage government information collections.

If the necessity and significance of this information was at all in question, one has only to look at the huge reductions in toxic emissions that have results from the public's access to this information. Since facilities began reporting in 1988, there has been a nearly 60 percent reduction in total releases of the 299 core chemicals that the program began tracking. Simply making this information available has fueled a significant drop in the toxic chemicals in our environment. As new chemicals have been added to the TRI program, we have also seen those releases drop. EPA reported this year that since the TRI list was expanded to 589 chemicals in 1998, there has been a 42 percent reduction in total releases. TRI has become EPA's premier database of environmental information demonstrating the power of information to promote change and improvements.

Because of the risks posed by the TRI burden reduction proposal, we urge Congress not to promote the EPA "model" during PRA reauthorization.

B. Reauthorization must not distort regulatory policy with amendments that are extraneous to information resource management.

We urge Congress to refrain from attaching to any PRA authorization non-germane provisions. Often, an important and broad government-wide bill, such as a PRA reauthorization, can attract numerous amendments and riders that deal with unrelated, or even vaguely related, issues. A few scattered mentions in the press indicate interest in some circles in using PRA reauthorization as a vehicle for often-proposed, often-rejected ideas. Congress should not cave in to any such pressure.

For example, there has been great attention given to the Data Quality Act that was passed as an appropriations rider in 2001. We have created a website providing updates on implementation of the law at http://www.ombwatch.org/article/articleview/2668/. In monitoring the law, we have been surprised to see the expansionist approach OMB has taken to interpreting a rider than was never debated in Congress. Without doubt this rider has become a highly controversial law. One issue that has emerged from industry is whether data challenges filed under the law are judicially reviewable. Judicial reviewability of the DQA would cripple government agencies from meeting their obligation to serve the public's needs, especially since industry groups often use the DQA not just to correct technical errors but, further, to demand substantive changes in the informational basis for a policy. We strongly urge Congress not to add any provisions that make DQA challenges reviewable in a court of law.

Additionally, we know that industry groups such as the U.S. Chamber of Commerce have been working in coalitions led by lobbying firm Valis Associates. The corporate lobbying coalition has been working in backdoor meetings with the White House to plot ways to use PRA reauthorization as a vehicle to promote ideas that would benefit corporate special interests at the expense of the public interest. Among these ideas:

- "open peer review," or creating an end-run around the balance requirements of the Federal Advisory Committee Act by throwing peer review open to the Internet, and allowing the legions of industry-funded scientists to overwhelm scientific assessment of policy issues;

- enshrining in law the executive order in which the White House arrogates to itself the power to interfere in agency regulations—a power that has been used in recent years to water down standards for protecting the public health against the runoff from large scale farming operations, order analytical requirements that devalue the lives of seniors, weaken a rule to protect drivers and vehicle occupants by alerting them to dangerously underinflated tires, and more; and

- adding "sunsets" or mandatory expiration dates for regulations, even proven protections such as the ban on lead in gasoline.

These proposals would threaten existing protections and gut the government's capacity to develop new protections to meet the public's needs. Any such non-germane proposals would only muddy the discussion of information resources management and would threaten the bipartisan support that the PRA has traditionally engendered. They must be excluded from reauthorization.

I thank you for this opportunity to testify, and I look forward to addressing your questions.

Mrs. MILLER OF MICHIGAN. Thank you very much.

You know, one of the reasons I wanted to actually get on this committee when I first came to Government, I liked the name of the committee, "Government Reform." I like to think of myself as a Government reformer, and I like to think of myself as sort of a common-sense approach to Government. And we had a hearing last week that I was going to ask a question on. Actually, I thought it was sort of an interesting hearing and certainly a topic—and Mr. Lynch and I have introduced a piece of bipartisan legislation about some of the—talking about all of the burden with the paperwork and everything. In this case, we were talking about plain English, where somebody that was actually trying to comply could understand what the Government was trying to ask them to comply with. And the testimony was fascinating. In fact, one of the fellows, who happened to be from Michigan, Cooley Law School, had written this book, "Lifting the Fog of Legalese: Essays on Plain Language." And as I said, I thought it was just a fascinating evaluation of how much time is spent in compliance, and again, you know, he articulated some various examples. He had given the first example, you could not understand—even if you were an attorney, you could not understand in many cases what the Government was asking you to comply with on some of these things.

