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FULL COMMITTEE HEARING ON IMPROVING THE PAPERWORK REDUCTION ACT FOR SMALL BUSINESSES

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UNITED STATES HOUSE OF REPRESENTATIVES

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FULL COMMITTEE HEARING ON IMPROVING THE PAPERWORK REDUCTION ACT FOR SMALL BUSINESSES

Thursday, February 28, 2008

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

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360 Rayburn House Office Building, Hon. Nydia Velázquez [chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Clarke, Chabot, and Graves.

OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ

Chairwoman VELÁZQUEZ. Good morning. I call this hearing to order to address improving the Paperwork Reduction Act for small businesses.

The federal paperwork burden continues to grow for small firms. As agencies churn out regulations and notices at a rate of nearly 1,500 pages per week, it seems that every day brings some new paperwork on small businesses. In their most recent annual report, OMB found that the overall burden increased nearly 700 million hours from F.Y. 2005 to F.Y. 2006.

Paperwork is costly for small firms. According to an NFIB study, paperwork and recordkeeping costs small businesses nearly $50 per hour. Not surprisingly, small businesses cited the volume as being the one of the most difficult problems.

The Paperwork Reduction Act, or PRA, was created in 1980 with the intent of curtailing the growth of paperwork, but, unfortunately, it hasn't done so. One question the Committee seeks to address today is whether current law provides OMB with the right tools to limit their growth or if changes must be made to the PRA to improve its effectiveness.

At today's hearing, we have present the administrator of the office that was created as part of the Paperwork Reduction Act, the Office of Information and Regulatory Affairs. Administrator Dudley is charged with overseeing and enforcing this important law. It is my hope that she can talk frankly about the underlying weaknesses of the law and whether she has adequate resources to enforce it. While OIRA has a difficult task, small businesses deserve to know exactly why their paperwork burden continues to grow.

In today's testimony, we will surely hear about some of the successes of OIRA, but we also wish to understand the obstacles that are preventing the office from reducing paperwork requirements for

small businesses. Additionally, it is critical to get answers why some agencies continue to violate the law.

It is our hope to identify what steps are needed to reverse the growth in paperwork. Some critics have pointed out the reason there is poor compliance with PRA may be due to the fact that OMB guidance is inconsistent with the intent of the Act.

While the statute says that agencies should work to reduce paperwork burdens on small businesses, OMB guidance seems to incorrectly limit the scope of the law. I am interested in hearing the reasons for this inconsistency and whether the small business sections of the law are being misinterpreted by OIRA.

Ensuring that agencies are considering the economic impact of their regulations and paperwork requirements on small firms is critical. It is a primary reason the Committee established the Regulatory Flexibility Act: to focus on reducing unnecessary paperwork burden created due to federal regulations. We have already has passed legislation to strengthen RegFlex this Congress, but it is important to examine whether that law and the PRA are working in a cohesive manner.

The PRA should not serve to discourage agencies from conducting proper regulatory flexibility analyses. All too often we see agencies implementing regulations that ignore or understate economic impacts on small businesses. In many instances, this is because of a lack of communication between the agencies and the small business community.

Under PRA, an agency that wishes to survey more than 10 small businesses to determine the economic impacts of a rule is required to receive OMB approval. Since approval may take months, agencies that are eager to move forward with regulations may not be properly assessing potential impacts on small businesses.

Enforcement and oversight of PRA is important, but we have to open the prospects of strengthening it to achieve real change. Today's panels will offer insight on what types of reforms may be needed and if the need for further accountability is required.

The reality is the federal paperwork burden continues to grow at a troubling rate, and it is harming our nation's entrepreneurs. And it is clear that the purpose of the Paperwork Reduction Act is not being realized. I look forward to working with Ranking Member Chabot to ensure this important law is meeting its full potential for small businesses.

I want to thank all of the witnesses for coming here today, and I yield to the ranking member for his opening statement.

OPENING STATEMENT OF MR. CHABOT

Mr. CHABOT. Thank you, Madam Chairwoman. And thank you for holding this hearing on the Paperwork Reduction Act.

Although this Committee has legislative jurisdiction over the Act, it has not undertaken a comprehensive review of the Act since it was last reauthorized back in 1995. During the 1960s and 1970s, Congress enacted dozens of pieces of legislation that imposed recordkeeping and reporting requirements on the American citizenry, including millions of small businesses.

In response to this mushrooming growth in paperwork, small businesses cried out at a White House conference. And Congress

responded with the passage of the Paperwork Reduction Act back in 1980.

The Act has three primary objectives: one, minimization of federal reporting and recordkeeping requirements on individuals and business, especially small businesses; reduction in the government's cost of collecting and utilizing the information obtained from the public; and, three, maximization of the value of the information obtained.

To meet these objectives, the Paperwork Reduction Act prohibits the establishment of a recordkeeping or reporting requirement unless it is approved by the Office of Management and Budget's Office of Information and Regulatory Affairs, or OIRA.

Prior to such approval, the agency requesting information from the public must perform an extensive assessment of the cost and benefits of the collection of the information. After completing that task, the agency then sends a formal request to OIRA for approval of the collection of information.

Prior to OIRA approval, that office must satisfy itself, after providing the public with an opportunity to comment, that the collection of information satisfies ten specific statutory standards, which are designed to ensure that paperwork burdens on the public are minimized while still providing the federal government with the necessary information.

Despite the Act and extensive review by the agency and OIRA, the number of hours spent by the public in reporting to the federal government increased from 7.4 billion hours in fiscal year 2000 to 9.2 billion hours in fiscal year 2007.

Given this, it remains an open question whether the Paperwork Reduction Act is meeting the laudable goals of minimizing paperwork burdens on the public. I am particularly interested in hearing what recommendations the witnesses have to modify the Act to achieve its goal of burden reduction without sacrificing the government need to obtain critical information.

With that, I yield back.

Chairwoman VELÁZQUEZ. It gives me great pleasure to welcome the Honorable Susan E. Dudley. She was nominated by the President on July 31st, 2006 and appointed on April 4th, 2007 to serve as Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget.

From 1998 through January 2007, Ms. Dudley served at the Mercatus Center at George Mason University, where she directed the Regulatory Studies Program, 2003 to 2006. She has authored more than 25 scholarly publications and regulatory matters, ranging from e-rulemaking to electricity, health care, the environment, and occupational safety.

Ms. Dudley, you are welcome.

OPENING STATEMENT OF THE HONORABLE SUSAN E. DUDLEY, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC

Ms. DUDLEY. Thank you very much. Thank you, Chairwoman Velázquez and Ranking Member Chabot. I am happy to be here to

testify about improving the Paperwork Reduction Act for small businesses.

I actually have had the pleasure of testifying before this Committee before, but this is the first time as OIRA Administrator. And I want to assure you that I do share your commitment to reducing the regulatory and paperwork burdens that America's small businesses confront daily, and I appreciate the opportunity to explore new approaches to advancing this important goal.

Small entrepreneurs are the engine of economic growth in America. They represent over 99 percent of all employers and provide 60 to 80 percent of net new jobs. Yet, they bear disproportionate burdens when it comes to paperwork and regulatory burdens.

OIRA, along with SBA's Office of Advocacy and other federal agencies, is working both to minimize unnecessary burdens and to help America's small businesses comply with regulatory and reporting requirements.

As you both have mentioned, my office has an important role in the Paperwork Reduction Act. The PRA that created OIRA back in 1980 and the reauthorizations of the Act in 1985 and 1995 as well as the Small Business Paperwork Relief Act of 2002 have further enhanced OIRA's role in eliminating unnecessary, duplicative, and unjustified paperwork burdens, particularly on small entities. And these goals remain high priorities for my office.

Through OIRA's day-to-day reviews of agency information collection requests, we seek to ensure that agencies reduce the paperwork burdens associated with existing collections of information and impose the least burden necessary when they issue new collections of information.

Motivated by the PRA and the SBPRA requirements, federal agencies have taken a number of steps over the past several years to reduce the amount of information they collect from small businesses and to ease their compliance burdens. Nonetheless, as you both mentioned, we continue to see paperwork burdens grow. The government-wide paperwork burden increased more than eight percent in fiscal year 2006.

I strongly support the PRA's goal of reducing government reporting burdens while improving the management of agency information resources, and I generally believe it is having a positive effect. However, there may be things we can do, both administratively and legislatively, to improve it further.

We face two challenges. I will divide it into two categories. One involves streamlining the method of collection to ease the burden, particularly on small businesses. And the other involves reducing the amount of information being collected.

