

H.R. 5242, THE SMALL BUSINESS PAPERWORK AMNESTY ACT

HEARING

BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE

COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

H.R. 5242

TO AMEND TITLE 44 OF THE UNITED STATES CODE, TO PROVIDE FOR
THE SUSPENSION OF FINES UNDER CERTAIN CIRCUMSTANCES FOR
FIRST-TIME PAPERWORK VIOLATIONS BY SMALL BUSINESS CON-
CERNS

SEPTEMBER 26, 2006

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H.R. 5242, THE SMALL BUSINESS PAPERWORK AMNESTY ACT

TUESDAY, SEPTEMBER 26, 2006

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

The subcommittee met, pursuant to notice, at 2 p.m. in room 2203, Rayburn House Office Building, the Honorable Candice S. Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller, Lynch, and Neugebauer.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Erik Glavich and Kristina Husar, professional staff members; Benjamin Chance, chief clerk; Krista Boyd, minority counsel; and Cecelia Morton, minority office manager.

Mrs. MILLER. Good morning. The Subcommittee on Regulatory Affairs will come to order. I'm sorry I'm running a few minutes late, running up the hill.

We certainly want to welcome you all to today's hearing, particularly our special guest, Senator Vitter. We are absolutely delighted, sir, that you could take the time to come and testify before our committee on this very important topic. Certainly a good friend and great friend in the House, Representatives Neugebauer, as well. We certainly appreciate you bringing this to the subcommittee's attention and being here as well.

Today we are going to be hearing from witnesses regarding H.R. 5242, which is also titled the Small Business Paperwork Amnesty Act. Representative Neugebauer introduced this bill in April of this year and at the same time, Senator Vitter introduced a companion bill, S. 2556.

The Small Business Paperwork Amnesty Act would really give small businesses the ability to correct a first-time paperwork violation within 6 months, as long as the violation does not harm the public interest, affect internal revenue laws or threaten the public health or safety. Importantly, a small business would not be exempt from a monetary penalty if the head of an agency determines that the violation has a potential of causing harm or impairs the ability to detect criminal activity.

According to the U.S. Small Business Administration, there are about 25 million businesses with less than 20 employees. These firms actually account for over 97 percent of all U.S. businesses and roughly 30 percent of all employment. Nearly 6 out of every 10 workers are employed at a business with less than 500 employees. Their payroll contributions and tax base constitute the eco-

conomic heart and the backbone, certainly, of our competitiveness in the global marketplace.

Federal policies should help them succeed, and help to foster their advancement. But oftentimes this is not the case. Sadly, agency bureaucrats are more concerned with meeting monetary quotas for enforcement than ensuring compliance with the regulations. This attitude is well ingrained within agencies and unfairly punishes small businesses.

The regulatory burden on small business is much greater than the burden imposed on larger firms. Firms with more than 500 employees pay roughly \$5,300 per employee to comply with Federal regulations. But businesses with less than 20 employees pay more than \$7,600 per employee, or about 45 percent more, just for regulatory compliance. This burden has not been forced upon them by foreign governments engaged in unfair trade practices, it actually has been forced upon them by us. So we need to take a very good look in the mirror here I think at the Federal level.

And I'm certainly not proposing that we abolish regulations. The integrity of regulations that keep our water and our air clean and protect our children and society from harm is really a reflection of the ideals that all of us uphold. I'm suggesting that the Government provide small businesses some form of monetary relief from insignificant paperwork violations to ease the disproportionate burden that they face. This would really help small businesses, I think, without sacrificing regulatory safeguards. The legislation that we are going to be dealing with today, again, introduced by Representative Neugebauer and Senator Vitter, attempts to do exactly that. If a small business has a paperwork violation that essentially does not present a danger to the public health or safety or violate Internal Revenue laws, then the Federal agency citing the business is required to waive the civil fines for the first time only.

And I would mention that this is really not a new idea. Actually, Senator Feingold introduced legislation in the 104th Congress that included a provision very similar to H.R. 5242. In both the 105th and the 106th Congresses, the House passed regulatory reform initiatives that included the language that we are discussing today. Both bills passed with bipartisan support. Fifty-four Democrats voted for the measure in 1998 and 64 voted for it in 1999.

In March 1998, the predecessor of this subcommittee held hearings on the legislation. It was introduced by then-subcommittee chair David McIntosh of Indiana and Ranking Member Dennis Kucinich of Ohio. At the time, our colleague Mr. Kucinich offered a very good reason why members of the subcommittee should be supportive of the provision that provides penalty relief for a first-time paperwork violation. He stated, "I would like to stress that this is a very important point for every member of the committee and the public to be aware of, that this penalty relates only to civil fines not of a criminal nature. We have made sure to include language that seeks to protect the health and safety of the public." I mention that because I think it is important to point out that this should be viewed in a bipartisan prism.

Congress is not the only branch of Government trying to compel agencies to provide penalty relief to small businesses. In April

1995, President Clinton issued a memorandum directing the heads of 27 departments and agencies to waive penalties to the extent permitted by law for small businesses. The standards dictating when an agency should waive a fine are essentially the same as those included in the legislation that we will be examining today.

Unfortunately, Federal agencies did not and have not taken seriously the directive to reduce or waive fines for small businesses committing an insignificant first-time paperwork violation. In fact, many argue that things could be getting worse. Congress passed the Small Business Regulatory Enforcement Fairness Act a year after President Clinton directed agencies to provide penalty relief to small businesses. Among other things, the law requires agencies to establish policies to provide penalty relief to small businesses. It has been a decade since that law took effect, and we are still sort of concerned with the “gotcha” approach to regulatory enforcement. I think again it is time for Congress to take back some of the discretion that we have given to the agencies. Agencies seem unwilling to implement fair penalty relief to small businesses on their own, despite the wishes of Congress and Presidents. Again, I think it is time for Congress to mandate true penalty relief for the small businesses that are really the engine of our economy. Again, I want to thank the witnesses for being here. We certainly look forward to your testimony, to both of you. At this time I would like to recognize the distinguished ranking member of the subcommittee, Mr. Lynch.

[The prepared statement of Hon. Candice S. Miller and the text of H.R. 5242 follow:]

“H.R. 5242 – *The Small Business Paperwork Amnesty Act*”

Opening Statement of Chairman Candice S. Miller

Committee on Government Reform
Subcommittee on Regulatory Affairs

Tuesday, September 26, 2006
2203 Rayburn House Office Building

The Subcommittee on Regulatory Affairs will come to order. Welcome to today’s hearing. I especially want to welcome our witnesses, including my friends and colleagues—Representative Randy Neugebauer and Senator David Vitter.

Today, we will be hearing from witnesses regarding H.R. 5242, the *Small Business Paperwork Amnesty Act*. Representative Neugebauer introduced this bill in April of this year. At the same time, Senator Vitter introduced a companion bill, S. 2656. Thank you both for being here today and we look forward to your testimony on how this legislation will help reduce the regulatory burden and costs faced by this nation’s small businesses.

The *Small Business Paperwork Amnesty Act* would give small businesses the ability to correct a first-time paperwork violation within 6 months as long as the violation does not harm the public interest, affect internal revenue laws, or threaten public health or safety. Importantly, a small business would not be exempt from a monetary penalty if the head of an agency determines that the violation has the potential of causing harm or impairs the ability to detect criminal activity.

According to the U.S. Small Business Administration, there are about 25 million businesses with less than 20 employees. These firms account for over 97 percent of all U.S. businesses and roughly 30 percent of all employment. Nearly six out of every 10 workers are employed at a business with less than 500 employees. Their payroll contributions and tax base constitute the economic heart and the backbone of our competitiveness in the global marketplace. Federal policies should help them succeed and foster their advancement; but oftentimes, this is not the case. Sadly, agency bureaucrats are more concerned with meeting monetary quotas for

enforcement than ensuring compliance with the regulations. This attitude is well-engrained within agencies and unfairly punishes small businesses.

The regulatory burden on small businesses is much greater than the burden imposed on larger firms. Firms with more than 500 employees pay roughly \$5,300 per employee to comply with Federal regulations, but businesses with less than 20 employees pay more than \$7,600 per employee, or 45 percent more, on regulatory compliance. This burden has not been forced upon them by foreign governments engaged in unfair trade practices: It has been forced upon them by our Federal government.

I am not proposing that we abolish regulations. The integrity of regulations that keep our water and air clean and protect our children and society from harm is a reflection of the ideals we work to uphold. I am suggesting that the government provide small businesses some form of monetary relief from insignificant paperwork violations to ease the disproportionate burden they face. This would help business owners without sacrificing regulatory safeguards. The legislation introduced by Representative Neugebauer and Senator Vitter attempts to do exactly this: If a small business has a paperwork violation that essentially does not present a danger to public health or safety, or violate internal revenue laws, then the Federal agency citing the business is required to waive the civil fine for the first-time only.

This is not a new idea. Senator Russell Feingold introduced legislation in the 104th Congress that included a provision very similar to H.R. 5242. In both the 105th and 106th Congresses, the House passed regulatory reform initiatives that included the language we are discussing today. Both bills passed with bipartisan support: Fifty-four Democrats voted for the measure in 1998, and 64 voted for it in 1999.

In March of 1998, the predecessor of this Subcommittee held hearings on the legislation, which was introduced by then-Subcommittee Chair David McIntosh of Indiana and Ranking Member Dennis Kucinich of Ohio. At the time, my colleague, Mr. Kucinich, offered a good reason why Members of the Subcommittee should be supportive of the provision that provides penalty relief for a first-time paperwork violation. He stated: "I would like to stress, and this is

a very important point for every member of the committee and the public to be aware of, that this penalty relates only to civil fines, not of a criminal nature. We have made sure to include language that seeks to protect the health and safety of the public.” Even if a business corrects a violation within 24 hours to avoid a fine, Mr. Kucinich continued: “[T]he agency has the discretion to impose the fine if the violation is serious.”

Congress is not the only branch of government trying to compel agencies to provide penalty relief to small businesses. In April 1995, President Clinton issued a memorandum directing the heads of 27 departments and agencies to waive penalties to the extent permitted by law for small businesses. The standards dictating when an agency should waive a fine are essentially the same as those included in the legislation we are examining today.

Unfortunately, Federal agencies did not—and have not—taken seriously the directive to reduce or waive fines for small businesses committing an insignificant first-time paperwork violation. In fact, many argue that things are getting worse. Congress passed the *Small Business Regulatory Enforcement Fairness Act* a year after President Clinton directed agencies to provide penalty relief to small businesses. Among other things, the law required agencies to establish policies to provide penalty relief to small business. It has been a decade since that law took effect, and we are still concerned with the “gotcha” approach to regulatory enforcement. Maybe it is time for Congress to take back some of the discretion it has given to agencies. Agencies seem unwilling to implement fair penalty relief to small businesses on their own, despite the wishes of Congress and Presidents. Maybe it is time for Congress to mandate true penalty relief to the small businesses that are the engine of our economy.

I want to thank each of our witnesses for being here today. We look forward to your testimony. With that, I recognize the distinguished Ranking Member of the Subcommittee, Mr. Lynch.

109TH CONGRESS
2D SESSION

H. R. 5242

To amend title 44 of the United States Code, to provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Mr. NEUGEBAUER introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 44 of the United States Code, to provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Paper-
5 work Amnesty Act of 2006”.

1 **SEC. 2. SUSPENSION OF FINES FOR FIRST-TIME PAPER-**
2 **WORK VIOLATIONS BY SMALL BUSINESS CON-**
3 **CERNS.**

4 Section 3506 of title 44, United States Code (com-
5 monly referred to as the “Paperwork Reduction Act”), is
6 amended by adding at the end the following:

7 “(j) SMALL BUSINESSES.—

8 “(1) SMALL BUSINESS CONCERN.—In this sub-
9 section, the term ‘small business concern’ means a
10 business concern that meets the requirements of sec-
11 tion 3(a) of the Small Business Act (15 U.S.C.
12 632(a)) and the regulations promulgated under that
13 section.

14 “(2) IN GENERAL.—In the case of a first-time
15 violation by a small business concern of a require-
16 ment regarding the collection of information by an
17 agency, the head of such agency shall not impose a
18 civil fine on the small business concern unless the
19 head of the agency determines that—

20 “(A) the violation has the potential to
21 cause serious harm to the public interest;

22 “(B) failure to impose a civil fine would
23 impede or interfere with the detection of crimi-
24 nal activity;

25 “(C) the violation is a violation of an inter-
26 nal revenue law or a law concerning the assess-

1 ment or collection of any tax, debt, revenue, or
2 receipt;

3 “(D) the violation was not corrected on or
4 before the date that is 6 months after the date
5 of receipt by the small business concern of noti-
6 fication of the violation in writing from the
7 agency; or

8 “(E) except as provided in paragraph (3),
9 the violation presents a danger to the public
10 health or safety.

11 “(3) DANGER TO PUBLIC HEALTH OR SAFE-
12 TY.—

13 “(A) IN GENERAL.—In any case in which
14 the head of an agency determines under para-
15 graph (2)(E) that a violation presents a danger
16 to the public health or safety, the head of the
17 agency may, notwithstanding paragraph (2)(E),
18 determine not to impose a civil fine on the
19 small business concern if the violation is cor-
20 rected not later than 24 hours after receipt by
21 the small business owner of notification of the
22 violation in writing.

23 “(B) CONSIDERATIONS.—In determining
24 whether to provide a small business concern
25 with 24 hours to correct a violation under sub-

1 paragraph (A), the head of the agency shall
2 take into account all of the facts and cir-
3 cumstances regarding the violation, including—

4 “(i) the nature and seriousness of the
5 violation, including whether the violation is
6 technical or inadvertent or involves willful
7 or criminal conduct;

8 “(ii) whether the small business con-
9 cern has made a good faith effort to com-
10 ply with applicable laws and to remedy the
11 violation within the shortest practicable pe-
12 riod of time; and

13 “(iii) whether the small business con-
14 cern has obtained a significant economic
15 benefit from the violation.