I guess I would just ask all of you generally if you think that the possibility of having some of these various collections written in plain English would be an advantageous act as well.

Mr. LANGER. Yes, I think that would definitely be helpful. One of the problems that we deal with—and I am NFIB's sort of principal liaison with the executive branch folks—is this idea both of plain English and putting a limit on compliance guides. You know, OSHA, for instance, put out a compliance guide on communication of hazardous materials. We all can agree that, you know, what is communicating what is hazardous and what isn't hazardous is an important thing. But if you are a small business owner, having something the size of a telephone book to go through to learn what you need to do to comply is ridiculous. Someone is going to look at that and just go—you know, they are going to go blank.

We talked about TRI earlier, and Mr. Lynch brought it up. And the issue—you know, one of the issues that we had to deal with as they were reformulating TRI was the fact that they would not put executive summaries into the changes that were being advocated, and all I wanted was for them to simply put out, you know, a couple of pages saying here is a guide, here is what you need to do, maybe attached to the Table of Contents or with an index, for more information go here; but here are the basic things that you need to do.

And I would just point out, you know, just a couple of things Mr. Shull brought up, just very quickly. With regards to Love Canal, Hooker Chemical let the community know what was hazardous there. They didn't have to, and what they were doing was fully in accordance with the law. So Love Canal I don't think is really apropos. Neither is September 11th only because September 11th was not an issue of paperwork burden and paperwork reduction. And the thing is, you know, what mistakes EPA might have made in terms of letting the public know had nothing to do with small busi-

nesses' burdens in filling out paperwork. So I don't think those are terribly accurate issues.

We have no beef about the idea of protecting lives, but when you are talking about small businesses and—you have a situation where small businesses are different than larger businesses. When you have a business that has only five employees, invariably it is the owner who has to divine what the regulations say and what they need to do. They are not the large companies that are out there that are even building buildings like the World Trade Towers. You know, those companies can hire compliance specialists. My folks can't. They don't. They simply can't afford it. And yet they are being treated in the same way. That is one of our big issues with the TRI. And I am sorry Congressman Lynch isn't here for me to talk about that because, you know, one of the things with reforming the TRI that we have been dealing with is this issue that the reforms being proposed would account for 99 percent of the data that is currently out there, and the vast majority of the businesses that would be impacted emit 50 pounds—they emit either nothing or they emit less than 50 pounds of any chemical, and they should be treated differently.

So with that, I will conclude. I know I went way over with that, but, yes, plain English would help.

Mrs. MILLER OF MICHIGAN. I would like to ask Mr. Kovacs as well: have you had discussion over there at the Chamber about plain English or something along those lines?

Mr. KOVACS. Well, we like plain English. Our CEO requires everything that we send around to be less than one page. So no matter how complex it is, we have to break it down. And I think the theory is that unless you can break it down and explain it, you really don't understand.

When we look at the regulations—my shop is also the regulatory side—I mean, they occupy shelves. I don't know how a small business person—I am just saying this. I have a group—I have a team of lawyers, and we have problems with them. And so if you give it to a small business that is worried about running it, it is really very difficult.

The point I tried to make to Congressman Lynch was the Congress has been very good about—you have a lot of these laws to really help get a handle on this. You have to figure out a way to get cooperation from the agencies. They have the expertise. They are the ones who know what regulations are right, what regulations are wrong, what regulations do not work, and they have Section 610 of the Reg. Flex. Act, which they are supposed to come back to you with a plan and say this works, this—no one ever does it, and that is where I think the frustration is.

Mrs. MILLER OF MICHIGAN. Mr. Shull.