So to address the first challenge, agencies have worked to simplify and redesign forms. And they are relying more on technology and e-commerce to streamline reporting.

SBA's business gateway initiative, a result of the SBPRA task force recommendations, offers small businesses a single access point to federal regulatory and paperwork compliance resources. For example, business.gov is an innovative search-focused Web site where businesses can access up-to-date regulatory and paperwork compliance information and save time doing so. We have also made

some progress on the second challenge: reducing the amount of information collected.

The IRS is responsible for over 75 percent of the federal government's total reporting burden. Recently its Office of Taxpayer Burden Reduction launched an initiative to reduce burden on small business taxpayers who owe $1,000 or less in employment tax by allowing them to file those ET returns as well as pay taxes due on an annual, rather than a quarterly, basis. IRS estimates this change will reduce reporting burdens by 30 million hours annually.

Despite efforts such as these, agency implementation of new statutes has continued to increase paperwork burdens. In each session of Congress, laws are passed that create new programs for federal agencies to implement and quite frequently new agency demands for information. This is the biggest challenge we face in trying to minimize paperwork burdens, in large part because there are real tradeoffs associated with these new collections.

For example, third party disclosure requirements, such as nutrition labeling on food, imposes burdens but may be the most effective and least intrusive method of protecting consumers. Surveys and other information collection may improve the design and enforcement of regulations, making them more effective and less burdensome in the long run.

Nevertheless, it would be valuable for legislators as they draft new legislation to consider the paperwork implementations of alternative proposals, particularly as they affect small entities.

For OIRA's part, we will continue to work with agencies such as IRS and EPA, which impose paperwork burdens that are particularly demanding for small businesses, to minimize the burden and maximize the utility of information collected.

I look forward to discussing these further with you and other ideas that you may have to improve the effectiveness of the PRA. Thank you.

[The prepared statement of Ms. Dudley may be found in the Appendix on page 33.]

Chairwoman VELÁZQUEZ. Thank you, Ms. Dudley.

Administrator Dudley, I mentioned in my opening remarks the study that was conducted by the General Accounting Office in 2006 that found that agencies were not adequately complying with the small business provisions.

And in the study, it was determined that most of the information collection records failed to explain small businesses' impacts or examine less burdensome alternatives for small firms. Can you tell us, since that study was released in 2006, has the situation improved for small businesses?

Ms. DUDLEY. I can tell you that this is something that my office working with the agencies as they issue new requests and as we review because every three years we review existing requests for information as well, this is something that we do pay attention to. We pay attention to the burden that is imposed and the effect it has on small entities.

That doesn't mean that that's not something that we can do better and that we continue to work on doing that better and under-

standing what the real implications are and whether there are things within the statutory constraints that we can do better.

Chairwoman VELÁZQUEZ. What specific steps has OIRA taken to ensure agencies are complying with the small business provision of the Paperwork Reduction Act?

Ms. DUDLEY. One of the things that we are recently working—and this is going to get a little into the weeds—the system by which agencies submit their data to us, so their information collection requests. And we have an element of that.

So it's a data field that they need to enter what are the small business impacts. And that is something that I think one of the things it will do is still a work in progress, but I think within the next few years, it will give us a better sense of this total burden, what is the impact on small businesses.

Chairwoman VELÁZQUEZ. But can we wait a few years when we know the costs that represents for small businesses?

Ms. DUDLEY. I am not saying we wait a few years to see for us to work. Each information collection we try to focus on the small business impacts as well. What I'm saying, in a few years, we may have a better sense of, of that eight billion hours, how much of that is borne by small businesses?

So I think it's a twofold maybe answer to your question. One is, in our individual reviews, we are focusing on the burden. And we are looking at the impact on small businesses. And separately in the long run, we hope to be able to get a better handle on exactly what is it that small businesses face.

Chairwoman VELÁZQUEZ. Okay. One of the goals of the Paperwork Reduction Act was to stop unnecessary paperwork requirements within the agencies before they were sent to OMB. However, this is not happening. The General Accounting Office has found the agency's processes for reviewing information collection requests are ineffective.

Agency chief information officers tasked with this responsibility are simply not giving them sufficient scrutiny. Do you believe that other officials in the agencies should be given the responsibility of reviewing information collections, rather than CIOs?

Ms. DUDLEY. Well, that is a good question. I think there are various officials in agencies that we work with when we review information collections because often they are part of a regulatory program or another program. So there are different officials within each agency that are responsible.

I recently had a meeting with a deputy secretary of an agency on an issue involving paperwork. So I don't know whether that requires any kind of statutory change because I think it is happening. I think there are senior officials, including the CIO but maybe not exclusively the CIO.

Chairwoman VELÁZQUEZ. Let me ask you, can you tell me if the CIOs have the necessary resources to do their job, training and expertise to do their job?

Ms. DUDLEY. I think it does go back to the fact that it is ultimately the head of the agency or department that is responsible. And it may not always be the CIO. The CIOs have I think taken some good initiatives to streamline reporting of information, make it easier to report.

Chairwoman VELÁZQUEZ. What is the main focus of the CIOs?

Ms. DUDLEY. They have a lot of IT responsibilities.

Chairwoman VELÁZQUEZ. But they focus more on keeping the system going, working?

Ms. DUDLEY. That may be the case in some areas. And I think in those areas, I don't think that means the Paperwork Reduction Act is not being paid attention to by others. At least my experience has been the program office often is the ones that take the initiatives to reduce burdens working with the CIOs.

Chairwoman VELÁZQUEZ. Some people, some critics have suggested that to make the Paperwork Reduction Act more effective, the volume of information collection requests that are being sent to OMB needs to be reduced. This could be done by limiting OMB review to significant paperwork collections and shifting more of the review responsibility to the agencies.

OMB already has delegation authority under the Paperwork Reduction Act. Would delegating more authority to agencies on lower-priority information requests help OIRA focus on more significant paperwork issues? If so, how would you envision this delegation occurring?

Ms. DUDLEY. I have not focused on this enough, although I think that is a very interesting question. I would like to look at that and perhaps get back to you.

Chairwoman VELÁZQUEZ. I think this is a very important issue here. And so I would like to get an answer in writing within the next week.

Ms. DUDLEY. We will do that. Thank you.

Chairwoman VELÁZQUEZ. Now I would yield to Mr. Chabot.

Mr. CHABOT. Thank you, Madam Chair.

What are some of the reasons that small businesses spend more time to comply with federal paperwork requirements than, say, large businesses would, in your opinion?

Ms. DUDLEY. I think some of the requirements are not per-employee. So if there are some paperwork requirements that a firm with several hundred employees could handle and spread over a lot of employees, I think often those analyses are on a per-employee basis. And so obviously with fewer employees, it's more per employee.

Mr. CHABOT. Sure. Okay. Thank you.

The Paperwork Reduction Act was last reauthorized in 1995, as we know. What effect has the utilization of the Internet, for example, had on federal reporting and recordkeeping requirements that are not reflected in the statutory language of the Paperwork Reduction Act?

Ms. DUDLEY. I think business.gov. So we have made some improvements there. Business.gov I think has. I think it is exciting, the opportunities that we have with eGov so that you have one place to go for grants, grants.gov, e-filing of income tax returns. I think that it has improved. So it hasn't reduced the amount of information that is collected, but it has streamlined and made it easier.

Mr. CHABOT. Thank you.

If you know, what has been the feedback from small businesses with respect to the SBA's business gateway?

Ms. DUDLEY. I don't know.

Mr. CHABOT. Okay. Can you get that information later for us?

Ms. DUDLEY. Yes, I can.

Mr. CHABOT. Okay. Thank you.

And, finally, do you think there should be an effort to incorporate plain language initiatives to reduce reporting and recordkeeping requirements on small business?

Ms. DUDLEY. I mean, that makes sense. And what I don't know is how far we have already come there and how much. So that is something I can also look into.

Mr. CHABOT. Okay. Very good. All right. Thank you very much. I yield back, Madam Chair.

Chairwoman VELÁZQUEZ. Ms. Clarke?

Ms. CLARKE. Thank you very much, Madam Chair and Ranking Member Chabot.

Honorable Dudley, in your written testimony, small businesses represent 99 percent of all employers and provide 60 to 80 percent of net new jobs. You stated that research by the SBA suggests that small entities disproportionately shoulder regulatory and paperwork burdens. How does your research explain some of the criticisms in regards to complying with regulatory and reporting requirements?

Ms. DUDLEY. The criticisms from small businesses about the difficulties?

Ms. CLARKE. Yes.