16 “(C) NOTICE TO CONGRESS.—In any case
17 in which the head of the agency imposes a civil
18 fine on a small business concern for a violation
19 that presents a danger to the public health or
20 safety and does not provide the small business
21 concern with 24 hours to correct the violation
22 under subparagraph (A), the head of the agency
23 shall notify Congress regarding such determina-
24 tion not later than the date that is 60 days

1 after the date that the civil fine is imposed by
2 the agency.

3 “(4) LIMITED TO FIRST-TIME VIOLATIONS.—

4 “(A) IN GENERAL.—This subsection shall
5 not apply to any violation by a small business
6 concern of a requirement regarding collection of
7 information by an agency if such small business
8 concern previously violated any requirement re-
9 garding collection of information by that agen-
10 cy.

11 “(B) OTHER AGENCIES.—For purposes of
12 making a determination under subparagraph
13 (A), the head of an agency shall not take into
14 account any violation of a requirement regard-
15 ing collection of information by another agen-
16 cy.”.

○

Mr. LYNCH. Thank you, Madam Chair. I join the Chair in welcoming our colleagues. We appreciate your being here today to talk about your legislation. I want to begin by commending you both for your commitment to helping small businesses.

As we discussed at a recent hearing in this subcommittee, the Government's paperwork burden in the last 5 years has increased by over a billion hours. I think our efforts in terms of helping small businesses are best aimed at reducing the unnecessary part of that paperwork.

The legislation we are discussing today, H.R. 5242, has been around for a number of years now. I believe the bill overall is very well intended. Unfortunately, I don't think that this bill would reduce paperwork for small businesses. Instead it would encourage companies to break the law or circumvent the law. Under the Small Business Regulatory Enforcement Fairness Act, agencies are required to have policies in place for reducing or waiving civil penalties for small businesses, as the Chair noted. I think instead our focus should be on causing those agencies to waive those penalties when appropriate. Agencies should use this authority when appropriate, but this discretion should be left to the agencies charged with enforcing the law. I certainly agree that there are many instances where waiving the fines and penalties are appropriate.

H.R. 5242 would prohibit an agency from assessing a civil fine against a small business for a first time information collection violation. This would not just cover technical paperwork violations, it would also cover any information collection requirement, no matter how important ultimately.

Here are some examples of information collection covered by this bill: EPA requires that lead paint disclosures require landlords to notify prospective tenants about any known or potential lead paint hazard in a home prior to leasing it. Earlier this year, an administrative law judge upheld the civil penalties assessed by EPA against two Rhode Island companies that violated the lead paint disclosure rule after at least four children suffered from lead poisoning.

Another example, the Emergency Planning and Community Right to Know Act requires companies to report the presence of hazardous chemicals at a facility. And firefighters and local responders depend on having this information before they respond to a fire so they can properly protect themselves. In 2001, three firefighters were killed from an explosion of a hazardous material at a hardware store. Similarly, OSHA requires companies to notify workers of particular hazards in the workplace.

Earlier this month, OSHA cited a company partly for the company's failure to communicate to employees the hazards of working in a confined space after non-ventilated workspace contributed to the deaths of three workers. EPA and the Department of Transportation reporting requirements for transporting hazardous materials would also be circumvented by this legislation.

In 2005, two freight trains collided in South Carolina, releasing an estimated 11,500 gallons of chlorine gas, which caused 9 deaths and at least 529 people were sent to the hospital. The Public Health, Security and Bioterrorism Preparedness and Response Act of 2002 would also be affected. That law requires companies that

manufacturer, process or pack food for human or animal consumption in the United States to register with the FDA. That allows us to track them. If a company is not registered with the FDA and is making contaminated food, it could be very difficult for the FDA to trace back the contamination. Right now, we are seeing the impact of an e-coli impact from spinach. And we are having a heck of a time tracing down the source of that. CDC has reported 175 cases of e-coli so far, and it would help if we had all those companies complying with the filing requirement.

Section 409 of the Sarbanes-Oxley Act requires public companies to promptly disclose material changes in a company's financial condition to allow investors the opportunity to make informed decisions. This would be waived.

We also have a provision that in order to prevent illegal immigrants from working in the United States, employers are required to verify that workers are eligible to work in the United States by completing an INS form I-9. This would also allow those employees to fail to file. It is tough to police without the filing. Yet there would be no penalty.

Agencies already must deal with fewer and fewer resources, which makes it hard enough to enforce these important laws. This bill would make this task even tougher. The exceptions in H.R. 5242 are very, very narrow, too narrow to fix the glaring problem. These exceptions can only be used if the head of an agency makes a finding, for example, that a violation has the potential to cause serious harm.

But in the first instance, the agency often has to become aware of the need to take an enforcement action based on the information collected from a company. So if they are not filing the information, we will never know about it. An agency may not know whether a violation presents a danger to the public until it is too late.

Giving companies a free pass to break the law would weaken the incentives of small businesses to comply with the law, because they would know that even if they got caught they wouldn't face consequences. The fact of the matter is, the overwhelming majority of small businesses obey the law. This bill would put those law-abiding companies at a severe disadvantage competitively with those who break the law. We need to look carefully at how we can help the small businesses that are doing the right thing and need a break in a way that doesn't jeopardize our health, safety and environmental protection.

Madam Chair, I yield back.

Mrs. MILLER. Thank you very much.

Our first witness this afternoon is Congressman Randy Neugebauer, from the 19th District of the great State of Texas. He is the author, of course, of the legislation that we are discussing today, H.R. 5242, the Small Business Paperwork Amnesty Act of 2006. The Congressman is in his second term of office and he serves on the House Committee on Agriculture as well as Financial Services. Before coming to Congress, he served as the President and CEO of Lubbock Land Co., which is a residential and commercial land development company which created many successful subdivisions in that area. So he certainly understands the challenges

that are faced by many small businesses, and we welcome you to the subcommittee and look forward to your testimony, sir.

STATEMENTS OF HON. RANDY NEUGEBAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; AND HON. DAVID VITTER, A U.S. SENATOR FROM THE STATE OF LOUISIANA

STATEMENT OF HON. RANDY NEUGEBAUER

Mr. NEUGEBAUER. Madam Chairman, thank you very much. I also want to congratulate Senator Vitter and the city of New Orleans and the State of Louisiana on a great night last night. I know all of us are excited about the things that are going on there. I also appreciate the Senator's support of this legislation.

Chairman Miller, Ranking Member Lynch, members of the subcommittee, thank you for the opportunity to appear before this subcommittee to discuss an issue of tremendous importance to small businesses. I appreciate your willingness to hold this hearing at my request. Most of us can agree that the Federal Government requires a substantial amount of paperwork for small businesses. When I listen to small business owners back home in West Texas, they continually reaffirm this reality, and they want me to know that what we are doing here in Washington is impacting them.

As a former small business owner myself, I can sympathize with their frustration. For these reasons, I introduced the Small Business Paperwork Amnesty Act in April of this year. I strongly believe that this legislation will go a long way in reducing this burden by bringing some common sense to the relationship between small business owners and the Federal Government.

Over the past decade there has been a growing effort in Congress to reduce the burden the Federal Government places on small businesses. While there have been some small victories along the way, this effort has met fierce opposition by special interest groups and not surprisingly from the Federal regulators themselves. In the late 1990's, former Representative David McIntosh, who was chairman of this subcommittee, introduced a similar bill that was approved by this subcommittee. While a broader scope, Mr. McIntosh's bill, the Small Business Paperwork Reduction Act of 1998, included the same provisions that are found in the Small Business Paperwork Amnesty Act that I have introduced. The House of Representatives passed that bill overwhelmingly with an overwhelming majority. Unfortunately, our colleagues in the Senate were unable to pass with similar results.

Some may wonder, why am I taking on this issue almost 8 years later? Well, the fact is, time has not diminished the need for this legislation. If anything, the passage of time has only increased the need. According to the National Federation of Independent Businesses, which you will hear from today, small businesses with fewer than 20 employees face regulatory costs of over \$7,600 per employee per year. Each year these costs continue to increase because the Federal regulations continue to increase.

Today you will also hear from Mr. Jim Wordsworth, who operates J.R.'s Stockyards Inn located in McLean, Virginia. He will testify about the amount of regulation he must comply with and the

impact on his business. I can sympathize with Mr. Wordsworth, because I have been in his shoes before. Indeed, many business owners live in fear of Federal regulations. This fear is not because they are in violation of any regulations that they know about, but because they may be in violation of regulations that they are not even aware of.

This “gotcha” mentality on the part of the Federal agencies is at odds with the core principles of our economy. I believe we have the responsibility to fight this mind set. We must begin with common sense reforms.

From my personal experience, I know that for a small business owner to be successful, he must diligently manage his two greatest assets: resources and time. More often than not, these things are in short supply. The cost of compliance to obscure regulations further eat away at both. We must find ways to help small business owners comply with paperwork requirements so that they can devote more time and resources to growing their businesses, creating new jobs, and thus expanding the economy.

Due to the sheer volume and complexity of the Federal regulations, even the most diligent small business owner may inadvertently make an error or miss a deadline associated with Government paperwork. The Small Business Paperwork Amnesty Act will prevent bureaucratic agencies from imposing excessive civil fines on small businesses for first-time inadvertent paperwork violations. This bill will not exempt any business from any paperwork requirements. I want to repeat that comment: this bill will not exempt any business from any paperwork requirements. It just gives leeway for business owners to correct first-time mistakes. If the business does not comply within the first 6 month period, the fine will be imposed.

Furthermore, this legislation will provide relief while still providing for the safety and health of our communities. Only those paperwork violations that do not threaten the public welfare will be eligible for a second chance. A common misconception concerning this legislation is that it will somehow lead to more non-compliance or that agencies could not enforce penalties for violations that could harm the public. This is simply not the case. In the event that a paperwork violation would harm the public welfare or present an imminent threat to the environment, this bill gives the agency full discretion to impose civil fines under the law.

However, the agency may give the small business, and I would say may give the small business owner, 24 hours rather than 6 months to fix the violation. In other words, if a company swiftly and faithfully correct an inadvertent mistake, only then will they be eligible to receive a second chance under this bill. By giving these agencies this broad discretion, we can be confident that those agencies will be able to use this authority to carry out the mandate that we have entrusted them to fulfill. The Small Business Paperwork Amnesty Act strikes the right balance between reducing the burden placed on small businesses and our responsibility to protect communities and the environment.

In closing, I would like to say that here in Washington, it is easy for some of us to forget the proper role of Government, the reason that we are here in the first place. Personally, I believe that Gov-

ernment is accountable to the people and not the other way around. This philosophy is at the heart of this legislation and I hope that this can be the basis of our discussion here today. Again, thank you, Chairwoman Miller, for holding these important hearings. I look forward to the testimony of my colleague, Senator Vitter, and the witnesses on the second panel. Thank you.

[The prepared statement of Hon. Randy Neugebauer follows:]

Testimony
Rep. Randy Neugebauer
House Government Reform Subcommittee on Regulatory Affairs
September 26, 2006

Chairwoman Miller, and members of the Subcommittee, thank you for the opportunity to appear before this Subcommittee to discuss an issue of tremendous importance to small businesses. I appreciate your willingness to hold this hearing at my request.

Most of us can agree that the Federal government requires a substantial amount of paperwork from small businesses. When I listen to small business owners back home in West Texas, they continually reaffirm this reality, and they want to know what we're doing about it here in Washington. As a former small business owner myself, I can sympathize with their frustration.

For these reasons, I introduced the Small Business Paperwork Amnesty Act in April of this year. I strongly believe this legislation will go a long way to reducing this burden by bringing some common sense to the relationship between small business owners and the federal government.

Over the past decade, there has been a growing effort in Congress to reduce the burden the Federal government places on small businesses. While there have been small victories along the way, this effort has been met with fierce opposition by special interest groups, and not surprisingly, from the federal regulators themselves.

In the late nineties, former Representative David McIntosh, who was then Chairman of this Subcommittee, introduced a similar bill that was approved by this Subcommittee. While broader in scope, Mr. McIntosh's bill, the Small Business Paperwork Reduction Act of 1998, included the same provisions that are found in the Small Business Paperwork Amnesty Act. The House of Representatives passed that bill by an overwhelming majority. Unfortunately, our colleagues in the Senate were unable to produce similar results.

Some may wonder why I have taken on this issue almost eight years later. The fact is, time has not diminished the need for this legislation. If anything, the passage of time has only increased the need.

According to the National Federation of Independent Business, whom you will hear from today, small businesses with fewer than 20 employees face regulatory costs of over \$7,600 per employee per year. And each year, these costs continue to increase, because federal regulations continue to increase.

Today you will also hear from Mr. Jim Wordsworth, who operates J.R.'s Stockyards Inn located in McLean, Virginia. He will testify about the amount of regulations he must comply with, and the impact it has on his business.

I can sympathize with Mr. Wordsworth, because I have been in his shoes before. Indeed, many small business owners live in fear of federal regulators. This fear is not because they are in violation of regulations they know about, but because they may be in violation of regulations they are not even aware of.

This “gotcha” mentality on the part of federal agencies is at odds with the core principles of our economy. I believe we have a responsibility to fight this mindset. We must begin with common sense reforms.

From my personal experience, I know that for a small business owner to be successful, he or she must diligently manage their two greatest assets: resources and time. More often than not, these two things are in short supply. The costs of compliance to obscure regulations further eat away at both.

We must find ways to help small business owners comply with paperwork requirements so they can devote more time and resources to growing their businesses, creating new jobs, and thus expanding our economy.

Due to the sheer volume and complexity of federal regulations, even the most diligent small business-owner may inadvertently make an error or miss deadlines associated with government paperwork.

The Small Business Paperwork Amnesty Act will prevent bureaucratic agencies from imposing excessive civil fines on small businesses for first-time, inadvertent paperwork violations.

This bill will not exempt any business from any paperwork requirements. It just gives leeway for a business owner to correct a first-time mistake. If the business does not comply within a six-month time period, the fine will be imposed.