Mr. SHULL. We actually fully agree that plain language would be a very important step to take. In fact, we wholeheartedly encourage and we support the bill that you introduced, and I think that it is exactly the kind of thing that I wanted to stress—after fumbling about with the mic—that really the goal of improving, taking things to the next step with the Paperwork Reduction Act, we really should be focusing on not just some across-the-board burden hour reduction target but how we can reduce the burden of supply-

ing information without actually reducing the information itself. And I think that plain language is an example of the kind of thing that would make it much easier for businesses to find out what information they need to provide and actually provide it. I think that other examples might be—the Toxics Release Inventory has come up, and EPA has produced the TRI-ME software that is supposed to make it easier for businesses to report the toxics that they have released into our air and our water and in our own backyards.

There are other things that we could do. For example, if businesses have to complete a lot of forms that require the same bits of information, even name, address, that kind of thing, there possibly should be a data base that allows them to get all of that information pulled out and filled out automatically on every form that they fill out that requires that information. That is something that would save businesses time and money, but not rob the public of the information that it needs to keep itself safe and healthy.

When I brought up, arguably inapposite, examples of Love Canal and September 11th, I really meant to make a broader point that the Paperwork Reduction Act is about so much more than just the paperwork clearance process. It is meant to be a comprehensive information resources management law, and there are many components of the PRA that include dissemination requirements, that include information security privacy, electronic records and archiving, and these are aspects that GAO has reported over the years OMB has been deficient—I mean really from the very beginning of the life of the PRA—OMB has been deficient in paying sufficient attention to these aspects of its responsibility. And we could really significantly advance the very things that we have just talked about using, say, information technology to make reporting easier if OMB started shifting more of its resources away from regulatory reviews that are not sanctioned by any law or away from the paperwork clearance process even, and into this broader universe of activities that really is responsible for the law.

Mrs. MILLER OF MICHIGAN. Yes, I appreciate all those comments. You know, I am a firm believer that obviously Government does not create jobs, the private sector does, and it is for us to try to create an environment to encourage entrepreneurship, etc. I think on to this plain English thing, because I really believe that it is a psychological barrier for small businesses and people that want to start their own businesses and those kinds of things. So I was very glad that Representative Lynch and I were able to, as I say, have that hearing, and I appreciate your comments on the legislation.

One of the questions that I asked the other panel and that we are still not—I am a person who believes generally less Government is better and less Government regulation is better, less taxes are better, etc. That is my ideology. But at the same time, you know, Government certainly has a role to play in so many areas, as we were talking about here today, and particularly OIRA. And so I guess I would ask the panel as well, as I asked the previous panel, do you think that they currently have enough resources or are you finding some difficulty in the amount of resources that the Government has provided them in order for them to do their jobs? If anyone has any comment on that, I would be interested.

Mr. KOVACS. My comment is simple. What is lacking over at OIRA or even within the agencies is the will. I don't think we need any more laws. I don't think we need—maybe if you had more oversight, and you are certainly doing that. But at the end of the day, the question comes down to whether or not they want to do it. And I used the example before of certifications. It is very simple. You look at it, and then at the end it gives you—and it says, "On behalf of the Federal agency, I certify that this request complies with 5 CFR 13.9." What is it? You know, does it avoid duplication? Does it get at information that is only necessary? Is this a proper agency function? These are really simple questions.

So if you have 65 percent of the CIOs filing requests that do not have any of the supporting information, that is a willpower question. When you go to OMB or OIRA and you ask them about the data quality—you know, they have done a great job, if you read their regulations, on good practices or risk assessment, peer review, it is good. It is well written. And they talk about how you integrate the science and how you make sure that it is the best-quality information and it is not 10 years out of date. It is not a question of whether they—it is a question of they don't implement—they don't have the willpower, nor have they set up the mechanisms. And yet the courts are telling us it is their responsibility. So this is a willpower question, not more laws.

Mr. LANGER. From a procedural aspect of it, I will talk about two specific examples. No. 1, on the paperwork side of things—and I will just blanket say, no, I don't think OIRA has enough resources. One of the issues—the last time I testified before this subcommittee, I brought a bootleg form, and it is a bootleg form that has not gone through the approval process yet; nevertheless, it is being used by agency personnel.