Ms. DUDLEY. This would be the Office of Advocacy's research and I think might suggest that the reason for the criticism is that they feel they bear a greater burden.

Ms. CLARKE. How has the OIRA been particularly sensitive to small businesses?

Ms. DUDLEY. In our reviews of paperwork, of information collections, we do try to look at the effect of those. First of all, we try to make sure that the burden estimates are accurately represented. We look at the effect on small entities as well as the general population.

Ms. CLARKE. So you would say that the burden estimates are accurate?

Ms. DUDLEY. That is something that I would say we spend—in our reviews of agencies' information collection requests, that is the bulk of our effort, to ensure that they are. So we scrutinize them carefully to try to make sure that they are as accurate as possible.

Ms. CLARKE. And so you would say that they are accurate?

Ms. DUDLEY. I think it is not an exact science. So I don't think that there are intentional misrepresentations, but, unlike the budget, where we really know how much is being spent, it's harder to know.

Ms. CLARKE. It kind of defies the reasoning for measurement if there is no indication or you don't have some sort of measurement tool that would indeed give you the sense of the tipping point, right?

Ms. DUDLEY. Yes. I would say, actually, that the fact that you have given us the Paperwork Reduction Act does give us a need to measure. And we have been improving the measurement.

So I think, even if the measurement is never going to be perfect because different people will take different amounts of time, I think you really have provided the incentives to get that measurement better and better.

An example would be the IRS last year. Part of the eight percent increase that I mentioned in burden, a lot of that came from the IRS just reestimating the burden of filing taxes. And so we didn't really change the burden, but we have a better model for estimating it. And it turns out it is bigger than we thought.

Ms. CLARKE. So how do we, then, flag it for change?

Ms. DUDLEY. I think it is changing. I think you have. And I think you provided agencies a strong incentive. And we are working with them to make sure it is accurate.

Ms. CLARKE. And following a short period of modest decline from 2002 to 2004, the federal paperwork burden has increased at a rapid rate. Do you know why there was such a rapid increase?

Ms. DUDLEY. There are probably three factors. And one is these adjustments to the burdens that I just mentioned. And so it is actually not a change in the burden, but we are estimating it more accurately. So that is one factor.

Another is legislative changes. And that was a large change in the 2002 to 2005. That was the bulk of it. It was things like Medicare part D.

And then the third tends to be the smaller of the three, is discretionary agency actions. And that is where we feel we have the most control as we review paperwork collections.

Ms. CLARKE. And so it just seems to me that what we have done is put a spotlight on the problem. We have begun to essentially get a sense of how broad the problem is.

But what I am not hearing is where our act basically serves as the trigger for reduction and what you are prepared to do to help in that process.

Ms. DUDLEY. I think your act is actually doing more than you may suggest because we don't know what paperwork would look like if we weren't tracking it. So if we weren't measuring or tracking paperwork at all, who knows what it would look like.

I mean, so I agree. We all would like to find a way to reduce it further.

Ms. CLARKE. Who do you believe has the responsibility at the end of the day to making that change, to identifying that tipping point and really enforcing a change?

And, of course, we are all looking at this because we know of the cost to the small business. And the more that we kind of study the study and draw this process out, the more that these businesses are really suffering a huge burden.

So we don't want to be so academic about this that we are not bringing relief to the problem. And having an active place which highlights and spotlights that is great. To me it's the action that we are able to put in place through each of our agencies that says, you know, this is the time that we are going to change this.

Do you have a sense of where we are with regards to that?

Ms. DUDLEY. You had asked where the responsibility lies?

Ms. CLARKE. Right.

Ms. DUDLEY. I think it does lie with all of us. And I think the other thing I think we need to realize was I mentioned in my prepared remarks that there are real tradeoffs. So sometimes asking for more information may avoid other costs on small businesses and is valuable in itself. And so there are real tradeoffs. And it is hard to take all of those tradeoffs into account.

So I would say when we pass new legislation, we need to understand what will this require? And I think my office and the federal agencies, we need to continue to work and say, given the constraints that we have, what is the most efficient way that we can do this to avoid burdening small businesses?

Ms. CLARKE. Has there been given significant thought to integrated information sharing through technology? Oftentimes we know that these businesses are filling out paperwork for a myriad of regulatory agencies. And it is all the same information over and over.

And they, too, can use the technology to update any information that would then be disseminated to the various entities that would need that information. Has there been a lot of conversation or thought around that sort of integrated technological system?

Ms. DUDLEY. Yes, conversation and thought and some pilot studies. But I think you're right. I think that is an exciting opportunity for improvement, the data harmonization.

So if a lot of different agencies ask for similar but not quite the same information using several different forms, how can we do that so that there is one place to provide the information and then have it shared?

We are working on that. There is resistance to it. There are barriers to it. But I think that we are making some progress towards that.

And I think you are right. I think that is an exciting opportunity not to limit the amount of information we have but to collect it in a much more streamlined way.

Ms. CLARKE. Thank you very much, Madam Chair. Thank you, Honorable Dudley.

Chairwoman VELÁZQUEZ. Ms. Dudley, I am concerned that the Paperwork Reduction Act is discouraging agencies from properly conducting analysis of small business impacts pursuant to RegFlex. This is because the law requires OMB approval when an agency conducts a survey of small firms regarding the potential impacts of regulations. Agencies often try to avoid these types of delays in the rulemaking process.

Do you believe the PRA should be amended to exempt information collection requests from OMB clearance if they are purely voluntary and requested for the purpose of doing a RegFlex analysis?

Ms. DUDLEY. That is something that I think is something that is worth exploring. And I know it is very different from the way the PRA was initially created to include voluntary as well as mandatory. So I think that will take a little—I certainly can't give you an off-the-top-of-my-head answer.

Chairwoman VELÁZQUEZ. What can you tell us today is a recommendation from your end where you feel that legislatively changes should be made to make the PRA more effective?

Ms. DUDLEY. I know that there have been efforts to examine that. The administration has not developed a position on how to make it and I think, in large part, because it doesn't always appear to be, but I think it is working pretty well and so whether there are specific changes that we can make to fix the things that I think you have all accurately identified.

Chairwoman VELÁZQUEZ. Well, I think that if you stay here for the second panel—

Ms. DUDLEY. There will be recommendations?

Chairwoman VELÁZQUEZ. —they will say that it is not working for them. And so, Ms. Dudley, do you have any staff that will remain for the second panel?

Ms. DUDLEY. Yes. Yes, I do.

Chairwoman VELÁZQUEZ. Mr. Chabot, do you have any more?

Mr. CHABOT. I don't have any other questions.

Chairwoman VELÁZQUEZ. Well, Ms. Dudley, you are excused. And, again, thank you for your participation this morning.

Ms. DUDLEY. Thank you very much.

Chairwoman VELÁZQUEZ. I will ask for the witnesses from the second panel to please take your seats. And now we recognize Ms. Clarke for the purpose of introducing our first witness on the second panel.

Ms. CLARKE. Thank you very much, Madam Chair and Ranking Member Chabot.

It is truly a privilege for me to introduce the distinguished panelist, whose work has been of great benefit to the people I serve in the 11th congressional district. I am very honored today to introduce Dr. Linda Brady.

She is currently the President and the CEO of Kingsbrook Jewish Medical Center, located in Brooklyn, New York. Dr. Brady has served in her current role at the medical center since 1999. A cum laude graduate of Barnard College, Dr. Brady received her medical degree from New York University School of Medicine and completed her psychiatric residency at the Albert Einstein College of Medicine, Bronx Municipal Hospital Center.

Kingsbrook Jewish Medical Center, located in the East Flatbush section of central Brooklyn, was founded in 1925 as a chronic care facility to serve the then Jewish community within a cultural context. As the community diversified, Kingsbrook expanded its services and programs to meet community needs. An 864-bed medical training institution, Kingsbrook comprises a 326-bed acute care hospital and a 538-bed adult and pediatric skilled nursing long-term care facility.

Today Dr. Brady is here to testify on behalf of the American Hospital Association. The AHA is the national organization that represents and serves all types of hospitals, health care networks, and their patients and communities. Close to 5,000 hospitals, health care systems, networks, and other providers of care, and 37,000 individual members come together to form the AHA.

I am proud to have Dr. Brady here representing my district. I am grateful for you being here today. And I look forward to hearing your testimony.

Thank you very much, Madam Chair.

Chairwoman VELÁZQUEZ. Welcome, Dr. Brady. And you will have five minutes to make your presentation.

Thank you.