Furthermore, this legislation will provide relief while still providing for the safety and health of our communities. Only those paperwork violations that do *not* threaten the public welfare will be eligible for a second chance.

A common misperception concerning this legislation is that it would somehow lead to more noncompliance, or that agencies could not enforce penalties for violations that would harm the public. This simply is not the case.

In the event that a paperwork violation would harm the public welfare or present an imminent threat to the environment, this bill does give the agency full discretion to impose the civil fine under current law. However, the agency may give the small business 24 hours, rather than six-months, to fix the violation. In other words, if a company swiftly and faithfully corrects an inadvertent mistake, only then will they be eligible to receive a second chance under this bill.

By giving agencies this broad discretion, we can be confident that those agencies will be able to use their authority to carry out the mandate we have entrusted them to fulfill.

The Small Business Paperwork Amnesty Act strikes the right balance between reducing the burden placed on small businesses, and our responsibility to protect our communities and the environment.

In closing, I would like to say that here in Washington, it's easy for some to forget the proper role of government, and why we're even here in the first place. Personally, I believe our government is accountable to the people, and not the other way around. This philosophy is at the heart of this legislation, and I hope this can be the basis of our discussion here today.

Again, thank you Chairwoman Miller for holding this important hearing. I look forward to the testimony of my colleague, Senator Vitter, and the witnesses on the second panel. Thank you.

Mrs. MILLER. Thank you very, very much, Representative. We appreciate that testimony. Senator Vitter, out next witness, we certainly appreciate your coming. Actually, before you were elected to the Senate, you served three terms in the House of Representatives where you were a member of the Government Reform Committee.

During his tenure in the House, he authored and passed legislation establishing a prescription drug program for military retirees, advancing missile defense and cleaning up Lake Pontchartrain as well. For his work in Congress, Senator Vitter has received numerous awards from leading organizations, such as Americans for Tax Reform, the 60 Plus Association and the Family Research Council. In the Senate, he serves on the Committees of Commerce, Science and Transportation, Environment and Public Works and Small Business and Entrepreneurship.

We are certainly glad to have you back on our side of the Capitol, Senator, and the floor is yours, sir.

STATEMENT OF HON. DAVID VITTER

Senator VITTER. Thank you very much, Madam Chair. Thanks for the invitation and thanks for your leadership. It is a real honor and pleasure to be here, particularly since I am a former House Member and a strong conservative. As both, I don't drink from the water fountains over there, so it is particularly refreshing to get back here, where I can do that freely and breathe a little fresh air. Thank you for having this very important hearing about a very important topic.

I share Randy's concerns, because I share his experiences. I know in Louisiana, I talk to business, particularly small business folks all the time. And they always talk to me about the regulatory and the paperwork burden. I hear directly those stories about their dealing with EPA or the Army Corps of Engineers, the Coast Guard, SBA, Commerce, IRS, Customs, just to name a few. Of course, on top of that, there is a State bureaucracy that poses additional issues, Department of Revenue, Labor, Wildlife and Fisheries, Insurance. So they face a real burden which has been growing as they face other growing burdens, health care costs and other things. It is just getting out of hand and they tell me about that very directly, as they do to Randy in his home district.

Having lived in the last couple of years through Hurricanes Katrina and Rita, in some sense some of those experiences have been magnified even more. Because of course you have an extraordinary presence now of certain agencies like FEMA and the Corps of Engineers. Unfortunately, although there has been extraordinary commitment by the Congress, and extraordinary help in many ways, unfortunately the sort of paperwork burden is pretty extraordinary in a lot of those cases, too. So I hear directly about that.

And of course, a lot of this, as you said yourself, has been quantified by folks like the SBA Office of Advocacy. You mentioned businesses with fewer than 20 employees spending more than \$7,600 per employee just to comply with Federal regulations. NFIB estimates that all told, Americans spend about \$400 billion, \$400 billion with a B, on this Federal paperwork cost. That is the same general amount of spending that we are going to pass later this week in the Defense Appropriations bill, to fund all of our defense

when we are at war. It is pretty staggering that we are wasting that same amount on pure paperwork burden.

Now, I certainly want to echo Randy's words and your words, we are not getting rid of a single requirement. We need to do that. We are acting to do that through other legislation. But in this bill, we are not getting rid of a single requirement. We are certainly not stripping away key health and safety regulation. We are simply adopting a common sense rule while we work through these regulations, while we hopefully narrow the scope and lessen the burden. While we do that, a simple rule that first-time violators will get some relief if the regulation at issue doesn't affect public health and safety.

With regard to that, I certainly want to directly address the comments of your ranking member. I am sorry he couldn't stay, because I really wanted to have this discussion with him. Virtually every example he used, if not every single example he used, clearly falls into the exceptions in the bill, clearly his focus went directly at public health and safety or potential serious harm to the public interest. So in the bill, we clearly address that and clearly say no, we are not talking about that. That isn't automatically waived. It could be waived. There is discretion to waive it if the company comes in and complies within 24 hours, which is obviously a very narrow timeframe. And even then, the regulatory agencies doesn't have to waive the civil penalty.

I think this is an enormously important point. Again, virtually all if not every case he mentioned, is accepted in the bill. In other words, those cases would not be governed by the normal meat of the bill. It would be an exception to the bill.

And again, what are we talking about? Well, the violation would cause serious harm to the public interest. Everything he said would have done that. If it would impair criminal investigations, if it would concern the collection of taxes, if it would present a danger to public health or safety, I think about everything Congressman Lynch said, would do that. Again, in those cases there wouldn't be this waiver.

And again, as Randy mentioned, I think it is very important to say, we are only talking about civil penalties. Congressman Lynch repeatedly used the term breaking the law, which is technically correct, but it certainly makes it sound criminal. And by definition, we are not talking about anything criminal, by definition.

Again, this is really important to folks I represent. This is really important to small business in Louisiana, was before Hurricanes Katrina and Rita, it is even more so now because we have greater need and therefore greater Federal help and resources, which is great. But also much greater regulatory burden as part of the Stafford Act and all of hurricane response. We are certainly not complaining about the very generous response, but it makes this sort of common sense approach to a regulatory and paperwork burden that has gotten out of hand even more important right now.

With that, Madam Chair, I thank you again for the kind invitation for me to be here. I thank Representative Neugebauer again for his leadership on this. I should say, and I want to give credit where credit is due, we have both picked up the mantle of folks who have come before us. Dave McIntosh, who was in the Congress

before us, started this. We took over the bill from him. There have been others, as you mentioned, including Democrats who have proposed largely the same thing. We are continuing that fight, and it is something we absolutely need to do quickly.

Thank you.

[The prepared statement of Hon. David Vitter follows:]

Sen. David Vitter, Louisiana
Testimony before the House Government Reform Subcommittee on
Regulatory Affairs
Hearing on the Small Business Paperwork Amnesty Act of 2006
September 26, 2006

Chairwoman Miller and members of the Subcommittee, I want to thank you for holding this hearing today. The topic of the hearing – the Small Business Paperwork Amnesty Act – is very important, and I am thankful for the invitation to be here today.

There are so many agencies that our small businesses have to answer to and file paperwork with that it is sometimes a wonder to me how it can be done and still leave time to run a business, grow a business, or do anything else. I know businesses in Louisiana, depending on the nature of the business or where the business is located, have to deal with many federal agencies. Off the top of my head, these agencies include the EPA, the Army Corps of Engineers, the Coast Guard, SBA, Labor, Commerce, IRS, and Customs, just to name a few. And that doesn't even count the state regulatory agencies, such as the Departments of Revenue, Labor, Wildlife and Fisheries, Insurance, Environmental Quality, and others. And then there are local governments. The compounded effect of these levels of regulation can be suffocating to the entrepreneurial spirit of small business owners.

While I understand the need for some basic level of regulations to protect consumers and to protect the public health and welfare, the massive amount of regulations and paperwork small businesses face today is overwhelming and way beyond what is reasonable to protect the public. The compliance costs grow each year, increasing the cost of doing business and hampering our competitiveness in the world market.

In September of last year, the SBA Office of Advocacy released a study that gave us a glimpse of the burden small businesses have from federal regulations. Businesses with fewer than 20 employees spend more than \$7,600 per employee to comply with federal regulations. In addition, NFIB estimates Americans spend more than \$400 billion in costs relating to federal paperwork. That is nearly the amount of spending we will pass later this week in the Defense Appropriations bill – what a staggering waste of time and resources on paperwork!

While we have made significant progress in the past with the passage of other regulatory relief legislation, there is still much to do. I will continue to advocate for reductions in regulatory costs and burdens, a fairer and simpler tax code, and a drastic reduction in time-consuming, often duplicative paperwork demanded from government agencies. However, as we continue to push for these drastic reforms, we need a temporary release valve, a quick solution.

Too often, from reports I have heard from small business owners, the federal regulators seem to be playing a “gotcha” game – fining small businesses for paperwork violations just for the sake of issuing the citation. Bureaucrats, too often, act in an oppressive way with the regulatory power they yield.

With the massive burden I briefly mentioned, and that the subcommittee will hear more about during the second panel today, there should be understanding and forbearance when minor paperwork violations occur. The intent of paperwork fines should not be to create a new revenue stream from fines or to make criminals out of small business owners. Instead, these regulations, while currently being way out of hand and costly as I mentioned, are intended to protect the general health, protect our environment, or protect consumers. If a minor paperwork violation occurs, federal regulators should have the ability to waive fines for first time offenses and allow the business owner to correct the problem in a reasonable time frame.

The Small Business Paperwork Amnesty Act of 2006, which I introduced in the Senate and which Rep. Neugebauer introduced in the House, would help give small businesses some small amount of relief from the federal regulatory regime. Our former colleague Rep. David McIntosh of Indiana first introduced this legislation in 1998, and after he left Congress, I introduced it in the 107th and 108th Congresses while I was serving in the House of Representatives. This Congress, I have introduced it in the Senate, and I am pleased to be working with Rep. Neugebauer as the lead sponsor in the House.

This bill would direct federal agencies not to impose civil fines for a first-time paperwork violation by a small business unless the violation would cause serious harm to the public interest, impairs criminal investigations, concerns collection of taxes, is not corrected within six months, or presents danger to public health or safety. Also, the bill says that fines can be waived in the case of a violation that could present a danger to public health or safety if the violation is corrected within 24 hours of the small business receiving notification of the violation.

So, in short, this bill would provide a reasonable, one-time pass for minor paperwork violations, unless the violation is of a grave nature and as long the small business owner corrects the problem promptly. That is a reasonable thing to do, and I believe it is something we should do now, while we continue to work on broader reform of our regulatory system and to lower the burdens on small businesses.

I know many of the arguments against this bill are that it would encourage business owners to break the law. Opponents of the bill may argue that devious business owners could wait for their free shot before filling out required documents. I cannot see how that could be the case, as the bill does not remove any obligations, only temporarily providing relief from fines. Also, the bill expressly limits the relief to first time violations, not a series of violations regardless if they are caught right away or not. And, there are the exceptions that preserve fines in case of serious violations.

The intent of the bill is to inject some common sense into our regulations. With so much paperwork required from small businesses, with so many I's to dot and T's to cross, it is easy for business owners to make minor mistakes. These fines can be very punitive, many times with assessments in the hundreds or thousands of dollars a day. I do not think we should bring down the hammer on innocent mistakes. Instead, we should focus our enforcement efforts on serious violators and let minor violations be corrected without excessive fines.

This bill is particularly relevant to Louisiana's efforts to recover from Hurricanes Katrina and Rita. The small business base in south Louisiana was devastated. In many areas, it will be like starting from scratch, as they work to recover from the destruction. Small businesses are vital to our long term economic recovery. Surely, with so much on the line for our communities, and with so many bureaucratic delays already hindering our recovery, the last thing we need for our struggling small business community is assessment of major fines for minor paperwork violations.

I look forward to continuing our efforts to pass this bill and to promote the greater need of regulatory relief for our small businesses. This bill is an important interim step in that process.

Again, I want to thank you, Madam Chair, for having this hearing.

Mrs. MILLER. Thank you very much, both of you. We are delighted to have you both here and certainly when Representative Neugebauer approached me on this issue, I was very enthusiastic about holding this subcommittee hearing on this piece of legislation. This is a committee that has really studied what we can do to assist every level of business, quite frankly, in America, with various types of regulatory burdens.

I appreciated your comment that you think in Government we need to be accountable to the people. Sometimes we all have to remember that famous saying, I am from the Government and I am here to help you. When small businesses and others hear us say that, they dive for cover under the table sometimes.

One of the first hearings we actually had in this subcommittee, Governor John Engler, former Governor from the great State of Michigan who is now the Executive Director of the National Association of Manufacturers, had a very interesting testimony to this subcommittee where he talked about a study that NAM has done recently that shows that the structural burden, structural cost for American-made manufactured goods is about 22, 23 points higher than any of our foreign competitors. A principal reason for that, a huge component, not the only reason, but a big reason for that is because of the regulatory burdens that businesses do face. So when we see exodus of manufacturing jobs or other types of industry that leaves our shores and perhaps goes to other countries in a competitive, global marketplace, if we are coming from Michigan, where you all know what is happening to the American automobile industry, we have unfortunately sort of an economic hurricane that is hitting Michigan right now. But as we see some of these jobs leaving our Nation to China or India or Mexico or wherever they are going, guess what? Those nations did not place these regulatory burdens on us. We did it to ourselves.

So the idea that you have here I think is great. I know, Senator, you testified a bit about the burden, the regulatory cost of compliance for every level of business, but particularly small businesses that might have just a few employees. And it makes some inadvertent error, and then it is like a year in jail for jaywalking or something. I think the standard always has to be, what is reasonable. That is something that I think all of us in Congress, both Republicans, Democrats, what have you, need to look at.

I guess I would ask this. How do you, particularly Senator, with the kinds of experiences that you have had in your State, the horrific natural things that have happened there, how do you foresee this piece of legislation helping a new business, perhaps a small business starting up, just trying to restart their business?