If we are not to sort of—you know, to repeat what Sally said earlier about, you know, garbage in, garbage out, or she says in her testimony, if you are not getting an accurate picture of what is actually out there and what is actually being used in terms of paperwork, you are not going to get an accurate, you know, sort of idea of what the total burden is. I think if OIRA had more resources, they would be about to ferret out those forms much more easily.

And then from a general regulatory standpoint, again the answer is no, and I point to OIRA's annual picture of the costs and benefits of regulation. The fact is I take great stock in Mark Crain's report, and the reason why I do is because it is a comprehensive look at the state of Federal regulation, and it goes along with what a lot of folks on the outside are saying about the regulatory state. But when you get to OIRA's annual snapshot of the costs of regulation, they are only looking at major rules, and the reason why is because they don't have the resources to look beyond those major rules.

So you get these different numbers, and the media looks at them and they say, OK, OIRA is saying it is X, Crain is saying it is Y, Crain is clearly overstating it and OIRA is saying—you are saying that OIRA is understating it. Well, the reason why OIRA is understating it is because they are only looking at a dozen rules, when, as we know—how many rules did you say there were, Bill?

Mr. KOVACS. 192,000.

Mr. LANGER. 192,000. So, I mean, if you are looking at 11 major rules—and for our, for our members, it is never one rule, it is never one big rule that they can point to. It is always 1,000 little itty, bitty things they have to do. You have TRI, which takes 100 hours to do the paperwork for, or 60 hours, depending who you talk to. You have this, and you have that. So, you know, you are looking these cumulative things, and to look at the major rules presents a hugely inaccurate picture. So, yes, more resources for OIRA.

Mr. SHULL. First of all, I have to say that I take the position that both OIRA and Crain and Hopkins are wildly overestimating regulatory compliance costs, but that is a debate for another time.

I really think that it would be incredibly inappropriate to ask for more resources devoted to OIRA at this time. I mean, this is a time in which we are cutting budgets or trying to eliminate programs like Evenstart, public housing. I mean, at such a time to devote more resources to the office that focuses on Government paperwork, I think many people in the public would find obscene. There are just way too many problems that actually this information paperwork reviews would help us determine more about and would help us focus more of our Government resources on that at such a time to focus on OIRA's budget and getting more people to do more regulatory reviews or more paperwork reviews would not well serve the public.

It is actually not even clear that if OIRA had more resources and more staffing that they would actually devote more time to the paperwork clearance process. They have devoted significant amounts of time to regulatory reviews that they haven't been asked by Congress to do. Moreover, there is this large universe of activities that even from the beginning with what has been called full funding, OIRA still didn't pay sufficient attention to on the information resource management side of things. And it means that there are a lot of wasted opportunities.

We could have more things like TRI-ME that makes the Toxics Release Inventory reporting easier. We could have—I mean, if OIRA really devoted its resources to information resource management, maybe we would have this business gateway that would make it easier for businesses to comply with regulations without reducing the public's protection that it needs. OIRA is really letting us down with the resources that it has, and it has been doing that from the beginning. It has a real job on information resources management, and I think it is time for Congress to send that signal to OIRA.

Ms. KOONTZ. I just wanted to add that what we found in our study was that 65 percent of the certifications that were made were supported with either no—the certification was made without any support or with only partial support. And I think as some of the other witnesses have said, this is not all a matter of resources. I sat down and looked at these files as well, and when you see that the certification was made and then you go to the place where the support was supposed to be provided and it is one sentence or it is very little information, it would not take much time on the part of OIRA to say that the support was not there for the certification, we are going to give it back to you, agency, maybe we would like to see something a little better next time.

Mrs. MILLER OF MICHIGAN. I appreciate that. I have a number of other questions, but looking at the hour, it is almost 5 o'clock. You have been so patient with us this afternoon. We appreciate that. Rather than asking any additional questions, I might just ask you generally, is there a question that I should have asked you that we haven't that you would like to put on the record? I will start with Mr. Kovacs. It is a free question for you.