STATEMENT OF MS. LINDA BRADY, PRESIDENT AND CEO, KINGSBROOK JEWISH MEDICAL CENTER, ON BEHALF OF THE AMERICAN HOSPITAL ASSOCIATION

Dr. BRADY. Good morning, Madam Chairwoman, Ranking Member. And hello to Congresswoman Clarke.

I am Dr. Linda Brady, President and CEO of Kingsbrook Jewish Medical Center in Brooklyn, New York. On behalf of the American Hospital Association's nearly 5,000 member hospitals, health systems, and other health organizations, and its 37,000 individual members, I appreciate the opportunity to share with you the administrative burdens faced by hospitals and what should be done to reduce them.

As a valued and trusted public resource, our society holds hospitals in special regard. As a result, we are closely monitored and evaluated by local, state, federal, and private regulators charged with protecting the public and ensuring that public funds are spent wisely and in the public's best interest. However, providers are increasingly concerned that health care regulation is out of control and has lost a sense of fairness and common sense.

Currently administrative costs comprise between $145 and $294 billion of our nation's health care spending and are a chief factor in the growth of that spending. It is time for a dramatic change.

Should all regulations be eliminated? No. The issue is not whether to regulate but how. Just as providers constantly work to ensure that what they do benefits patients first and makes prudent use of resources, government must do the same by standardizing requirements, being efficient in its demands, and eliminating some of the redundant administrative burden placed on providers.

Hospitals operate in an increasingly constrained financial environment. As a result, every dollar is precious to preserving our mission. Medicare currently reimburses hospitals only 91 cents for every dollar of care that they provide to a Medicare patient. And Medicaid payments are worse, only 86 cents for each dollar of services. In 2006 alone, this combined underpayment totaled $30 billion. That is on top of an additional $31 billion in uncompensated care. Meanwhile more and more of hospitals' precious resources are being diverted to comply with inefficient, duplicative, and burdensome regulations.

Nearly 30 federal agencies regulate hospitals. And little coordination exists among them or between similar agencies at the state and local levels. As a result, redundancy abounds.

For example, CMS conducts six types of activities to protect against improper payments, waste, fraud, and abuse. Multiple contractors are tasked with carrying out these activities to one degree or another.

While each contractor has an individual purpose, they often seek the same information, requiring duplicate effort by hospital personnel, who must pull, review, and process patient charts and appeals time and time again.

The Medicare Recovery Audit Contractor Program is particularly troublesome because the RACs are paid on a contingency fee basis, meaning they keep a percentage of the payments they recover, with limited risk for making the wrong decisions that unfairly hurt providers. This bounty hunter-like payment mechanism has led to excessive chart requests and aggressive denials on the part of the RACs.

Kingsbrook, for example, has seen many cases of wound debridement denied for incorrect coding. In 119 cases, the RAC claimed that we used the improper code because the word "excisional" was not written on the patient's chart. However, the charts contained skin biopsy results clearly demonstrating that skin had been removed for testing.

The RAC was unwilling to accept clinical addenda to the medical record, despite the fact that every medical and legal expert we consulted said that such documentation was sufficient to make a determination.

As of December 31st, 64 cases, totaling $894,000, have been overturned in our favor upon appeal. Fifteen cases are still pending. The cost to us in terms of money and man-hours expended to overturn these erroneous denials and recoup money that was rightfully owed us was great.

And, yet, we continue to be subjected to denials for the same documentation issue because the RAC program lacks a feedback loop. This example only hints at the levels of confusion and waste caused by duplicative oversight mechanisms.

In conclusion, we urge the administration and Congress to work together to ease the regulatory burden confronting health care providers by creating a more common sense approach to developing and issuing future regulations. Equally critical is the need to provide relief from the most burdensome, inefficient, or ineffective regulations, those that take away critical time spent with patients.

My written statement contains specific actions the AHA believes will help ease this burden. Hospitals are committed to doing the right thing the first time to ensure quality patient safety and payment accuracy. However, duplicative regulatory and oversight mechanisms only increase confusion and drive up costs for both hospitals and the health care system as a whole as well as for the government.

We need smarter, more efficient regulation, rather than additional rules and oversight so that the people of America's hospitals can spend more time with patients and less time with paperwork.

[The prepared statement of Ms. Brady may be found in the Appendix on page 43.]

Chairwoman VELÁZQUEZ. Thank you very much, Dr. Brady.

And now our second witness is Mr. Robert Daly, who is the President of the Kaw Roofing and Sheet Metal Inc., established in 1923 in Kansas City. And he is testifying on behalf of the National Roofing Contractors Association.

Mr. Daly has served on NRCA's Board of Directors and many NRCA committees and in 2007 was elected as president of the association. Established in 1886, NRCA is one of the construction in-

dustry's oldest trade associations and the voice of professional roofing contractors worldwide.

Welcome, sir.

STATEMENT OF MR. ROBERT P. DALY, JR., PRESIDENT, KAW ROOFING AND SHEET METAL, INC., ON BEHALF OF THE NATIONAL ROOFING CONTRACTORS ASSOCIATION

Mr. DALY. Thank you, Madam Chairwoman, Ranking Member Chabot, and distinguished members of the Committee.

My name is Robert Daly. I am President of Kaw Roofing and Sheet Metal, a small business in Kansas City, Kansas. I also serve as President of the National Roofing Contractors Association. NRCA welcomes the opportunity to testify on the growing paperwork burden on small business.

NRCA not only represents over 4,600 contractor members, but what we accomplish ultimately affects over 20,000 roofing contractors in the United States. Our burden also mirrors that probably of every specialty contractor in the U.S. as well.

Let me state at the outset that small business owners recognize the need for sensible regulation in order to protect employees, consumers, and the environment. However, it is critical that the implementation of regulations and the required paperwork be governed by the type of common sense that small business people must employ every day if we are to survive.

It is not an exaggeration to say that small businesses are drowning in a rising flood of paperwork. My experience bears this out, and statistics back it up. Paper files that I must keep that used to be one-quarter or a half-inch thick are now anywhere from 6 to 12 inches. The paperwork requirements in our business are at least 10 times what they were 20 years ago.

If you are a small business person like myself, forget about filing cabinets. Instead, you need to think in terms of entire storage rooms to accommodate your paperwork. Paperwork requirements in our relations with general contractors, or GCs as we call them, demonstrate the challenges we face.

Just a few years ago, we had to provide general contractors with duplicates or at most three copies of government paperwork. Today we often have to provide six copies of this paperwork.

There have been instances in which my firm provided three copies of certain paperwork to a general contractor, when they needed six. Rather than copying the three copies they already had, they demanded that we provide those three copies.

It appears that the further down the food chain you are, the more one has to produce while others up the food chain tend to manage things. Therefore, not only does the paperwork burden fall on us, but also we have to maintain copies for our own records.

The onslaught of government regulatory agencies include paperwork requirements that are not entirely cohesive of everything such as OSHA to deal with in regards to material safety data sheets, and safety policies that must be placed on the job in a written form.

We have DOT daily logs. We have forms regarding the disposal of materials in regards to EPA. The Department of Homeland Security requires that we fill out forms for transportation of certain

materials. Prevailing wage jobs require that we fill out weekly wage reports. And the list goes on and on.

I understand that these entities' mission is to improve worker safety and the security of our country. And we fully subscribe to that. But there must be a way to streamline the proliferation of paperwork while still achieving that goal.

The paperwork burden is most acute for small construction firms that wish to work on federal projects. In my experience, 10 to 15 years ago, our firm would often bid federal projects. And the paperwork was manageable.

Now paperwork requirements for federal projects are so excessive that a firm has a difficult choice to make. You either don't bid on federal contracts or if you are going to bid on federal contracts, you must hire additional staff to deal with the extra paperwork demands. This drives up overhead costs and puts small businesses at a disadvantage to larger competitors. Small businesses' decisions not to bid leaves the government with less-qualified contractors to choose from.

Small businesses often do not have the resources capable of tracking government regulations. Even diligent small business owners may inadvertently make an error or miss deadlines associated with government paperwork. It is particularly disturbing to be hit with fines or penalties for minor inadvertent paperwork violations.

One of my pet peeves is that people knock on my doors and come in and start crying to me about how the river is dirty, but nobody suggests how to clean it up. I think one of the things we would like to do as a part of this is make some recommendations as to what we would like to see done.

We recommend that Congress provide increased funding for the Office of Information and Regulatory Affairs at the Office of Management and Budget. OIRA has had some success over the years in reducing or streamlining paperwork requirements. However, the office has been constrained in recent years by declining budgets.