Senator VITTER. Well, again, it gives a new business, a new small business a chance. There is a huge difference between the Xeroxes or the GMs of the world and small business, which account for most of the jobs in this country and an even greater percentage of the jobs in a State like Louisiana. One of the differences is big, big companies can have full time staffs. They have teams of people that comb through everything we pass, every Congress and how it impacts their business and what new reports they have to issue and how they are going to issue.

Well, guess what? If you have a small business of 20 people, you don't have that sort of team. In fact, you don't have a single person who can possibly do that. So we are talking about a brand new requirement that is often created by a brand new bill that we pass here that a small business of 20 people in Louisiana has no idea has come into existence. All of a sudden, they can be hit for very serious civil fines the first time there is non-compliance.

This is simply saying, first-time offense, and again, this is very important, that is what we are talking about, first-time offense, we are not talking about a pattern, we are not allowing that to develop. First-time offense, civil penalty, you are not putting people in a health or safety danger. That is going to be waived. That is a huge relief to small business. When you are trying to get a business up and running, that sort of monetary financial threat, just like a liability threat from lawsuits, can not only be crushing in practice, it can be so intimidating that you never start the venture.

So I think it is a major factor. And I would echo your comments. We talk about the problems of global competition. To me, in any challenge you are facing in life, no matter what it is, as an individual, as a Congress, as a company, no matter what it is, there are some things that are going to be beyond your control, but there are some things that are going to be within your control. No matter what that challenge is, you are always a lot better off focusing on the things that are within your control and doing something about it. And this is within our control. And this is a factor in global competitiveness.

I will be the first to admit, not everything that hurts us in that global competition is within our control. Labor costs in India are not within our control. This is. The regulatory environment, the litigation environment, the taxation environment is. We need to do something about it.

Mrs. MILLER. Representative Neugebauer, I would ask you the same question.

Mr. NEUGEBAUER. I think that is a great question. I was thinking back, and the way I relate to a lot of issues we have up here is from my own experience. I was thinking about in 1980 when I started my construction company, my home building company. My day started early, getting on the phones and ordering materials to the jobs and then making sure that the subcontractors were going to be there, starting to tour the jobs and go back and discover that some materials that I had ordered weren't there, having to go back, this is pre-cell phone days, and call and make sure that the lumberyard—and all day long. Then trying to find the time to meet with a client so I could sell some more homes.

When I think about the small business person today, whether it is a man or a woman, is that they wear so many hats. For 1 hour I am the construction supervisor, I am the material orderer, I am the purchase agent, I am the accountant, I am payroll, I am compliance. And all of those various hats. When I first started in business in 1980, I spent about 90 percent of my time actually doing what I call productive things, that is selling and building, and 10 percent of my time was fooling around with compliance of various regulations.

But over the years, I saw this huge increase in the amount of regulation, in the amount of governance in my industry to where I really, just before I came to Congress, realized I was spending 70, 80 percent of my time trying to make sure that I was in compliance with some very sophisticated rules and regulations that the Government put on me, because of punitiveness of the fine was major.

So small businesses are capitalized thinly to begin with. And then you go in and start fining them for an inadvertent mistake, it sends the wrong signal to business. It sends the wrong signal to America as the Senator said. In America, 95 percent of our jobs are created by small business people in this country. And in District 19, I can tell you about 100 percent of them are, because we would love to have an automobile plant in District 19.

But we don't have that. So I think what we are just saying here, and I think the term, using our head, using common sense, is the approach that we send the signal to small business, you know what, we want you to start a new business and we are going to help you start that new business, rather than saying, we can't wait for you to start that new business so we can get you. That is the signal that we are talking about here. We are trying to send a signal, let's start more small businesses. That is the American dream. And let's make Government a part of the solution and not part of the problem.

Mrs. MILLER. I appreciate that. My background, actually, before I got involved in politics, was in the marina business. My family sold boats for a living, my dad built some of the first fiberglass sailboats in the world, actually. I can remember as a kid being around the epoxies and the resins and all the woven, the different kinds of materials, etc. Today you can't have two or three guys in the back building a boat, because of the regulations. My brother is still in the boat business and I can't believe, I won't even tell you what he had to go through to put a paint booth in his place. But again, these are small businesses.

But of course we want to ensure, I always say the standard has to be reasonable. We want to make sure that as we progress as a Nation that we do have reasonable standards in place for worker safety, for environmental kinds of regulatory affairs, etc. Let me just play the devil's advocate and ask a final question to you both, in the interest of time, since my ranking member unfortunately had to go to another hearing. I think he might ask this question if he was here, about some people are saying that because of this, you might have companies that would start doing things, like dump mercury into the lakes or some sort of pollution or what have you. What would your response be to somebody who would be very critical of this legislation? Either one of you?

Senator VITTER. If a company starts dumping mercury into the environment because of this bill, they clearly haven't read the bill. Because that sort of violation clearly is not covered in the bill. That clearly impacts public health and safety. That clearly doesn't get a pass at all.

In addition, we are only talking about first-time violations. By definition we are not talking about a string or pattern of violations, we are not allowing that to develop. In addition, to get any waiver of civil penalties, the folks have to comply. So they have to comply

with the requirement, all the requirements. So again, I think it was rather distracting to the discussion, to put it kindly, when Congressman Lynch went through this litany of abuses that clearly, clearly fall within the category of public health and safety threat. Because those don't get an automatic pass under the bill at all.

Mr. NEUGEBAUER. I think Congress can testify to the fact that we can't legislate morality, and we can't legislate people doing the right thing. We have given it a really good try for about 230 years, and we have figured out that people that are going to obey the law, that are going to uphold the law, that are going to play by the rules are going to do their very best to do that. There are always going to be those.

The good news about this, this bill has no benefit for those people who don't want to play by the rules. It has absolutely no benefit for them. This bill is for the good guys, the good men and women that are trying to run a small business, keep their small business. And as the Senator said, if you have a pattern saying, oh, yes, I forgot that report again, you don't get any help under this bill, because we have been down that road with you before, this isn't your first time. As we say in Texas, this isn't your first rodeo.

So what I think the people that would talk about that are trying to distract from this bill are the same people that want to pass more regulations, want to make more burden on small businesses and aren't really interested in giving small business a break. That is really what this does, is it gives small business people a break, gives them a second chance.

Mrs. MILLER. OK. Thank you again very, very much for taking time out of your schedule to testify before the subcommittee. Representative, I certainly look forward to continuing to work with you to push this very necessary legislation through the process if we can.

Thank you both very much. We will adjourn for a moment for our next panel.

[Recess.]

Mrs. MILLER. Before you all sit down, I will ask you all to raise your right hands. Because the subcommittee has subpoena authority, we swear everybody in.

[Witnesses sworn.]

Mrs. MILLER. Thank you very much.

We appreciate you all coming to the second panel. Our first witness of the second panel this afternoon is Mr. James Wordsworth, who is the owner of J.R.'s Stockyards Inn in Virginia, located at Tyson's Corner. In addition to J.R.'s Steakhouse, he is also the owner of two corporate picnic facilities in McLean and Leesburg, VA, an off-premises catering company, a marina in Stafford County and a company that builds and designs modular prisons. Mr. Wordsworth has served as a general partner in several small limited partnerships that acquired raw land and planned, zoned and developed subdivisions, featuring amenities such as golf courses and waterfronts. He is here today representing the U.S. Chamber of Commerce, where he was elected to the board of directors in June 2001.

Mr. Wordsworth, we appreciate your attendance today and the floor is yours, sir.

STATEMENTS OF JAMES M. WORDSWORTH, PRESIDENT, J.R.'S STOCKYARDS INN, MCLEAN, VA; KAREN HARNED, EXECUTIVE DIRECTOR, NFIB LEGAL FOUNDATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES; AND J. ROBERT SHULL, DEPUTY DIRECTOR, AUTO SAFETY AND REGULATORY POLICY, PUBLIC CITIZEN

STATEMENT OF JAMES M. WORDSWORTH

Mr. WORDSWORTH. Thank you, Chairwoman Miller. My name is Jim Wordsworth, I am the owner of J.R.'s Stockyards Inn, a fine dining steakhouse in McLean, Virginia. I am also the owner of several other small businesses, and a marina is one, and I understand that is your family's background as well.

I am here today on behalf of the U.S. Chamber of Commerce. I would like to begin by pointing out that there are several common threats that are universal to Government paperwork: the burdens imposed by agencies on businesses and individuals. First is the sheer volume of paperwork requested. I hold in my hand a 266-page document, I would like for you to see this document. These are single spaced documents that list the 5,960 forms, and these are just the lists of the forms, not the forms, forms and instructions generated by 109 bureaus and departments of 49 agencies. That is within the Federal Government. It does not include the State and local government agency forms.

If I were to print all the forms and the instructions out, print them out, the stack of paper would exceed the height of the tallest person in this room. And that stack only grows. In its 2002 report to Congress, OMB stated that all agency regulations imposed over 7.65 billion hours of paperwork in fiscal year 2001. Just 4 years later, that total has risen to 8.4 billion hours. This represents an increase of 750 million hours.

The second point I would like to make is when Government agencies estimate the time it takes to fill out the paperwork, they almost never take into account the time it takes to collect, to organize, and retrieve the information that they have asked for. If they take into account this number, it would be much larger.

The third characteristic that most forms have in common is that there generally is a penalty associated with filling out the forms incorrectly. In many cases, the penalty applies whether the mistake was intentional or not. Although I try to fill out every form in a timely manner, with due diligence and care, as a small business owner my primary concern is running my business and keeping my customers happy. Having provisions passed in the law such as those contained in H.R. 5242, the Small Business Paperwork Amnesty Act of 2006, that provides for the suspension of fines under certain circumstances for first-time paperwork violations by small business owners like myself, would act as a fail-safe in the case that I make an inadvertent error when filling out such a form.

This bill is strongly supported by the U.S. Chamber and contains adequate protections to avoid excusing fines, adequate protections to avoid excusing fines, for violations that could present a danger

to public health or safety or cause serious harm to the environment or public interest that Congressman Lynch pointed out.

I would like to also highlight just a few examples of how this bill, if enacted into law, could affect my business. The Census Bureau has a number of forms that are sent out to businesses for the collection of data in order to distill the results into valuable statistical information. Just recently, my wife and I were in an unfortunate accident that required a lengthy rehabilitation. During this time away from our business, both of us away, if one of my employees inadvertently misplaced or disposed of a census survey request for data, not realizing the importance of the document, or attempted to fill it out and didn't fill it out correctly or completely to the best of their knowledge, my company could be fined up to \$500. I have very capable managers that work for me and run my business while we are out. But their expertise is in running the business, not in filling out forms.

Additionally, during my wife's and my convalescence, the management had to do extra duty to make up for our absence, so they worked very long hours. It could be very understandable and foreseeable that under those conditions that this type of request could fall through the cracks. Adequate safe harbors contained in this bill would provide me with a cushion that is needed to avoid an expensive fine during this very difficult time.

Another example where the bill's provisions may apply is in filling out I-9 forms. Under current law, first-time immigration paperwork violations, which are very complex, for failure to properly prepare and file I-9 forms, could result in civil penalties from \$100 to \$1,000.

The concept of waiving penalties for minor paperwork violations for small businesses is not something new. Section 223 of Public Law 104-121 requires agencies to establish a policy or program to provide for the reduction, and under appropriate circumstances for the waiver of civil penalties for violations by small businesses. Passage of H.R. 5242 would incrementally extend the existing law to apply what agencies already do and have already been doing for all paperwork violations to first-time minor paperwork violations, something that from my point of view would seem very logical and very helpful and consistent with the current intent of Congress under the present law.

In closing, I would like to again thank the committee for holding this hearing and for its interest in the Small Business Paperwork Amnesty Act. I would welcome any questions that you might have.

[The prepared statement of Mr. Wordsworth follows.]

**Statement on
The Small Business Paperwork Amnesty Act of 2006
Hearing before the
THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS
on behalf of the
U.S. CHAMBER OF COMMERCE
by
James Wordsworth
President, J.R.'s Goodtimes, Inc.
McLean, Virginia
September 26, 2006**

Good morning Chairwoman Miller and distinguished members of the Subcommittee. Thank you for asking me to testify before you today. I commend you for your efforts in having this important hearing to explore waiving minor first time paperwork violations for small businesses where the violation does not present a danger to the public health or safety.

I am Jim Wordsworth, President of J.R.'s Goodtimes, Inc. and the owner of several small businesses. I am here to speak with you today on behalf of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small

businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

I have been a member of the Chamber since 1990 and serve as the chair of its Council on Small Business and as the chair of its Labor Relations Committee. I was elected to its Board of Directors in June of 2001.

Small business has been a common thread throughout my entire life. I grew up in North Carolina where I worked in a number of small businesses owned by my father, mother, grandfather, and uncles. I moved to the Washington, DC area in 1970 to work as a large computer system's account manager for Burroughs Corporation.

In 1974, while working with Burroughs, I took my life savings and a small business loan and opened J.R.'s Steak House of Virginia, a small 130-seat fine dining restaurant. As the Steak House proved successful, in 1978, I opened J.R.'s Stockyards Inn, a 250-seat fine dining restaurant in Tysons Corner, Virginia, and resigned from my twelve-year career with Burroughs. Since that time, I have opened a number of other small businesses including two corporate picnic facilities in McLean and Leesburg, Virginia, an off-premise catering company, a marina in Stafford County, Virginia, and a company that designs and builds modular prisons. Along the way, I have also served as general partner in several small limited partnerships that acquired raw land, then planned,

zoned, and developed subdivisions featuring amenities such as golf courses and waterfronts.

Any one of these diverse business endeavors comes with its own particular set of rules, regulations, and paperwork requirements specific to the industry and, I might add, that some paperwork requirements are necessary to protect public well being. In fact, we could not do business without disclosures that protect the integrity of transactions for all parties.