Mr. KOVACS. As long as it is a free question, let me try. You know, when you look at the regulatory process and what Congress has done, one of the things that comes to mind is that the system right now is almost—not almost, it is literally overwhelming. It is overwhelming to me, and I run an organization that deals with this all the time. I am sure it is overwhelming to you when you look at it. And it is overwhelming, frankly, to the agencies.

I think with the tools that you have, like the Performance and Results Act, with Regulatory Flexibility, you almost, as a Congress, could turn around and say, look, we have fooled with this for 64 years, and we obviously are playing a game, and the agencies are winning because they are at the controls—to a large extent, there is nobody at the control other than what you tell them to do through the budget, but other than that, once they get their money, they go home and do what they want.

And I think you could say to them, you know, we are going to give you so much in appropriations and you are going to have to really run this as a business; you are going to have to set up your priorities, and you are going to have to tell us what performance you are going to go for and what you will expect and what the business community will expect, and that gives you some regulatory certainty, but we are not going to try to deal with every issue that affects everything in the world because I think we waste a tremendous number of resources on that.

I guess just the example that I would like to use, if you want to the EPA—and we have testified about this before. We have this data quality indication where they have 16 data bases and all the data bases are inconsistent with each other. They just—they don't need 16 data bases that are inconsistent. They need to have the right answers. And that is where their resources should be.

Second, they have hundreds of models for how they model air pollution, and water pollution. They don't need hundreds so that every staff person has their favorite model and can take it off the shelf. They need to get the models together, and there is so much waste. And I don't want to get into waste, fraud, and abuse, but what they need to do is focus on what the priorities are, where they can protect public health the most, and that is where they need to do it. And if they don't get everything done but they get the major things done, that is a huge step forward, and not fight around the edges.

So that would be my free suggestion. Thank you.

Mrs. MILLER OF MICHIGAN. Thank you. I appreciate that.

Mr. Langer.

Mr. LANGER. You know, it is funny because as I am sitting here listening to Mr. Shull, I am talking about costs and benefits and how much we spend and how much time we spend measuring the costs. And it seems to me that on the other side of this issue there

is the costs and benefits of what we are doing in terms of reducing paperwork. And it is not just in the abstract. We are not cutting costs of small businesses for the sake of small businesses. It is what we are gaining down the road.

And so we might be cutting certain—we might be expending resources on OIRA at the sake of some other social programs that many Americans might not find acceptable. But what we are doing down the road is we are freeing up businesses' greater time and greater resources so they can hire those people so that we might not have to give them, you know, housing allowances because they are getting a better wage because they are going to have a better job.

So I want to just leave you with that idea, that we are not just, again, doing this for the sake of just cutting it, that there are benefits down the road in terms of the American economy. The American Shareholders Association is about to come out with a report discussing the drag that regulation has on capitalization. The National Association of Manufacturers has come to you and talked to you about the impact of regulation on the manufacturing sector.

To me, there was never any mystery during the 2004 election as to why Ohio's economy tanked. There was a reason why manufacturing fled Ohio, and it had everything to do with the great regulatory state that was created over the last 30 years. There is a direct relationship there.

And in the end, what we are talking about here is prioritization, as Bill said. We want government to prioritize what is important and what is not important. One of those things that I like about OIRA and what they are doing now, they have a great guidance that they have just put out on comparative risk assessment, which next to cost/benefit analysis is the hallmark of good regulation. And, frankly, I want an OIRA that is doing more of that because the Government needs somebody to look over the shoulders of the regulated entities, the regulated community to determine whether or not they are doing the right thing. I think the American people want that. I think that is the hallmark of good government.

You know, the fact is that down the road we want a government that protects the rights and interests of the citizens of this country, and OIRA does that and should do more of that.

Thank you.

Mrs. MILLER OF MICHIGAN. Thank you.

Ms. Koontz.

Ms. KOONTZ. I would just like to summarize some of the things that we think need to be done from this point on because of the work we have done.