To address the problem of inadvertent paperwork violations, NRCA urges Congress to consider the Small Business Paperwork Relief Act of 2007. The bill would direct federal agencies to not impose civil fines for certain first-time paperwork violations.

The bill does not exempt businesses from paperwork requirements but merely gives an owner acting in good faith some leeway to correct a first-time mistake. This is a common sense approach to reducing the paperwork burden on small businesses while still providing for the safety and health of workers in our communities.

NRCA urges the Committee members to take a serious look at this bill as a proposal that could be taken as a first step to address the paperwork burden on small businesses. NRCA looks forward to working with this Committee to develop effective solutions to the paperwork problem facing small businesses.

Thank you, again, for considering NRCA's views. I would be pleased to answer any questions which you may have.

[The prepared statement of Mr. Daly may be found in the Appendix on page 54.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Daly.

Now it is with great pleasure that I welcome the Honorable Sally Katzen. Ms. Katzen is a former Administrator at the Office of Information and Regulatory Affairs in the Office of Management and Budget. She served as Deputy Assistant to the President for Economic Policy and Deputy Director of the National Economic Council at the White House. She has had various leadership roles in the American Bar Association and is a visiting professor of law in George Mason University.

Welcome.

THE HONORABLE SALLY KATZEN, FORMER OIRA ADMINISTRATOR, VISITING PROFESSOR OF LAW, GEORGE MASON UNIVERSITY

Ms. KATZEN. Thank you so much, Chairwoman Velázquez, Ranking Member Chabot, Congresswoman Clarke.

My written testimony will be included in the record, so I want to use my time to emphasize a few points. First, each of you and all of these witnesses have spoken repeatedly and eloquently about the heavy burden of paperwork on small businesses. I just want to drop a footnote here that use of total burden hours, the nine billion hours, can be misleading because that figure includes not only the hours spent incurring a liability or monitoring an obligation like a tax form, but also hours spent to obtain a benefit, like a small business loan or a student loan or veterans' benefits or Social Security benefits or Medicare benefits. All of those hours are combined. And to speak of the totals repetitively I think masks the very important differences.

Now, it is true that the heaviest burden comes from the IRS, and it is customary to beat up on the IRS for its heavy-duty forms. I would like to point out that the IRS is the most aggressive agency in attempting to streamline and simplify forms. Administrator Dudley referred to it this morning. The GAO cited it as a model, along with EPA, two years ago for an effort to try to break through all of this.

There is also the benefit side of the burden, and, again, Administrator Dudley spoke about it. It is in my written testimony, and I won't go through that.

Clearly, all of this aside, paperwork does pose very serious burdens on small businesses. And I think you are right, it is great that you convened this hearing, and that you asked the questions.

As to the issue you posed to Administrator Dudley, is the PRA really working, I was at OIRA for five years during the Clinton administration. My own instinct—no empirical data is there because there is no counter-factual baseline from which to measure—my instinct is it does work. Some of the proof of that is in the remarks that you and others have made about the fact that agencies are reluctant to send things forward to OIRA. They realize that the PRA process imposes time, cost, effort, and constraints, and negotiating with OMB is not always the most fun thing to do. And, therefore, I think agencies have held back.

Now, can we do better? I think, yes, we can. And I wanted to move to the positive side. To do that, we must first identify the barriers. We are all in agreement that the single largest barrier is the fact that Congress mandates these information collections.

I suspect as we sit here talking about reducing burdens, there are hearings in other rooms in this building and across the way, where committees are thinking about how they should impose new obligations. National security, we have seen a lot of that. We see it in a lot of other areas as well. And the fact that Congress is making these decisions is something that the PRA can't do anything about, regrettably. The PRA does not trump another statute.

The other barrier goes to the issue that Congresswoman Clarke was talking about, which is the multiplicity of same requests. How do we stop that? Well, I think the government is taking some steps with this business gateway to try to get information once and use it for several purposes. But a lot of times a form will have specialized questions with specialized terms or, you might say, idiosyncratic definitions.

The term "employee" might be used by various programs in the same agency or in different agencies in different ways. So you can't take the answer from one form and incorporate it wholesale into another form. Why do those definitions' differences exist? It is not because of agency silliness or stubbornness. It is because the underlying program creates certain terms which the agency has to abide with.

Now, one of the things that I was very excited about was when the task force was set up. The first item on the agenda was, come up with ways of consolidating information requests across agencies and even within an agency. And I eagerly awaited the first report.

The first report was long on the challenges they face, but short on the accomplishments. There were I think five or six in appendix 5, several of which had gone back several years. And what was particularly disappointing is that there was no road map of how to go further.

Why not call for the agencies to put forth a list of instances where, with some technical modifications in the definitions or the cutoffs or some of the other qualifications, you could, in fact, consolidate a number of requests within an agency or across agencies? And then this Committee, working with the committees of jurisdiction, can serve this up to the Congress and actually accomplish some real difference.

I have to invoke the committees of jurisdiction. Dr. Brady was talking about the source of this, of the regulations, which come from HHS or CMS or the different agencies. It's not clear that by your saying, "Reduce paperwork, reduce paperwork, reduce paperwork" is going to produce anything until the committees of jurisdiction say, "Let's get real."

Two other quick things, if I may. The suggestion of the Chairwoman on the role of the CIO and on whether OIRA should be limited to review of significant forms are two items that I discussed at some length in my testimony before the House Government Reform Committee, it was then called, I think, in 2006. I would be happy to get you a copy of that testimony, but those are ideas that I think do bear looking at. Otherwise I would continue pressing on what you have accomplished in setting up the agenda in the Small Business Paperwork Relief Act.

I am not saying the PRA works perfectly. To the contrary, we need to do more. But there are ways of doing it that are smart and productive. And I would encourage you to work in that regard.

Thank you. I will be happy to take any questions.

Chairwoman VELÁZQUEZ. Thank you very much.

Our next witness is Mr. Drew Greenblatt. Mr. Greenblatt is testifying on behalf of the National Association of Manufacturers. He is the President of the Marlin Steel Wire Products, established in 1968 in Baltimore, Maryland. Marlin manufactures wire racks, baskets, and hooks.

The National Association of Manufacturers was founded in Cincinnati, Ohio in 1895 and represents 130,000 manufacturers in all 50 states.

Welcome. And you will have five minutes. Thank you.

[The prepared statement of Ms. Katzen may be found in the Appendix on page 59.]

STATEMENT OF MR. DREW GREENBLATT, PRESIDENT, MARLIN STEEL WIRE PRODUCTS LLC, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. GREENBLATT. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee on Small Business. Thank you for the opportunity to testify today on behalf of the National Association of Manufacturers regarding the Paperwork Reduction Act and the work of this Committee to improve it for small businesses.

The National Association of Manufacturers is the nation's largest industrial trade association, and it represents small and large manufacturers in all 50 states. Three-quarters of NAM's membership is small and medium-sized manufacturers. We represent the 14 million men and women that actually make things.

My name is Drew Greenblatt. And I am the President and Owner of Marlin Steel Wire Products. We make steel wire baskets, and we make wire hooks, like this. We make them all in Baltimore City, Maryland. We import nothing from China. And we make everything in Baltimore.

Marlin Steel Wire custom-builds wire products for clients in the pharmaceutical industry, automotive industry, and aerospace manufacturing. We employ 27 people. We have grown 33 percent in the last 2 years. And we tripled in the last ten years. We are adding people. And we want to keep on adding people, but we don't want to keep on adding paperwork.

NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase the understanding among policy-makers, media, and the general public about the vital role of manufacturing to America's economic future and living standards.

I compiled all the forms in my business—if you look over at this picture right over here—that we generated in a single year. We piled them up on top of each other. As you can see, it is more than six feet tall. If you look at this photo, you can see my plant manager, Simon Matthews; our production specialist, Nan Brand, all next to last year's paperwork. This is crazy.

That's why it is no surprise to me that the federal government reported that it imposed 9.2 billion hours of paperwork on the public in 2007. The cost per employee for small firms was almost $22,000 per employee. It's $10,000 per employee if you are a medium-sized firm. And it's almost $9,000 for large firms per employee.

NAM did a very good report on the structural costs imposed on U.S. manufacturers that harm workers and threaten our competitiveness. They examined these structural costs that are borne by us, and they compared our tax and regulations burdens against our competitors in Canada, Mexico, Japan, et cetera. And the finding was that our government is imposing 32 percent more paperwork on us than our foreign competitors. That is a major disadvantage for us.

We welcome the role that Chairwoman Velázquez and this Congress are addressing because it is so important for small business. Improving the Paperwork Reduction Act is necessary, and it is a noble enterprise.