Nevertheless, government agencies impose mounds of paperwork requirements on business for a variety of reasons. In some cases, government imposes paperwork as a window into how I operate my business in order to collect data, such as in the case of the Census Bureau. In other cases, the government generates paperwork as a prerequisite for me to obtain or maintain a license to do something that is essential to the profitability of my business, such as the renewal of my liquor license. Agencies like the IRS use reporting in order to determine the amount I need to pay the federal government.

There are several characteristics universal to the paperwork burdens imposed by government agencies that I would like to point out to you here today. First, is the sheer volume of paperwork requirements that government requests of businesses and individuals. I hold in my hand a 266 page document that lists the 5960 forms and instructions generated by 109 bureaus and departments of 49 agencies – and that's just within the federal government, it does not include state and local government agency

forms¹. If I were to print all of the forms and instructions out, the stack of paper would exceed the height of the tallest person in this room. Now I am not here to testify that I am required to fill out all of these forms, but I am here to say that the list that applies to only me gets longer every year.

In its 2002 draft report to Congress on the “Cost and Benefits of Regulations,” the Office of Management and Budget (OMB) reported that all agency regulations imposed over 7.65 billion hours of paperwork on business in fiscal year 2001.² As of the end of fiscal year 2005, just four years later, OMB reports that the Federal Government imposed an annual paperwork burden on the public of about 8.4 billion hours.³ This represents an increase of 441 million hours, or 5.5 percent, over the previous year and an increase of 750 million hours over FY 2001.

The second point that I want to make is when government agencies estimate the time it takes to fill out the paperwork, they almost never take into account the time it takes to collect, organize, and retrieve the information that they ask for. I am rarely capable of filling out a form in the time that they have estimated under the Paperwork Reduction Act (PRA).⁴ The Internal Revenue Service recently went through a rigorous review of their methodology in estimating the paperwork burdens, taking into account the productivity increases of using computers and software programs, as well as the time and

¹ www.forms.gov – the U.S. Government's official hub for federal forms.

² Office of Management and Budget, *March 18, 2002 Draft Report to Congress On the Costs and Benefits of Federal Regulation*, Appendix C, page 114,

<http://www.whitehouse.gov/omb/inforeg/8stevensdraftmemoMarch18.pdf>.

³ Office of Management and Budget, *Information and Collection Budget of the United States Government Fiscal Year 2006*, Page 1,

http://www.whitehouse.gov/omb/inforeg/icb/fy2006_icb_report.pdf

burden of collecting and organizing the data.⁵ Aggregating the burden for all individual forms and schedules using the new methodology resulted in a net increase of 250 million burden hours to taxpayers between 2003 and 2004. This adjustment increase reflects a new estimate of the previously analyzed burden, not an actual change in burden imposed on taxpayers.

The third characteristic that most forms have in common is that there is generally a penalty associated with filling them out incorrectly – and in many cases the penalty applies whether the mistake is intentional or not. In some cases, the mistakes lead to civil penalties. While other cases, where the public health and safety could be jeopardized, the penalty may be criminal in nature.

Although I try to fill out every form in a timely manner with due diligence and care, as a small business owner, my primary concern is running my business and keeping my customers happy. There is only so much time I can dedicate to filling out forms for the government. Having provisions passed into law, such as those contained in H.R. 5242, the “Small Business Paperwork Amnesty Act of 2006”, that provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business owners like myself, would act as a failsafe in case I make an inadvertent error when filling out a form. As the need for more and more information by government agencies grows, common sense safeguards should be put in place to soften the burdens

⁴ USC Title 44.

⁵ Office of Management and Budget, Information and Collection Budget of the United States Government Fiscal Year 2006, Page 17-20,
http://www.whitehouse.gov/omb/inforeg/icb/fy2006_icb_report.pdf

for those attempting to fulfill the required paperwork demands. Anytime you can remove the anxiety of being penalized for making a minor error, small business owners can focus more of their energy on doing what we do best – creating jobs and growing the economy.

H.R. 5242, if enacted, is just such an effort and is strongly supported by the U.S. Chamber of Commerce. This bill amends section 3506 of title 44 of the U.S. Code⁶ to mandate that the head of an agency shall not impose a civil fine for first-time minor paperwork violations regarding the collection of information by the agency. H.R. 5242 contains adequate protections to avoid excusing fines for violations that can present a danger to the public health or safety, or cause serious harm to the public interest. The bill also exempts violations of the internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt.

I would like to highlight just a few examples of how this bill, if enacted into law, could affect my business. The Census Bureau has a number of forms that are sent to businesses for the collection of data in order to distill the results into valuable statistical information used for a variety of purposes. Just recently, my wife and I were in an unfortunate accident that required a lengthy rehabilitation. During this time away from my business, if one of my employees' inadvertently misplaced or disposed of a Census survey request for data not realizing the importance of the document, or attempted to fill it out and did not fill it out completely or correctly to the best of their knowledge, my company could be fined up to \$500 under title 13, section 224 of the U.S. Code. This section states that:

“Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge, of any company, business, institution, establishment, religious body, or organization of any nature whatsoever, neglects or refuses, when requested by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, to answer completely and correctly to the best of his knowledge all questions relating to his company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census or other schedule or questionnaire prepared and submitted to him under the authority of this title, shall be fined not more than \$500; and if he willfully gives a false answer to any such question, he shall be fined not more than \$10,000.”

I have very capable managers and assistants that work for me at my restaurant.

But their expertise is in running a restaurant and not filling out forms. Additionally, during my wife’s and my convalescence the management had to do extra duty to make up for our absence. It could be very understandable and foreseeable under those circumstances that this type of request could fall through the cracks. Adequate safe harbors contained in this bill would provide me and other business owners with the cushion needed to avoid an expensive fine during a very difficult time.

Another example where the bills provisions may apply is in filling out I-9 forms. Under current law, first time immigration paperwork violations for failure to properly prepare and file I-9 forms can result in civil penalties from \$100 to \$1,000 for “each individual with respect to whom such violation occurred” with due consideration for size of their business and good faith mistakes.⁷ The paperwork violations include failure to properly examine the documents, improperly completing the I-9 form, and failure to keep

⁶ Commonly known as the Paperwork Reduction Act (PRA).

⁷ Employer Information Bulletin 111, (page 2), Failure to Comply with Form I-9 Requirements, dated 3/16/05 entitled: Employer Sanctions, Office of Business Liaison, U.S. Department of Homeland Security, Citizenship and Immigration Services at [http:// www.uscis.gov](http://www.uscis.gov).

the form for the statutorily mandated time period. These are minor non-health and safety paperwork regulations all restaurant owners are subject to. Implementing the provisions of H.R. 5242 would again be justified to insulate myself and others from first-time, inadvertent errors in the filling out and maintenance of these forms.

The concept of waiving penalties for minor paperwork violations for small businesses is not something new. Contained in Public Law 104-121 is a section known as the “Small Business Regulatory Enforcement Fairness Act of 1995.” Section 223⁸ of this act requires agencies to establish a policy or program to provide for the reduction and under appropriate circumstances for the waiver of civil penalties for violations by small businesses. This section excludes violations that pose serious health, safety, or environmental threats as well as other conditions similar to the Small Business Paperwork Amnesty Act. Passage of H.R. 5242 would incrementally extend existing law to apply what agencies already should be doing for all paperwork violations to first-time minor paperwork violations, something that from my point of view would seem logical, very helpful, and consistent with the current intent of Congress under present law.

⁸ SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

- (1) requiring the small entity to correct the violation within a reasonable correction period;
- (2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;
- (3) excluding small entities that have been subject to multiple enforcement actions by the agency;
- (4) excluding violations involving willful or criminal conduct;
- (5) excluding violations that pose serious health, safety or environmental threats; and
- (6) requiring a good faith effort to comply with the law.

In closing, I would like to again thank the committee for holding this hearing and its interest in the "Small Business Paperwork Amnesty Act." I welcome any questions.

Mrs. MILLER. Thank you very much. We appreciate your coming today, sir.

The committee is now delighted to welcome Karen Harned. Ms. Harned is the executive director for the National Federation of Independent Business Legal Foundation. As a member of a law firm, she specialized in food and drug law and represented several small businesses and their trade associations before Congress and Federal agencies. She received her law degree from the George Washington Law School in 1995.

We are delighted to have you, and the floor is yours.

STATEMENT OF KAREN HARNED

Ms. HARNED. Thank you. Good afternoon, Madam Chairwoman and members of the subcommittee. My name is Karen Harned, and I serve as Executive Director of NFIB's Legal Foundation, the legal arm of NFIB.

NFIB is pleased to have the opportunity to be with you today offering our strong support for the Small Business Paperwork Amnesty Act of 2006. H.R. 5242 would provide hard working, well meaning small business owners with the opportunity to correct paperwork mistakes before they are forced to pay needless fines.

NFIB would also like to thank Congressman Neugebauer for championing this bill and Senator Vitter for his continuing work on this bill in the Senate and the other issues that he is working on for small business in that body.

When it comes to regulatory paperwork costs, small business gets stuck with the bill. A recent study performed for the Small Business Administration estimated that \$1.1 trillion of the cost of regulation falls disproportionately on small businesses with 20 or fewer employees. That is \$7,647 per employee per year.

For the average NFIB member, which employs five people and reports gross sales of between \$350,000 and \$500,000 per year, this price tag is huge. It is almost \$40,000 annually, 8 to 10 percent of revenues generated from a small business's gross sales are paid out in regulatory costs. That does not even include Federal, State and local income taxes.

Small businesses face a 45 percent greater regulatory burden than their larger counterparts. Unlike big businesses, small business owners do not have compliance departments or attorneys on staff to warn them of each and every regulation in the pipeline. Instead, those responsibilities fall to them.

Does this mean that small business owners should get a free pass? Of course not. After working on behalf of small business for 4½ years, what I find most impressive about this constituency is their respect for the law and their desire to do the right thing. For example, according to an NFIB research foundation poll on the Family and Medical Leave Act, small businesses grant virtually all requests for family and medical leave, whether required to by the law or not.

I thought it would be beneficial to provide a real life example of the types of mistakes that would be forgiven under H.R. 5242. Importantly, H.R. 5242 does not forget these mistakes. It merely gives well-meaning small business owners the opportunity to correct them. Non-compliance is not an option under this bill.

Nancy Kleinfelter, an NFIB member, is President of Baltimore Glassware Decorators, a small 15-employee business. Her business must comply with EPA's toxic release inventory lead rule, which requires small businesses to provide EPA with detailed information regarding lead usage. Ms. Kleinfelter's business prints small quantities of custom glass and ceramic ware for proms, weddings, restaurants and novelty stores. In fact, her decorated mugs have been sold here at the House gift shop.

Her business sometimes uses lead-bearing colors on outside surfaces of mugs and glasses which become part of the glass after they are fired and the lead does not leach out. After 95 hours of work trying to comply with this rule, Ms. Kleinfelter could not have complete confidence that the numbers she was providing EPA were accurate.

H.R. 5242 would give small businesses like hers a chance to fix mistakes that are made despite the small business owner's best efforts. Economic studies, polls and real-life examples all indicate why H.R. 5242 is such an important and necessary piece of legislation. Moreover, it enjoys bipartisan support going back to the Clinton administration.

NFIB supports strong regulatory reform measures that would dramatically reduce the regulatory burdens placed on small business. However, until such reforms are enacted, H.R. 5242 is needed to stop the bleeding. The bill recognizes the tremendous regulatory burdens small businesses face while at the same time ensuring that the public policy objectives those regulations are designed to address are met. It does not reward or create loopholes for bad actors, but instead gives well-meaning, hard-working small business owners a chance to correct unintended mistakes before being forced to pay civil fines for failing to dot every I and cross every T.

On behalf of NFIB's members, 92 percent of whom indicate that they believe small business owners should be exempt from first-time paperwork violations, I commend you, Madam Chairwoman, for holding this hearing and inviting me to testify today. I would be pleased to answer any questions that you have. Thank you.

[The prepared statement of Ms. Harned follows:]



Testimony of

Karen Harned

On Behalf of the National Federation of Independent Business

before the

**United States House of Representatives
Subcommittee on Regulatory Affairs
Committee on Government Reform**

on the subject of

The Small Business Paperwork Amnesty Act of 2006

on the date of

September 26, 2006

Testimony of Karen R. Harned
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Introduction and Overview

Good afternoon Madam Chairwoman Miller and Members of the Subcommittee on Regulatory Affairs. My name is Karen Harned and I serve as Executive Director of the National Federation of Independent Business Legal Foundation (NFIB), the legal arm of NFIB.

NFIB, the nation's leading small-business advocacy association, is pleased to have the opportunity to be with you today offering our strong support for H.R. 5242, the "Small Business Paperwork Amnesty Act of 2006." H.R. 5242 would provide hard-working, well-meaning small-business owners with the opportunity to correct paperwork mistakes before they are forced to pay needless fines.

In my testimony, I will discuss why this legislation is so critically needed. Specifically, I will highlight the disproportionate impact regulations have on small business as compared to their larger counterparts and how that disproportionate impact cries out for a solution like the one offered in H.R. 5242. I will provide real-life examples of how this bill would work to protect the fastest-growing segment of the nation's economy without compromising important policy objectives designed to ensure our health and safety.

Small Business Gets the Big End of the Regulatory Stick

When it comes to regulatory paperwork costs, the fact is that small business gets stuck with the bill. A recent study performed by economist Mark Crain for the Small Business Administration estimated that regulations cost Americans \$1.1 trillion annually. This cost falls disproportionately on small businesses, with the smallest firms (20 or fewer employees) bearing the greatest burden -- \$7,647 per employee, per year.¹ Importantly, the study also shows that small businesses face a 45% greater regulatory burden than their larger counterparts.²

These regulatory costs on small business begin to gain some perspective when you consider the typical small business profile. For the average NFIB member, which employs five people and reports gross sales of between \$350,000 and \$500,000 per year, the \$7,647 per employee, per year price tag is huge -- almost \$40,000 annually. That means that in many cases eight to ten percent of revenues generated from gross sales are paid out in regulatory costs -- and that does not even include federal, state and local income taxes.