Obviously, first of all, we do think that Congress should consider the pilot projects that we mentioned in our report and in doing so empower agencies to experiment in sort of a controlled fashion some alternative ways of reducing burden. And we outline our full statement all the different considerations that would have to go into that.

Second, the second issue deals with public consultation. Public consultation is very important in terms of burden reduction, and one of the things that we saw particularly in the IRS model that was very effective was this sort of sustained outreach to the af-

fected community, to trade groups, to the public, and others. And right now most of the public consultation is focused on the use of the Federal Register, and what we would like to see through pilot projects or some other means is some experimentation or some use of alternative ways of reaching the public, including using the Web sites, which I think the public is becoming much more accustomed to that being the public—the agency's face to the public. So we would like to see more of that.

And, third—and this does not have to do with amending the law. It has to go with putting in place the kind of rigorous processes in the agencies that Congress had in mind when they passed the amendments in 1995, and to ensure that the certifications are based, in fact, on justifications.

Mrs. MILLER OF MICHIGAN. Thank you.

Mr. Shull.

Mr. SHULL. I would like to make two final points.

One is that there is still a need for more transparency in OIRA's implementation of its responsibilities under the Paperwork Reduction Act. It is really unacceptable that in the information age, the Office of Information and Regulatory Affairs does not have an online docket where the public can go to file comments, to get copies of the information collections that are under review, and to get copies of OIRA's feedback to the agencies. That is possible. It is possible, as we know, with the electronic dockets for rulemaking. It really should be happening now for the Paperwork Reduction Act and the paperwork clearance process.

The other is that, again, we started by talking about the Paperwork Reduction Act is information resources management law, and many times in the course of this discussion, we have been talking about regulation. And I have seen some suggestions from the prepared statements from NFIB and from the Chamber, and I really want to stress that those ideas would really harm the public. They are really harmful, and above all, they are really controversial, and ultimately bipartisan, and would really divert too much attention away from the crucial issues of information resources management during the reauthorization of the Paperwork Reduction Act. And I really want to strongly suggest that this be a clean reauthorization without extraneous, non-germane riders that would put the public health and safety at risk.

Mrs. MILLER OF MICHIGAN. Well, again, thank you so very, very much, all of you. I sincerely appreciate your attendance here at the hearing today at the committee. I think it has been fascinating from my perspective, at any rate, and as we move forward with this reauthorization of the PRA, we certainly will take your input and suggestions into consideration. And we have some ideas for even possibly some other legislation that may come out of some of this testimony as well today.

So, again, we thank you so very, very much. The meeting is adjourned.

[Whereupon, at 5:03 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Tom Davis follows:]

Opening Statement of Tom Davis
Subcommittee Hearing
The Paperwork Reduction Act at 25
March 8, 2006

- First, I'd like to thank you, Chairman Miller, for the great work your Committee is doing to explore and document the challenges federal agencies are facing in complying with the Paperwork Reduction Act.

- Thanks also to the witnesses testifying before the Committee today. We appreciate the considerable advice you can offer this Committee on how we can make the PRA actually achieve the goals it was enacted to achieve.

- When the Paperwork Reduction Act was amended in 1995, Congress believed it had finally established a system that would decrease the reporting burden on the American public and increase and improve electronic information gathering and sharing.

- However, although agencies have been complying with the letter of the PRA, and the E-Gov Act which followed, there has been little, if any, noticeable progress in lessening the reporting burden on American businesses.

- So clearly something is wrong.

- Remember, the problem of out of control regulation is not just a problem for the bottom line in the Board Room – it's a problem for American workers' unemployment line as well.

- The good news is American workers and American businesses have learned an important lesson in the last eleven years since we passed the PRA – if the Government cannot get its act together and discipline itself to control the red tape, then American businesses can and will find places where they can operate profitably.

- American businesses can compete in the world marketplace because many have reshaped themselves to respond to the new business environment.

- This hearing will inform our Committee as to how the Federal government can reshape itself as well - to be leaner, nimbler and smarter. I look forward to hearing the testimony of these witnesses today and learning how we can improve a system that, despite our best intentions, remains outdated and overly burdensome.

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