The federal government can do much better. No one can say with a straight face that we have eliminated as much of the unnecessary burden that we can. No one is saying that there is no fat left in the system.

We have to find ways to identify true duplication of our information within agencies. But OIRA currently has no way to validate an agency's certification of duplication. They just take agencies at their word.

OIRA's staff has shrunk from 90 employees to 50 employees. The staff dedicated to writing, administering, and enforcing regulations has grown from 146,000 to 242,000 people. OIRA's budget has actually shrunk by $7 million in inflation-adjusted terms.

Every hour I spend on paperwork is an hour of lost productivity. And lost productivity means I am unable to hire the next employee, I am unable to make capital equipment purchases, or I can't spend time growing my business.

Let me give you an idea what I would do with the freed-up time. We sell a great deal of products to foreigners. Toyota is my second biggest account. Today we are running jobs for GlaxoSmithKline in England. We also run jobs for Unilever out in Holland. In the last six months, our company has exported products to the U.K., Mexico, Belgium, Canada, New Zealand, and Japan. My favorite is Taiwan.

We actually exported. We made it in Baltimore. We exported to Taiwan. There is a guy in Taiwan that opened up a box of wire baskets, and it said, "Made in the U.S.A." That is neat. We are doing a lot of things right.

We design products with the most sophisticated computer-aided-design, like this product for Hubert in Congressman Chabot's district in Harrison, Ohio. They are a very good account of mine, and we appreciate them.

We make high-quality products that don't get returned, but we have to do a lot of paperwork. And this is a distraction to our mission. We are afraid that the paperwork we are going to fill out, there are going to be typos in it or mistakes. So a lot of times we

will farm out this paperwork and have to pay vendors to fill out paperwork for us because we are not good at filling out paperwork.

Millions of small businesses like mine pay these outside fees. Our competition in China doesn't have to pay that fee. In India, they don't have to pay that fee.

In Marlin's case, we have to pay to comply for our 401(k) plan, to do our payroll. We have to farm all of that out. We pay them so much a year that we can't hire a $15 an hour person who is going to work full-time on our production floor.

We would be more competitive if we could hire that person. That person would have a job, a job here in America. Thus paperwork actually reduces employment because we are diverting cash from hiring people. Instead, we are filling out forms.

We want our small businesses vibrant since we hire people and we take the risks to grow. Government's goal should be take off the shackles of the small business hiring machine.

Again, Madam Chairwoman, thank you for this opportunity to testify. And I would be happy to respond to any questions.

[The prepared statement of Mr. Greenblatt may be found in the Appendix on page 65.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Greenblatt.

And our last, but not least, Mr. Robert Garbini. He is the President of the National Ready Mixed Concrete Association. Mr. Garbini has been active in the association since 1991, serving as the executive vice president and chief operating officer. The NRMCA was founded in 1930 and represents the ready-mixed concrete industry.

Welcome, sir.

STATEMENT OF ROBERT GARBINI, P.E., PRESIDENT, NATIONAL READY MIXED CONCRETE ASSOCIATION

Mr. GARBINI. Good morning, Madam Chairwoman Velázquez, Ranking Member Chabot, and Congresswoman Clarke. First off, I would like to compliment Mr. Greenblatt on being a fine representative of small business in the United States.

I am Robert Garbini, the President of the National Ready Mixed Concrete Association. Thank you for inviting me to testify about the Paper Reduction Act and the federal paperwork burdens faced by the ready-mixed concrete industry.

NRMCA is a national trade association representing producers of ready-mixed concrete, the vast majority of which are small businesses. Nationwide there are roughly 7,000 ready-mixed concrete plants, employing and using 70,000 ready-mixed concrete mixer drivers' trucks that are annually delivering 450 million cubic yards of ready-mixed concrete to the point of placement.

Ready-mixed concrete producers recognize that as small businesses, Congress specifically intended them to benefit from the Paper Reduction Act mandates that agency collection of information have practical utility, are not duplicative and impose the least burden possible.

I would like to take this opportunity to share with the Committee an example of how the Paper Reduction Act could be better

utilized to unsaddle at least the ready-mixed concrete industry and other short-haul operators from a lingering paperwork burden.

Concrete mixer drivers are an on-call and delivery product on a just-in-time basis. They operate exclusively in the short-haul construction industry, generally beginning and ending each shift at the same plant location and rarely exceeding a 50 air-mile radius.

In fact, the industry's studies show that a concrete mixer driver's average delivery is only 14 miles from the ready-mixed plant. They actually only drive four to six hours per day. As a result, industry truck drivers are eligible for an exemption from the Federal Motor Carrier Safety Administration's hour-of-service requirement that a driver's daily log be kept.

Currently a 100 air mile radius log exemption is available if the driver returns to the plant and is released from work within 12 consecutive hours; at least 10 consecutive hours of off-duty separate each 12 hours on duty; and, third, the driver does not exceed 11 hours maximum driving time. If these restrictions are met, instead of the daily log, an electronic time clock can be used to record a driver's hours.

It is notable that the Federal Motor Carrier Safety Administration cited paperwork burden reduction as a basis for the 100-mile air log exemption when it was first provided in 1980. Unfortunately, concrete mixer truck drivers are unable to take full advantage of the exemption. This is almost always caused by a driver surpassing the 12-hour return time limit.

The hours of service regulations afford a driver, all drivers, a maximum of 14 consecutive hours of on-duty time per shift, after which drivers may not drive. Yet, ready-mixed drivers who otherwise meet the requirements of the 100 air mile log exemption must still complete a log if they exceed the 12 hours on-duty time during the shift. Unlike in the long-haul trades, it is very difficult in the ready-mixed concrete industry to predict on any given day whether the 12-hour threshold will be surpassed.

If the driver surpasses the threshold but does not expect to do so, which is most times the case, he must go back and retroactively log his time status for the entire day on a sheet similar to this in 15-minute increments, no less. This is simply not practical for a concrete mixer driver as their duty status changes frequently throughout the day and completing an accurate log from memory is difficult.

To preempt this difficulty, many ready-mixed concrete producers have instructed their drivers to log every day every 15 minutes in case they exceed the 12-hour threshold. The Federal Motor Carrier Safety Administration has claimed that the threshold is necessary as a safeguard to ensure that drivers adhere to driving time limitations. Yet, concrete mixer drivers only drive four to six hours per day. Requiring them to return to the plant within 12 hours so that they don't exceed the 11 hours of driving time is regulatory overkill by itself.

The Federal Motor Carrier Safety Administration has, with one hand, used the Paperwork Reduction Act to provide the 100 air mile long exemption; yet, with the other hand, has taken the exemption away by establishing a seemingly arbitrary 12-hour return time limit.

NRMCA urges the agency and the Office of Information Regulatory Affairs to take another look at the 100 air mile log exemption to see if the Paperwork Reduction Act can be better utilized to correct this problem.

The solution for the ready-mixed industry is a very simple one. The 100 air mile exemption should be consistent with the hours of service regulations by changing the 12 hours on-duty time to 14 hours, which would allow ready-mixed drivers to take full advantage of the 100 air mile log exemption for their entire shift.

This seemingly small fix, which can be effected by a regulatory change only, would have no safety impacts and would provide real relief from paperwork, the paperwork burden that has plagued the ready-mixed concrete industry for decades.

I would also say that a change such as this would impact, I think, the third purpose of the Paper Reduction Act, which was examining the value of information required.

Madam Chairman, that concludes my statement. And I would be pleased to answer any questions.

[The prepared statement of Mr. Garbini may be found in the Appendix on page 75.]

Chairwoman VELÁZQUEZ. Thank you, Mr. Garbini.

We are going to have a series of votes, three votes, but I am going to start asking some questions. And we are going to stand in recess and come back right after the votes.

I would like to cut right to the chase and ask each one of you. We heard the Administrator, Administrator Dudley, saying that the PRA is working. So do you all agree with the Administrator that—and I heard Ms. Katzen. And I would like to come back to you with some specific questions regarding this matter, but to each one of the witnesses, would you say that the PRA is working; that is, reducing the burden that small businesses are facing regarding paperwork and reduction?

Dr. BRADY. I can just tell you that the amount of paperwork or information that is required and the burden to us has only increased. It is very hard for me to say that this is working and that there really is a successful effort, not effort but outcome, in terms of the ability to reduce duplicative reporting and regulation.

Chairwoman VELÁZQUEZ. Mr. Daly?

Mr. DALY. I would have to agree with Dr. Brady. Basically I see no evidence of it decreasing. However, it is kind of like having a safety program where you don't really know how bad or how serious someone is injured. So, relatively speaking, it could be worse than what it is now.