Part of the reason small business regulatory costs are so high is a function of what it means to be a small-business owner. A typical small-business owner, more often than not, is responsible for everything -- ordering inventory, hiring employees, and dealing

¹ Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms* (2005), available at <http://www.sba.gov/advo/research/rs264.pdf>.

² Crain, at 2.

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with the mandates imposed upon his or her business by federal, state and local governments. For this reason, it is not surprising that paperwork remains a significant source of anxiety for American small businesses.³

According to an NFIB Research Foundation poll, the cost of paperwork for small businesses averages approximately \$50 per hour.⁴ These costs are incurred through the commitment of in-house personnel resources and/or outside resources depending on the subject matter and firm size. Small-business owners most frequently handle paperwork and recordkeeping related to licenses and permits (55 % of firms), purchases (46%), and clients/customers (46%) internally.⁵ They least frequently commit in-house personnel resources to the completion of financial (27%) and tax records (12%).⁶ In fact, three out of four small-business owners report that they pay an outside firm to handle their tax paperwork.⁷ Paid employees customarily do most of the paperwork and record-keeping in about 25-30% of firms.⁸ 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 ten percent of cases.⁹

As NFIB, the Small Business Administration, and numerous economists have noted over the years, there is a tremendous amount of data supporting the important proposition that under the current regulatory state small businesses' are most negatively impacted by the mountain of paperwork they must complete just to open their place of business every day. Unlike big businesses, our small-business owners do not have compliance departments or attorneys on staff to warn them of each and every regulation coming down the pipeline. Instead, those responsibilities fall to small-business owners. Due to these sorts of resource constraints, small-business owners also are the least equipped to have the quality controls in place to ensure that they are aware of, and complete every form correctly.

Does this mean that small-business owners should get a free pass? Of course not. In fact, after working on behalf of small business for four and a half years, what I find most impressive about this constituency is their respect for the law and desire to do the right thing. For example, according to an NFIB Research Foundation poll on the Family and Medical Leave Act, virtually all requests for family and medical leave are granted

³ In NFIB's publication, *Problems and Priorities*, paperwork ranked 8th out of 75 major problems faced by small business. *Small Business Problems and Priorities*, Bruce D. Phillips, NFIB Research Foundation (June 2004).

⁴ NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping* (December 2003), available at <http://www.nfib.com> (go to NFIB Research > View all Small Business Polls).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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whether required by law or not.¹⁰ (Approximately ninety-two percent of small-business owners who are not covered granted family leave to their employees.)¹¹ Yet, that same study also shows the confusion surrounding federal regulations – approximately one-quarter of small-business owners with less than 20 employees wrongly believed they were covered by federal, state, or local law or regulations governing employee requests for time off for family-related or health matters.¹²

All of this demonstrates that H.R. 5242 addresses a critical need. Let me be clear, ***NFIB supports strong regulatory reform measures that would dramatically reduce the regulatory burdens placed on small business.*** However, until such reforms are enacted, a stop-gap measure is needed to “stop the bleeding.” That’s where H.R. 5242 is particularly helpful. It starts with a correct view of the current regulatory landscape for both small business and the public good – it recognizes the tremendous regulatory burdens small businesses face, while at the same time ensuring that the public policy objectives those regulations are designed to address are met. It does not reward or create loopholes for “bad actors,” but instead gives well-meaning, hard-working small-business owners a chance to correct unintended mistakes before being forced to pay civil fines for their failure to dot every “i” and cross every “t”.

A Look at the Types of Paperwork Mistakes H.R. 5242 Would Forgive

I thought it would be beneficial to provide a few real-life examples of the types of mistakes that could be “forgiven” under H.R. 5242. Importantly, as crafted, H.R. 5242 does not “forget” these mistakes. It merely gives well-meaning, small-business owners the opportunity to correct them. Non-compliance is not an option under H.R. 5242.

With that as background, let’s look at the types of small businesses and mistakes that would be addressed if H.R. 5242 were to become law:

Nancy Klinefelter, an NFIB member is President of Baltimore Glassware Decorators, a small, 15-employee business started by her brother in 1977, tells a story of her trials in attempting to comply with the Environmental Protection Agency’s Toxic Release Inventory lead rule. The rule requires small businesses that use 100 or more pounds of lead in a year to provide EPA with detailed information regarding lead usage and any subsequent release of lead into the environment resulting from that use. Ms. Klinefelter’s business prints small quantities of custom glass and ceramic ware for proms and weddings, restaurants, and souvenir and novelty stores. In fact, her company has decorated the mugs for sale at the House gift shop. When they print mugs or glasses, they sometimes use lead-bearing colors on outside surfaces, which become part of the glass after they are fired. The lead does not leach out. As she testified before Congress after the rule was promulgated:

¹⁰ NFIB Research Foundation National Small Business Poll, Vol. 4, Issue 2, *Family and Medical Leave* (2004), available at <http://www.nfib.com> (go to NFIB Research > View all Small Business Polls).

¹¹ *Id.* at 11.

¹² *Id.* at 7.

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For my company .. it is impossible to compile precise lead use records as required by EPA unless we track our color use on a daily basis. Since every lead-bearing color contains a different amount of lead .. we must make different calculations for each color used. We cannot simply take an average of color usage from May through December of last year .. and claim that our usage was the same for January through April.

...

As we began to compile our lead use data .. unexpected problems emerged. We buy decals from small decal printers that have fewer than ten employees and yet these companies must still provide lead content details to us for our TRI report. These printers are so small that they have no practical way of telling us how much lead is in each decal. We are still wrestling with this one and the deadline is looming!

...

I know that EPA has published estimates that say it will take 124 hours to track lead usage and complete the TRI paperwork. That is already quite a large number .. 3 full work weeks for one employee .. but sadly it is a gross underestimate.

I have already personally spent 95 hours trying to understand the TRI forms and requirements .. and I am still nowhere near the point where I can complete the forms with confidence. In addition .. I have spent 60 hours or more reconstructing retroactive color usage data. We are now spending about 4 to 5 hours per week tracking lead usage to enable us to have confidence in our 2002 TRI filing.¹³

Ms. Klinefelter's compliance issues with the EPA TRI lead rule point up why H.R. 5242 is sorely needed. After 95 hours of work, she could not have complete confidence that the numbers she was providing EPA were accurate. Although she was not fined in this case, her story paints a picture of the type of small-business owner H.R. 5242 is trying to help. It would give small businesses, like Ms. Klinefelter's glass decorating business, a chance to fix mistakes that are made despite the small-business owner's best efforts.

Still other small-business men and women have horror stories of small mistakes that ended up resulting in needless fines. Had H.R. 5242 been in place,

¹³ *The Lead Tri Rule: Costs, Compliance, and Science Before the House Committee on Small Business* (June 13, 2002) (statement of Nancy Klinefelter, President, Baltimore Glassware Decorators), available at www.house.gov/smbiz/hearings/107th/2002/020613/klinefelter.asp.

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these well-meaning small-business people might have had a chance to correct these minor regulatory violations.

Gary Roberts, the owner of a small company which installs pipelines in Sulphur Springs, Indiana, testified that he was fined \$750 by OSHA in May 1997 for not having a Hazardous Communication Program at a particular job site. The inspector was told that the program was in the main office, and that all the workers had been trained to follow it. One of the workers retrieved the program from the main office during the inspection. But, OSHA would not waive the fine.¹⁴

Similarly, Mr. Van Dyke, a muck crop farmer from Michigan, was fined in January 1999 for not having the proper employment disclosure paperwork. This omission was his first violation, and he settled for \$17,000.¹⁵

These are just a few examples of incidents where small-business owners are caught in a regulatory game of "gotcha" that, in many cases, would be remedied if H.R. 5242 were to become law. In each case, the small-business owner was well-intentioned and the underlying violation did not appear to pose a significant threat to the public health or be detrimental to the public good.

The Need for H.R. 5242: An Important Step Toward Eliminating Regulatory "Gotcha" for Good

Economic studies, polls, and real-life examples all indicate why H.R. 5242 is such an important and necessary piece of legislation. Moreover, it enjoys bi-partisan support going back to the Clinton Administration. In the words of Jere Glover, the Chief Counsel for the Small Business Administration's Office of Advocacy testifying in support of similar legislation under consideration at that time: "[W]here it is reasonable, where it is a first-time violation, do not go in and play 'gotcha' with the business. I think that makes a lot of sense. And I think your legislation also makes a lot of sense."¹⁶

Passage of the Small Business Paperwork Amnesty Act would go a long way to ensure that, in cases of first time paperwork violations, small businesses are able to correct those violations without penalty. The legislation would allow small businesses to remedy violations in a reasonable timeframe so that mistakes can be corrected and compliance can be achieved. Notably, the Small Business Paperwork Amnesty Act

¹⁴ Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *7 (Feb. 5, 1999); *see also* Small Business Paperwork Reduction Act Amendments of 1998, H.R. Rep. 105-462, 1998 WL 130710 at *10 (Mar. 24, 1998).

¹⁵ Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *7 (Feb. 5, 1999).

¹⁶ Small Business Paperwork Reduction Act Amendments of 1998, H.R. Rep. 105-462, 1998 WL 130710 at *11 (Mar. 24, 1998); *see also* Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *6 (Feb. 5, 1999).

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would accomplish this without a loss to the safety and health protections provided under the laws designed to protect our communities.

On behalf of NFIB's members, 92 percent of whom indicate that they believe small-business owners should be exempt from first-time paperwork violations, I commend you Madam Chairwoman for holding a hearing on this important legislation and trust that your colleagues will follow your lead by supporting the Small Business Paperwork Amnesty Act.

Thank you for inviting me to testify today. I would be pleased to answer any questions you have.

Testimony of Karen R. Harned
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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 for small business.

Members determine the public policy positions of the organization.

Our employees and members, 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.

NFIB

The Voice of Small Business.



Statement of the U.S. Chamber of Commerce

ON: THE SMALL BUSINESS PAPERWORK AMNESTY ACT

**TO: THE HOUSE COMMITTEE ON GOVERNMENT
REFORM, SUBCOMMITTEE ON REGULATORY
AFFAIRS**

DATE: SEPTEMBER 26, 2006

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 105 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Mrs. MILLER. Thank you very much.

Our final witness today is Robert Shull, who is the deputy director of auto safety and regulatory safety for Public Citizen. Prior to joining Public Citizen, he served as director of regulatory policy at OMB Watch. Mr. Shull has worked at Children's Rights, a non-profit in New York that works nationwide filing class action civil rights suits on behalf of abused and neglected children in order to reform foster care.

So we certainly appreciate your attendance today and look forward to your testimony as well, sir. The floor is yours.

STATEMENT OF ROBERT SHULL

Mr. SHULL. Thank you, Madam Chair. I am pleased to be able to come before you again, and I want to thank you for this opportunity, and I thank the subcommittee.

I was really heartened to hear the opening words from you that I heard at the beginning of this hearing, which is that you are deeply concerned about finding a way to balance the needs of small business while protecting the public interest. I want to observe that when it comes to information collection and small businesses, there are really two kinds of ways we can go to try to strike that balance. One of them is a negative way which could reduce the amount of information collected or reduce the incentives for businesses to provide the information that we need. And the other way to go is the positive way, which is focused on helping small businesses to comply with their obligations without reducing the quality, the quantity or the utility of the information that we need to protect the public. I am here today because we believe that this bill follows this negative path rather than the positive path.

I have heard first of all that this bill focuses on first-time violations and doesn't address or does not exempt repeat offenders. But I do have to point out that there is a part of the bill that does allow a business to have many first-time violations. A business could fail to comply with an EPA requirement, that is the first time it has failed to comply with the EPA requirement. But it could also have a first-time violation of an OSHA requirement, a first-time violation of other Department of Labor requirements, a first-time violation of SEC filing requirements and so on.

So we really could have a really bad actor who is failing to comply with requirements across the board but getting multiple first-time exemptions. I think that is one way that this bill does not address the possibility of a repeat offender.

I also am concerned about the public interest exceptions. I am really glad to see that there are public interest exceptions here, and as iterations of this bill have developed over the years, these public interest exceptions have become more detailed. That is really gratifying. But the way this iteration of the bill has developed, the public interest exceptions have a strange sort of sliding scale for these exclusions.

There are two sections of the bill that would address the public interest. One would address potential serious harms to the public interest, and another would address violations that present a danger to public health and safety.

So when we focus on these two, it really looks like a sliding scale. If a violation has the potential to cause harm that isn't serious harm to the public interest, public interest being broadly construed I presume to mean the public health and safety but also ecological harms, consumer pocketbook harms and so on. For these potentials to cause harm to the public interest, there is a 6-month safe harbor for the first time violation. If there is a potential to cause serious harm to the public interest, there is no safe harbor.

But if a violation presents an actual danger to this more narrow class of public health or safety, there is this optional 24 hour safe harbor for first-time violations. I think that these incentives just seem really misaligned. There is sort of a sliding scale that slides backward in a way that would need to be addressed.

But I think that really, the positive way to go is the way to go that I want to recommend the subcommittee focus on. I don't think those options have been exhausted yet. We heard a lot about compliance assistance, and it is absolutely true: small businesses don't have the resources that their larger competitors have to stay on top of all the requirements and to make sure that they are fully complying with their obligations under the law. So I think that the answer there is to provide small businesses that additional resource through compliance assistance offices. There have been bills that have been introduced in both the House and the Senate to provide these compliance assistance offices in every district of the country. There are other options that I have mentioned in my prepared statement.

I see that my time is up, so I look forward to your questions.