So to say that it's not doing any good I would not think is fair, but it needs to be improved. And I think duplication is one of the problems.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Greenblatt?

Mr. GREENBLATT. No, I don't think it is helping. And I think the government is strangling small businesses. And we cannot compete because of all of the paperwork.

Mr. GARBINI. Madam Congresswoman, I would also say that I think your own evidence shows that. If the volume of paperwork

declined, I think then in that case, we would all agree it was working but not so.

Chairwoman VELÁZQUEZ. Ms. Katzen, can you talk to us about your experience during the five years that you were at OIRA? Do you feel that the resources that OIRA has today are sufficient for them to do their job?

Ms. KATZEN. I think you can always do more with more. And I noticed that a number of the witnesses have called for an increase of funding and staff for OIRA, I would not disagree that additional staff would be helpful.

I think it is also important to have additional funding for the agencies who are being asked to do these tasks in addition to what else they have to do. In a day of fiscal discipline and in a time when we're trying to straight-line or decrease funding for domestic agencies to satisfy our general fiscal needs, the agencies have an enormous difficulty in bringing to the table the kind of expertise they need.

Chairwoman VELÁZQUEZ. Thank you.

So the Committee stands in recess.

[Brief recess.]

Chairwoman VELÁZQUEZ. I recognize Mr. Chabot.

Mr. CHABOT. Thank you very much, Madam Chair.

Dr. Brady, I will begin with you, if I can. Of the funds spent on administrative costs by hospitals, what percentage derives from private insurance carriers and what percentage stems from federal, state, or local government paperwork, if you know or you can estimate if you don't know exactly?

Dr. BRADY. I don't know exactly. I would say most I would suspect is probably government-related, although, you know, some of the insurers now, like the Medicaid advantage plans, it's sort of a hybrid, if you will. So if there were an opportunity, if government could use some standards or the government plans or government insurers to abide by, that would be a plus.

Mr. CHABOT. Mr. Daly? And I, first of all, have to comment that your name, Daly, is my wife's maiden name.

Mr. DALY. Oh, really?

Mr. CHABOT. So her name was Daly.

Mr. DALY. Spelled the same way?

Mr. CHABOT. Yes, spelled the same way and everything. And when I first got started, Cincinnati City Council was the first office I ran for and not too long after we got married. And because my name is Chabot, and nobody in my family had ever been involved in politics, so people weren't familiar with the name. We sort of thought kiddingly about maybe going with her last name, running with a political name like Daly, rather than Chabot, although we weren't in Chicago.

Mr. DALY. Right, right.

Mr. CHABOT. And we're not Democrats. But other than that, it would have been a great opportunity there. But we appreciate your testimony.

Let me ask, in your firm, who handles the reporting and recordkeeping requirements? And do you ever have to request assistance from lawyers or other outside consultants to comply with the paperwork requirements?

Mr. DALY. Yes. Basically what we do is—a good example, eight to ten years ago, one of my primary parts of being in the family business, in the business itself, was I estimated and did quite a bit of this task.

I literally quit doing that because I took on the responsibility of making sure that we properly met a lot of these regulatory requirements. Since then, I have been able to delegate that to one or two people in my office to the extent that they were all able to handle it.

We now keep an attorney on retainer, which we have never done before in order to review and look at a lot of what we get into.

Mr. CHABOT. Thank you.

And, Dr.—is it Dr. Katzen?

Ms. KATZEN. Whatever.

Mr. CHABOT. Ms. Katzen. Whatever, yes. What would be the drawback to reducing the reporting burdens on small businesses seeking to obtain benefit from the government if there would be any?

Ms. KATZEN. Well, as a generality, there is no down side to reducing burden. What would we be losing since some of the parts of the applications are to verify eligibility? You would have to have that information if you want to hold the agency accountable to say only those who are eligible have received the benefit. We read each day in the newspaper about scandals that are uncovered where an agency has paid money out, good money, good taxpayer money, to people who weren't really eligible for the benefit.

Now, if you eliminated all the forms and you just said, "I want a student loan, whether I qualify or not," you would lose that ability.

That is not to say the forms can't be streamlined more. I am not saying we are perfect by a long shot, but the answer to your question has to be, I think, it depends. It depends on what it is you would be cutting out.

And, if I may, we talk about the IRS being the major source of the burden. Some of that is, as I said, the 1040s. Some of it is that people can get tax benefits. If you want standard depreciation, it doesn't take a whole lot of form filling out. But if you want accelerated depreciation, if you want to be a subchapter S corporation, if you want to be a limited partnership, if you want to take advantage of things which Congress, in its infinite wisdom, has decided are necessary and beneficial, then it takes filling out forms.

Now, would you have people simply say, "I am a small business, and I want to accelerate depreciation. So I am just going to put down an amount"? What is it that you would be reducing in the burden for these people who would be receiving a benefit?

Mr. CHABOT. Thank you.

Mr. Greenblatt, first of all, I just had a question. You all were started back in the 1800s, I think you said, and it was in Cincinnati. Is that correct or—

Mr. GREENBLATT. No. I'm sorry. NAM, National Association of Manufacturers, was established in Cincinnati. My company was established in 1968.

Mr. CHABOT. And you were actually established in Baltimore at that time?

Mr. GREENBLATT. Actually, we were established in New York. In the last ten years, we have been in the State of Maryland, in Baltimore City.

Mr. CHABOT. Okay. But the National Association of Manufacturers had its origins in Cincinnati, then?

Mr. GREENBLATT. Yes.

Mr. CHABOT. Back in the 1800s?

Mr. GREENBLATT. Yes.

Mr. CHABOT. Okay. All right. Thank you very much.

I thought something that you had said was particularly interesting. You mentioned that, I think, the United States has 32 percent worse paperwork requirements than other countries around the world. And when one considers I guess we are including in that communist China, People's Republic of China, for example. We are not including in that?

Mr. GREENBLATT. No, no. It is our nine biggest trading partners.

Mr. CHABOT. Oh, it is our trading partners only. Okay.

Mr. GREENBLATT. And these are the people that are ruthless against us out in the real world.

Mr. CHABOT. So what countries are we talking about?

Mr. GREENBLATT. Canada, Mexico, Japan, China, Germany.

Mr. CHABOT. Well, China. So China would be.

Mr. GREENBLATT. U.K., South Korea, Taiwan, and France. So, you know, when we are going up against a Chinese or a Taiwanese or a French factory, we have 32 percent more paperwork shuffling going on than they do.

Mr. CHABOT. Yes. I mean, that is pretty incredible when you consider that somebody like China is on that list, that our paperwork requirements are that much more burdensome. And I think that shows why we really do need to do a much better job of relieving some of this burden that is now on small businesses, medium businesses, and large businesses as well.

If you had to make one change in the Paperwork Reduction Act or to do something about what you see on an everyday basis, what would you do if you were in one of these seats up here and had the ability to make a change in this area?

Mr. GREENBLATT. Well, if there were some sort of rules that said every year for the next three years we have to have ten percent less paper three years in a row, I still think we can get everything we need accomplished. But there would be a lot less forms to fill out. There would be a lot less pieces of paper to read.

And the second thing would be if we could make the paperwork in English language, as opposed to Washington bureaucratese, it would be easier to digest the data and then respond quickly.

A lot of times we get into positions where we are not exactly sure what we just read. So we have to have two or three people in a room staring at a phrase, "Does that apply to us? Does that rule apply to us? Is that not including us now anymore?" And this is an enormous, monumental distraction. And we are looking at things that are not germane to making good, quality product or shipping faster.

One other thing I wanted to mention regarding what Dr. Katzen just said about depreciation. I am a small company. And we have

13 robots. And we have about a million and a half dollars worth of equipment.

I just got a bill this week from my accountant. To figure out my depreciation for this year was $3,500. Okay? Now, that is complete waste to shuffle the paper to figure out how much my depreciation costs. And, rather than me buying another piece of equipment or me hiring a person to work for two months for me, instead I'm paying an accountant to figure out a depreciation schedule.

We should have no depreciation schedules. It makes accountants very busy, but it doesn't make me more efficient against China or France or Germany.

Mr. CHABOT. Thank you.

And, finally, Mr. Garbini, relative to ready-mixed concrete plants, I know that some of your paperwork is obviously from the federal government, a considerable amount of it. How much of it is from the state or local level as well?

Mr. GARBINI. Congressman, I am not sure exactly how to answer that particular question. We might have to come back to you about the—I would have to say on the environmental side and the safety side we have the same regulatory requirements that you see with any small business. So I don't know what the proportion would be.