[The prepared statement of Mr. Shull follows:]



Testimony of J. Robert Shull,
Deputy Director for Auto Safety & Regulatory Policy,
Public Citizen,
before the
Subcommittee on Regulatory Affairs
of the House Committee on Government Reform
on
H.R. 5242,
“The Small Business Paperwork Amnesty Act”

Sept. 26, 2006

Thank you, Madam Chairwoman and members of the Subcommittee on Regulatory Affairs, for this opportunity to testify on the importance of information for protecting the public. I am Robert Shull, Deputy Director for Auto Safety and Regulatory Policy at Public Citizen, a national nonprofit public interest organization with over 150,000 members nationwide.¹ Public Citizen represents consumer interests through regulatory oversight, lobbying, litigation, research, and public education, and this mission has led us repeatedly to promote and preserve not just specific policies but also the federal government’s very ability to protect the public. Integral to the federal role in protecting the public health, safety, civil rights, environment, and consumers is the government’s ability to collect information.

Public Citizen cares deeply about issues related to the Paperwork Reduction Act and bills that would modify the PRA, such as the one we are here today to discuss, because the public has so much at stake in the nexus of information and substantive policy. The federal government plays a vitally important role in protecting the public health, safety, civil rights, environment, and consumers, identifying the public’s unmet needs for protection, and ensuring that long-addressed problems do not reemerge as new problems. 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. Information is necessary in order to know how well existing government programs are functioning as well as what work is left to be done. Additionally, information is valuable for government accountability. Armed with information, the public can better identify needs for government action and hold its elected representatives accountable to address those needs. Sophisticated accountability systems, such as performance management tools, might also require rich information about real world conditions revealing the effectiveness or insufficiency of government programs.

¹ Public Citizen does not take federal grants or contracts. In response to the subcommittee’s request, I certify that Public Citizen has not accepted any federal grants or contracts in the current fiscal year or the previous two fiscal years.

H.R. 5242 would stanch the flow of information and put the public at unnecessary risk. In general, the bill would prohibit federal agencies from fining small businesses for “first-time” violations of paperwork requirements as long as the company complies within six months of notice of the violation (with some enumerated exceptions, such as tax collection paperwork). Under the guise of benefiting small businesses, this bill would create perverse incentives for corporate special interests to refuse to provide the information we need to protect the public.

I. THIS BILL WOULD PUT THE PUBLIC AT RISK WITH SPECIAL RIGHTS FOR SMALL BUSINESS SCOFFLAWS.

This bill threatens the public’s ability to demand the information we need to keep the public healthy and safe. What’s at stake is not simply mindless government “paperwork” — it is any information collection or reporting that affects 10 or more people, which means almost every requirement for reporting, labeling, or collecting the information we need to protect the public.

Gathering and reporting information is the very basis of public protection. The following are only a few of the many ways that information collection serves the public:

- For example, when a worker safety protection is issued, businesses often need to report information so that agencies know whether or not businesses are actually complying and whether workers are getting the full benefit of the new protective standard. Businesses might also be required to post information so that workers know about their rights or learn about potential hazards and protect themselves on the job. Under H.R. 5242, corporate special interests would be allowed to deny us this needed information without consequences.
- Firefighters rely on businesses to report on hazardous chemicals so that they can respond safely and effectively to potential chemical fires. The first-time violator immunity could reduce disclosure of chemical hazards and put firefighters at risk.
- Pension administrators must file annual reports on pension fund management under ERISA. An administrator mishandling funds could withhold the annual report, covering up the misdeed knowing that no fine could be levied under H.R. 5242.
- EPA relies on self-monitoring and reporting under the Clean Water Act and the Safe Drinking Water Act to head off potential dangers to the water supply. The information requirement is critical: EPA cannot inspect all 200,000 public water systems alone. Without reliable reporting, we cannot assure water quality. H.R. 5242 puts that important safeguard at risk.

H.R. 5242, however, is blind to the value of information. In fact, it establishes all the wrong priorities for information policy with incentives for small businesses to flout the law.

A. This bill would reward lawbreakers and immunize repeat offenders.

H.R. 5242 endangers the public's right to know by prohibiting federal agencies from fining small businesses for "first-time" violations of paperwork requirements as long as the company complies within six months of notice of the violation (with some enumerated exceptions, such as tax collection paperwork). Currently, agencies almost always waive fines for first-time violations. In fact, this bill could encourage even more violations, because small businesses would know they could avoid reporting requirements — without fear of fine — until they are caught for the first time. The bill would have the perverse effect of putting law-abiding businesses at a competitive disadvantage while denying the public the information we need to protect the public health, safety, civil rights, and the environment.

Businesses could have *many* "first-time" violations under this bill. As the "first-time" exemption is defined, an agency can only count violations from *that* agency's requirements — and cannot look at a small business's violations of requirements from *other* agencies. A business could fail to comply with a workplace safety requirement for OSHA, a toxic substance report for EPA, and a pension fund report under ERISA — each time getting the "first-time" violator exemption.

B. Delaying information can be disastrous.

The penalty exemption periods for correcting so-called "first time" violations — six months for most violations, and 24 hours for selected public health and safety violations — would allow small businesses to endanger us all with delays in releasing the information that we need. Time is of the essence with many information requirements. For example, the SEC needed to issue penalties to first-time violators in order to ensure rapid compliance with Y2K measures. In the case of chemical plants, we need information to protect workers and our communities by planning responses to potential accidents. For a plant to correct emergency information violations 24 hours after a chemical explosion may be too little, too late.

C. The public health and safety clauses are too weak.

The bill does set aside some special provisions for a "first-time" information violation that "presents a danger to the public health and safety." As a gesture to the public interest concerns that have been raised against this same language in previous Congresses, H.R. 5242 merely shortens the penalty exemption period from six months to 24 hours for this class of information violations. Keep in mind that the 24-hour clock does not start running with the violation, but only with notice from the agency that the violation must be corrected — which could be months after the violation.

Moreover, it can be difficult for an agency to know whether there is a danger to health or safety if it does not have the appropriate information to draw that conclusion in the first instance. Routine collection of information could alert public health or safety agencies to signs of developing problems that need to be addressed.

II. THERE IS NO NEED FOR THIS BILL.

It is not clear what problem this bill is intended to address. As the public interest community has already pointed out repeatedly over the years as iterations of this bill have been introduced, it is already the case that agencies almost always waive fines for first-time violations. Additionally, if the problem to address is the burden of information collection requirements, it makes little sense for this bill to exclude IRS paperwork, given that the IRS is responsible for over 75% of current paperwork burden — and that *all other agencies combined still do not amount to even 25% of paperwork burden.*² (EPA accounts for a mere 2% of paperwork burden, and OSHA is responsible for even less.) Moreover, there is nothing in this bill that would reduce or eliminate paperwork at any rate; it merely grants immunity to violators of the law.

This extraordinary effort to give small businesses a special right to evade their responsibilities under the law will probably be justified by its proponents on the basis of two interrelated claims: that small businesses disproportionately bear the burden of regulatory compliance costs, and they must accordingly bear the brunt of an observed increase in burden-hours of information collection requirements. There are two flaws embedded in such arguments: (1) reported increases in burden hours do not compel the conclusion that small businesses need exemptions from information collection requirements; and (2) the claims of disproportionate compliance cost burden on small businesses are based on research that has recently been revealed to be unsound.

A. Reported increases in burden hours do not justify special rights for small business scofflaws.

We will undoubtedly hear today 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.

² 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 14 Fig.1.

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.³

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.

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. . . .⁴

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.

³ *Id.* at 8.

⁴ *Id.* at 9-10.

For the benefit of the subcommittee, I am submitting with this testimony a detailed discussion of the deficiencies of quantifying burden hours, courtesy of OMB Watch. 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.⁵ 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 aids 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 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, Public Citizen 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.⁶

⁵ 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.

⁶ 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>.

B. The evidence of an unfair burden on small businesses is unreliable.

If the objective of this bill is to serve small businesses, there is still a wide chasm between the motivation and the actual proffered solution. The small business community is a major source of innovation and employment in this country, but it is also a major source of social harms that need to be addressed.⁷ It makes little difference to a worker injured on the job or a community contaminated by toxic exposure whether the source of the ill was a large or small business. Thus, there is a valid need to protect the public and the environment from harm caused by small businesses and, accordingly, a valid need to collect information from those small businesses. At the same time, it can be more relatively more expensive for small business to comply with regulations and information collection requirements than large companies. Given this confluence of circumstances, we need to find ways to both protect the public and lower the cost of compliance for such businesses.⁸

This, however, has already been done. Small firms receive direct government subsidies such as outright and government guaranteed loans from the Small Business Administration (SBA) as well as indirect preferential treatment through federal procurement requirements and tax provisions.⁹ Additionally, small business is treated to many exemptions or special treatment in the area of regulation. For example, employers with less than 15 people are exempt from the Equal Employment Opportunity Act,¹⁰ and OSHA levies lighter penalties for smaller firms, exempts businesses with less than 10 people from recordkeeping requirements, and provides free on-site compliance consultations.¹¹ Perhaps more importantly, small business has its very own law, the Small Business Regulatory Enforcement Fairness Act (SBREFA) that requires agencies to give special consideration and voice to small business as part of the rulemaking process as well as expanded judicial review for small businesses wishing to challenge agency decisions.¹² Given these special benefits, it is unclear why small businesses would need even more exemptions from information collection specifically.

It is likely that we will hear today that small businesses need to be allowed to flout the law and evade responsibility for information collection requirements because they disproportionately bear the costs of regulatory compliance. The citation for this argument tends to be a series of deeply flawed studies, performed first by Thomas Hopkins in 1995, updated in 2001 by Hopkins and Mark Crain, and updated again last year by Crain.

One of the chief flaws of this series of studies is the familiar problem of garbage in, garbage out. Note, for example, that the 2001 Crain and Hopkins study plugs in estimates of the cost of

⁷ Richard J. Pierce, Jr., *Small is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms*, 50 ADMIN. L. REV. 537, 558-61 (1998) (identifying, *inter alia*, that small businesses are disproportionately responsible for worker injury, worker fatality, and water and air pollution).

⁸ C. Steven Bradford, *The Cost of Regulatory Exemptions*, 72 UMKC L. REV. 857 (2004).

⁹ See Pierce, *Small is Not Beautiful*, *supra*, at 542-43.

¹⁰ 42 U.S.C. § 2000e(b).

¹¹ OSHA Small Business Benefits, <http://www.osha.gov/dcsp/smallbusiness/benefits.html>.

¹² 5 U.S.C. § 601 *et seq.*

workplace protections by relying on a Mercatus Center study by Joseph Johnson.¹³ Johnson's numbers are utterly unreliable, for two important reasons. First, he relies entirely on *ex ante* estimates of compliance costs from OSHA's regulatory impact analyses, which use biased samples, fail to anticipate technological innovations that will drive down actual costs, and make other conservative assumptions that routinely overestimate actual compliance costs significantly.¹⁴ Second, Johnson inflates these already inflated cost estimates: he actually *multiplied the estimates by 5.55!*¹⁵

Why this gross distortion of already distorted estimates? Johnson was emboldened by a previous article on the costs to corporate special interests of making workplaces healthier and safer. That study, by Harvey James, generates the 5.55 multiplier through a series of sleights of hand. To arrive at what he concludes to be the most reasonable estimate of \$33.5 billion, James compares the total annual cost of OSHA compliance estimated by a 1974 National Association of Manufacturers study against the total cost of 25 major rules in 1993, which he discovered was 5.55 times lower than the NAM figure. Here is the trick:

Assuming that the compliance burden of OSHA regulations in 1993 is at least as great as the compliance burden of OSHA regulations on business establishments in 1974 (and that the 1974 estimate is reasonably accurate), then the total compliance costs of all of OSHA's regulations enforced in 1993 is projected to be at least 5.55 times the total for the 25 major OSHA rules examined in this study.¹⁶

The assumption that the 1974 NAM estimate is "reasonably accurate" does not hold; the National Association of Manufacturers is a lobbying organization whose vested interest in overestimating regulatory costs makes its numbers immediately suspect, and there is no evidence that James made any effort at all to verify the NAM data.¹⁷ Moreover, James, like Johnson, relies entirely on *ex ante* estimates of compliance costs from OSHA's regulatory impact analyses, which are significantly overestimated. (In fact, in the case of the cotton dust rule that is included in James's list of 25 major rules, the actual *ex post* result was rapid compliance that improved competitiveness.¹⁸ James's estimates nonetheless include the cost estimates for that rule and others that have long since been proven to be significantly overestimated.) The additional assumption that 1993 costs must be at least as great as 1974 costs replicates these same errors by arbitrarily inflating 1993 costs to an already-inflated 1974 level and by failing to consider that innovations over time could indeed make compliance less costly over a 20-year time span.

¹³ See Joseph L. Johnson, *A Review and Synthesis of the Cost of Workplace Regulations*, Mercatus Center Working Papers in Regulatory Studies (Aug. 30, 2001), available at <<http://www.mercatus.org/pdf/materials/10.pdf>>.

¹⁴ See Thomas O. McGarity & Ruth Ruttenberg, "Counting the Cost of Health, Safety, and Environmental Regulation," 80 *Tex. L. Rev.* 1997, 2030-33 (2002).

¹⁵ See Johnson, *supra*, at 21 text accompanying note 38.

¹⁶ Harvey S. James, *Estimating OSHA Compliance Costs*, 31 *Policy Sciences* 321, 329.

¹⁷ McGarity & Ruttenberg, *supra*, at 2018 & n.120.

¹⁸ Ruth Ruttenberg & Assocs., *Not Too Costly After All: An Examination of the Inflated Cost-Estimates of Health, Safety, and Environmental Protections*, Feb. 2004, at 27.

Aside from the problem that the inputs of the study are unreliable, it turns out that the entire enterprise is irremediably flawed. An important new analysis by Winston Harrington of Resources for the Future reveals that the overall conclusion of the Crain and Hopkins series is overstated — and that its methodology is thoroughly unsound.¹⁹ Although the Crain and Hopkins reports have been purported to demonstrate economies of scale in regulatory compliance across the board, Harrington demonstrates that economies of scale in Crain and Hopkins' data “can be entirely accounted for by environmental regulation It is true that modest economies of scale are also reported for tax compliance regulations, but . . . these are more than offset by small diseconomies of scale in workplace and economic regulations.”²⁰ As Harrington further demonstrates, however, even that claim is “utterly without foundation,”²¹ because the econometric methodology used to arrive at that conclusion “is very *ad hoc*, with no basis in economic theory.”²²

III. THERE IS A BETTER WAY.

A special right for scofflaws is not the way to address the particular needs of small businesses. Congress should instead consider ways to make it easier and less expensive for small businesses to provide us all the information we need without reducing the quality, quantity, or utility of that information. For example, Congress could move ahead with the small business compliance assistance programs envisioned in H.R. 230 and S. 1411, which could lead one day to rich compliance assistance offerings in every district across the country. Additionally, Congress could provide increased funding for the development of small business “gateways” on the Internet, to give small businesses access to reliable and understandable information about their regulatory and information collection duties. In short, this subcommittee should be considering options that enable small businesses to continue to be the engine of economic growth in this country while helping them to be good corporate citizens, so that the public interest is not forsaken.

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

¹⁹ See generally Winston Harrington, *Grading Estimates of the Benefits and Costs of Federal Regulation: A Review of Reviews* (Resources for the Future Discussion Paper No. 06-39, 2006).

²⁰ *Id.* at 18.

²¹ *Id.* at 19.

²² *Id.* at 20.

Mrs. MILLER. Thank you very much.

We certainly appreciate all the panelists and I think I would like to direct a question to Mr. Wordsworth, since you really are the only small business person on the panel that is working every single day in a small business and trying to understand and to comply. I am certain you are trying your darndest to comply with every piece of legislation and all the rules and regulations and etc. at every level of Government, the Federal level and the State level and sometimes the local level can even be worse than the Federal level, if that is even possible. But having come from a local level, I know how that can be as well, with various kinds of things that you have to comply with as well.

Would you just tell us generally how many hours a week you actually spend working at your business and in the context of that, how much time would you guesstimate you spend during your average work week, maybe a percentage of your time, just trying to comply with the various things that you have to comply with? And as sort of an addendum to that, I know you have been at it for many, many years, but maybe in the last 10 years, have you seen a huge escalation in the amount of regulatory burden and the amount of time you are spending for compliance? I guess just generally, how much time do you spend complying and are you seeing it get better or worse?

Mr. WORDSWORTH. First of all, my beginning experience was with a large corporation before I started my own small business in 1974. So I have had a period of time to accumulate some experience. I am learning every day now.

Both my wife and I work 80 hours a week, maybe, 80, 85 hours a week in our businesses 7 days. And we have a number of managers, but that is the life of the restaurant business. Of that time, I would say a good 15 percent maybe is spent, and maybe even more, in complying. You are so right when you say, these are Federal regulations in this book. I really invite you to entertain yourself by looking at this list. And you understand, these aren't the forms, these are just the names of the forms. The Chamber did an excellent job putting this together. This should get some kind of award.

But many times, the State forms and the local forms are as burdensome. In particular, in some jurisdictions we have meals taxes. And almost the accounting meals taxes and the repercussions for a meal, for properly filing a meals tax in many cases is almost more impactful than filing a State sales tax. And so most people don't have the great opportunity to see the accumulation. No single item will ever kill you. But it is the great accumulation and that is what we deal with. We are the last guy, the total, the sum total. And it is the accumulation of the regulations. I think many of them, I truly believe, have unintended consequences. I don't think legislators really intended the consequence that it is on small business to comply.

Mrs. MILLER. Thank you. Death by 1,000 paper cuts, I suppose, is a way to say it as well.

Ms. HARNED, if I could ask you, one of the, actually this subcommittee has had a number of different hearings about burden. We have really tried to analyze the construct of some of the model-

ing that goes on with the various agencies about, as they are trying to estimate burden, cost of compliance and the amount of hours that people spend to try to comply with a number of the different regulatory processes that they are looking at.

I am just wondering, from your experience, through your foundation there, and you were talking about the lady that was in the business with the leaded glass and the EPA regulations. I think you mentioned 90 some hours, I forget exactly what you said, less than 100, that they thought that had estimated for her to comply with that. Do you think that is a proper estimation of time, or have you found in your experience that agencies often lowball the amount of burden or cost of compliance, or do you think they are usually generally on the mark?

Ms. HARNED. It varies by agencies. Unfortunately, all I would really have to proffer there is anecdotal. But I think really the answer to your question goes to the point that Mr. Wordsworth just made, which is, each agency looks at the regulatory obligations they put on small business owners and the regulated community in a vacuum. I sat in a 2-hour meeting with some officials from EPA that went through just one section of one rule. I just sat there, just thinking, if I am a small business owner, they said this is no big deal, this will only take X amount of hours. But they are not thinking about all the other forums that Mr. Wordsworth has to comply with.

So again, anecdotally we hear, this is a top 10 issue for small business owners, so I do think that there is probably something there to your point as far as agencies, what they are estimating what is actually happening out there. But that being said, I think the bigger problem is that each agency is looking at the regulatory obligations they are imposing and the paperwork requirements they are putting forward in a vacuum, and they are not seeing, as you said, the death by 1,000 paper cuts. As a result, that is really where I think small business owners like Mr. Wordsworth get buried.

Mrs. MILLER. And a final question for Mr. Shull. Mr. Shull, I was interested in your articulating repeat offenders. I have to tell you the truth, whenever I think of repeat offenders, I think of a piece of legislation I was involved with as a former Secretary of State of Michigan, where I was the chairman of the traffic safety commission of our State and we were looking at drunk driving repeat offenders. It was an interesting type of a thing. I don't think it is particularly inherent to drunk driving offenses, where somebody might have an extra glass of wine or something, and they go out, and one time in their life they have an incident, as opposed to a very small percentage of the driving population who are the repeat offenders that have an inordinate amount of the problems out there. They just flaunt the laws, they don't care about the laws. It is not like it happened once, OK, it can never happen really. But I think it is a different kind of thing.

Obviously, as I say, I think the standard always has to be reasonable. And what is reasonable, there is often a lot of discussion on that. But I also think you could put it in the context, and I would ask your opinion on this, as a Member of Congress, this is just my second term here, but we have to fill out a lot of different

paperwork, forms, etc., for trips that might be taken or different kinds of things that we are doing with our budget, budgetary constraints. I am a big believer of full transparency, etc. We try to make sure we are filling out all the forms that we can. We have taken lessons from the ethics committees and we understand what it is that they are looking for. And when we fill out our financial disclosure forms, we try and make sure we give them all the information they want.

But if inadvertently we somehow made a mistake and didn't give them all the information that they want, I guess I would just say, if it is OK for Congress, it is OK for us, how about these small businesses that it happens to them one time? I think, if I understand your testimony, too bad. It is OK for us to get away with it but not for a small businesses. There can never be an exception to the rule.

I think of it as the Government sort of saying, do as I say, not as I do. What is your thought on that?

Mr. SHULL. Sure. Actually, I think there is a line in my prepared statement where I do note that agencies already have enormous discretion that they do exercise to waive off certain first-time or technical violations. Although I am sure in your case, any little slip-up will be noticed by your opponents and you will be roundly criticized for it. So I am sure you are not even getting off scot-free.

But I do think there is a positive alternative. I just want to sort of take this example as another opportunity to point another kind of positive alternative. I am sure it would be a small chunk of time would be taken off Form A, Form B, Form C and so on that cumulatively would make a difference. If something so simple as having to fill out your name and your office number and your address, if you could do that once and every other form that you sit down to fill out, it were automatically completed for you.

I think that there are ways, by shifting to electronic reporting and by giving small business key identifiers that they can take to all their forms. There are things like that make it easier for businesses to report the things that they have to report or disclose the things that they have to disclose without having to—but it would give them a way to spend a little bit less time doing that.

I think that is something that would help small businesses and still allow the public to receive the information that it needs. So I think that is another example of the kind of positive way to go that doesn't reduce the information we receive and it gives small businesses a special break.

Mrs. MILLER. I appreciate those comments. I think that would be optimal in a perfect world. But in a Government that sometimes can't get the CIA and FBI to talk to one another, I am not sure that we are going to be able to accommodate that. But perhaps. It is certainly a goal.

At this time I would yield to recognize Representative Neugebauer again, who is the author of this very interesting legislation, for questions.

Mr. NEUGEBAUER. Thank you, Madam Chairman.

Mr. Shull, I want to go back to the comment you made, because I think sometimes, as I have listened to your testimony, I don't disagree, but I think you are talking about a different issue in many

cases. What you are talking about is someone that has, shortening the time for paperwork. I think everybody on this dais would be for that.

What we are talking about is not people, how long it took people to fill out that form. What we are talking about is if you forgot to fill out that form. So what this bill does is it addresses those people that didn't have, didn't say, it is too long a form, I am not going to fill it out, it is for those folks who thought that was a yearly report and it turns out it was a quarterly report.

So we are talking about people that inadvertently—then when you talk about violations, I think we have to be talking about, a violation, for example, of a failure to report an accident on your job site. This bill doesn't give you 6 months to correct that violation on your job. It just says, if you forgot to fill out the appropriate report when someone got hurt on your job, and the administrator believes that the failure to fill out that report did not cause significant health or hazard to the employee, that there is a forbearance. If there was a serious violation on that job site, and you didn't report it, you don't get any help under this bill.

So certainly, everybody here thinks we ought to cut down on the number of forms. And as Mr. Wordsworth pointed out with his document, and the fact that you print out the instructions, there are a lot of forms, I think everybody agrees with that. What we are talking about is that, like we are talking about Lori, and Lori writes me and says, Congressman Neugebauer, and I am paraphrasing here, my husband and I have a small business. My responsibility is to do the paperwork. She said, I am so afraid that we are going to forget to fill out a form or we don't fill it out correctly, and that we might be charged a huge fine or a penalty for that. We have a very small business and we can't afford that fine for something we didn't intend to do.

So what this bill does is say to Lori and her husband, you know what, we understand that you are trying to comply with the law. Now, for those people that have serious violations, this bill, as I said earlier, I think that the Chairwoman pointed that out, it is not for those folks. We all want to work to reduce the paper volume. But we need to, as the Chairwoman said, if I get a break to get a second chance to fill out my form because I didn't check that box and should have checked that box, Lori and her husband ought to get a second chance, too.

Mr. SHULL. Yes, sir. And I believe that in many cases Lori and her husband might already be getting second chances. Because agencies do have discretion in some cases to waive fines. And there are times when they will choose not to, either because of the public interest hazard that is at stake or because immediate compliance is the essence of the requirement. For example, with the SEC and Y2K compliance, waiting until after Y2K wouldn't have really helped things. So immediate compliance was absolutely a necessity.

I am pleased to hear that there is some interest in carving out some room for the public interest. There are some other public interest issues, though, that haven't been accommodated here that I do want to point out. One of them is that what might look like at the time a minor violation that doesn't seem to cause a harm to the public could ultimately, however, be something that contributes

to early warning about hazards that are emerging. We might be getting that early warning if an instance here and an instance there that are not being reported. They are really sort of enormously complicated issues. I think because we haven't exhausted all of the other ways to help small businesses comply, I think this kind of extraordinary remedy of giving people, letting people off the hook for having failed to comply, this should be sort of the last resort.

I think the first resort really should be helping small businesses comply. For example, small business compliance assistance. There are two bills right now, I believe it's H.R. 230 and S. 1411. These are bills that would help establish small business compliance assistance programs, so that Lori would never have to worry about missing out or failing to do something correctly. She could go and get help to do it right. Because I am sure that Lori and all her colleagues in the small business community want to be good corporate citizens. They want to provide the public or their employees the information that they need to provide.

And I really think that the first way to go about it is to help them do that. Help them with the burden before eliminating the information that the public needs.

Mr. NEUGEBAUER. If we really want to help them, we need to cut that folder in about ten-fold. That would really help them, because quite honestly, what we have done over the years is we have tried to somehow think that writing a report or filing some kind of form is going to somehow make the world a better place. I will tell you that probably when we start boiling a lot of that down, somewhere in a piece of compromise legislation was, well, let's just have them fill out a report. That is the kind of problem that is systemic in creating a business community in America that is not competitive.

That is the reason that companies start to say, you know, it is easier to do business in Ireland or it is easier to do business in China or it is easier to do business in India or it is easier to do business offshore than it is in America, because we have taken this viewpoint that if we burden business enough or try to make everybody play by the rules and create an enormous number of rules that somehow things are better. And quite honestly, that is not the mentality that works for this country. It doesn't create jobs, it doesn't create opportunity. In fact, it creates an opportunity for liability because it causes people not to invest.

That is the reason I want to take my next question to Mr. Wordsworth, have you ever found yourself sitting down with your attorney and saying, how can we structure this little business venture so that if we have some kind of a huge fine or a liability arises that we can protect our other assets and our other businesses?

Mr. WORDSWORTH. That would be a luxury, a pure luxury to have the time to calculate a risk. I think in most cases, just by living the business, you live a calculated risk. I think Mr. Shull's word here is correct, exhausted. You really get exhausted under the burden of these.

I don't think, as I understand this bill, this is not for the removal of any form whatsoever. I think this is for amnesty on a one-time occasion for a negligence that was unintended, a paperwork neg-

ligence. I think that is the intent of the bill, and I think it is misunderstood.

Mr. NEUGEBAUER. Madam Chairwoman, thank you for allowing a hearing on this bill, and I look forward to working with you and helping continue. I know you are a great champion of small business. I know you understand the importance of what they contribute to our country. I look forward to working with you on this. I want to also thank our panel today for their attendance.

Mrs. MILLER. Thank you very much, and I would echo that and thank our panelists very, very much. We are delighted to have you all, again in some cases, and look forward to continuing to work with you all in a bipartisan spirit to make sure that American businesses prosper and succeed in this global marketplace. Thank you very, very much for coming.

[Whereupon, at 3:25 p.m., the subcommittee was adjourned.]