Bob, do you have any sense of that? No. We would have to come back to you with that.

Mr. CHABOT. All right. That's fine. Okay. I will yield back, Madam Chair.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Garbini, in terms of the log form that you have to fill out regarding short-haul drivers, can you explain how detailed these forms are and how much time it takes to complete them? Also, does it make sense for a driver traveling in short distances to be required to complete a log?

Mr. GARBINI. Well, the form I think was the last one up there. And I can have someone bring this up to you so you can take a look at it. What it shows, there are four categories in there broken down from midnight to midnight. And it shows four categories: off-duty, sleeper berth, driving, and on-duty. And it is broken down in 15-minute intervals.

And if you can imagine any driver in a busy day—and certainly it is hard on the ready-mixed concrete delivery man, who is in and out of a truck—he is dealing on a construction job site or he is back at the plant—trying to individually stop all of a sudden and fill one of these 15-minute things out. It is almost impossible.

And, by the way, Madam Chairwoman, there are no sleeper berths on a ready-mixed concrete truck. So that goes to show you how this is misdirected.

Chairwoman VELÁZQUEZ. Thank you. Thank you.

Ms. Katzen, in answering my question commenting about when I asked each of the witnesses to comment regarding the assertion of the Administrator that, yes, the PRA, Paperwork Reduction Act, is working, you mentioned the fact about the empirical data. So my question to you is, how do we measure or how does OIRA measure whether or not the goals of the Paperwork Reduction Act have been accomplished?

Ms. KATZEN. Well, I think there are things that you can measure, those are the data that so many people here have relied on. What I was alluding to was the impossibility of measuring what the situation would be like without the Paperwork Reduction Act because there is no counter-factual-base line to use.

It is something similar to what Mr. Daly was saying, that the cup is probably a quarter to maybe a third full in that the PRA has made some difference. But there is a long way to go.

The ability to measure is essential, but you can't measure against what you don't know. I think you used the safety example, that there are no safety requirements. If we didn't have an air traffic controllers' system, how many plane crashes would there be? Who knows? We know how many there are now with such a system in place. That leads us to think that maybe it is working, although maybe not perfectly.

I don't think the PRA has as good a track record as the FAA and the air traffic controllers, but that is the kind of analogy that I was trying to use.

The problem with measurement, actually, Madam Chairwoman, is significant. I don't want to be a skunk at the picnic, but, in fact, almost everybody is relying on the Mark Crain study that was done for SBA for the nine billion hours. But he takes the total regulatory costs, which are not just paperwork. It is paperwork plus regulations.

In my written testimony, I note—and I really want to emphasize—that study is not universally acclaimed. Very credible sources have pointed out, time and again, that the estimate of the total regulatory burden is so impossible that OMB has given up that task completely, and then to divide it by the number of employees to get a per-employee basis. It is particularly significant that he is using the high end, he is using 1.1 trillion while OMB has used figures like 34 or—I'm sorry—44 billion. There is a huge difference there, which makes his bottom line somewhat suspect.

I do not deny there is a burden. And the time is better spent on other things. But before we latch onto that figure and say that is the gospel, I would just raise a red flag.

Chairwoman VELÁZQUEZ. What really struck me was the fact that the Administrator came here. And when I asked specific questions or I made specific suggestions, basically there weren't concrete recommendations or answers to the Committee. And for someone who is there and knows what is happening every day, it really makes me wonder.

I don't think that the Committee has to have all the answers. We need to have the type of synergy in terms of the people that are working at OIRA to be able to tell us what is working, what is not working if consolidation should happen, if we should take the responsibility from the chief information officer and give it to somebody else if they need more resources.

Ms. KATZEN. The chief information officer was assigned this task in the 1995 PRA because it was thought essential to have someone outside the program office providing a dispassionate, objective view of the need for the information collection request. The CIO was thought to be that person.

As I pointed out a couple of years ago in other testimony, the CIO official has lots of other responsibilities. And you alluded to that, and I thought correctly so. They have got their hands full.

Ours were busy with Y2K. Now there are all sorts of other kinds of issues. I think that it is a legitimate inquiry as to whether there are other people within the Department, the General Counsel's Office, the Office of the Secretary, that can perform this second look, this dispassionate objective review.

And, in any event, OIRA should be following up and providing its own objective review. I think you are right to press those points.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Chabot, do you have any?

[No response.]

Chairwoman VELÁZQUEZ. Well, again thank you all for your insightful information. And I ask unanimous consent that members will have five days to submit a statement and supportive materials for the record. Without objection, so ordered.

This hearing is now adjourned. Thank you.

[Whereupon, at 12:13 p.m., the foregoing matter was concluded.]

NYDIA M. VELÁZQUEZ, NEW YORK
CHAIRWOMAN

STEVE CHABOT, OHIO

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

STATEMENT
of the Honorable Nydia M. Velázquez, Chairwoman
United States House of Representatives, Committee on Small Business
Full Committee Hearing: "Improving the Paperwork Reduction Act for Small Businesses"
Thursday, February 28, 2008 at 10:00 am

The federal paperwork burden continues to grow for small firms. As agencies churn out regulations and notices at a rate of nearly 1,500 pages per week, it seems that every day brings some new paperwork on small businesses. In their most recent annual report, OMB found that the overall burden increased nearly 700 million hours from FY 2005 to FY 2006.

Paperwork is costly for small firms. According to an NFIB study, paperwork and recordkeeping costs small businesses nearly $50 per hour. Not surprisingly, small businesses cited the volume as being the one of the most difficult problems.

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

At today's hearing, we have present the Administrator of the office that was created as part of the Paperwork Reduction Act—the Office of Information and Regulatory Affairs. Administrator Dudley is charged with overseeing and enforcing this important law. It is my hope that she can talk frankly about the underlying weaknesses of the law and whether she has adequate resources to enforce it. While OIRA has a difficult task, small businesses deserve to know exactly why their paperwork burden continues to grow.

In today's testimony, we will surely hear about some of the successes of OIRA, but we also wish to understand the obstacles that are preventing the Office from reducing paperwork requirements for small businesses. Additionally, it is critical to get answers why some agencies continue to violate the law.

It is our hope to identify what steps are needed to reverse the growth in paperwork. Some critics have pointed out the reason there is poor compliance with PRA may be due to the fact that OMB guidance is inconsistent with the intent of the Act.

While the statute says that agencies should work to reduce paperwork burdens on small businesses, OMB guidance seems to incorrectly limit the scope of the law. I am interested in hearing the reasons for this inconsistency and whether the small business sections of the law are being misinterpreted by OIRA.

Ensuring that agencies are considering the economic impact of their regulations and paperwork requirements on small firms is critical. It is a primary reason, the committee established the Regulatory Flexibility Act – to focus on reducing unnecessary paperwork burden created due to federal regulations. We have already has passed legislation to strengthen RegFlex this Congress, but it is important to examine whether that law and the PRA are working in a cohesive manner.

The PRA should not serve to discourage agencies from conducting proper regulatory flexibility analyses. All too often we see agencies implementing regulations that ignore or understate economic impacts on small businesses. In many instances, this is because of a lack of communication between the agencies and the small business community.

Under the PRA, an agency that wishes to survey more than 10 small businesses to determine the economic impacts of a rule is required to receive OMB approval.

Since approval may take months, agencies that are eager to move forward with regulations may not be properly assessing potential impacts on small business.

Enforcement and oversight of PRA is important, but we have to open the prospects of strengthening it to achieve real change. Today's panels will offer insight on what type of reforms may be needed and if the need for further accountability is required.

The reality is the federal paperwork burden continues to grow at a troubling rate and it is harming our nation's entrepreneurs. And it is clear that the purpose of the Paperwork Reduction Act is not being realized. I look forward to working with Ranking Member Chabot to ensure this important law is meeting its full potential for small businesses.

U.S. House of Representatives

SMALL BUSINESS COMMITTEE

Thursday, February 28, 2008

Representative Steve Chabot, Republican Leader

Opening Statement of Ranking Member Steve Chabot

Improving the Paperwork Reduction Act for Small Businesses

I would like to thank the Chairwoman for holding this hearing on the Paperwork Reduction Act. Although this Committee has legislative jurisdiction over the Paperwork Reduction Act, it has not undertaken a comprehensive review of the Act since it was last reauthorized in 1995.

During the 1960s and 1970s, Congress enacted dozens of pieces of legislation that imposed recordkeeping and reporting requirements on the American citizenry, including millions of small businesses. In response to this mushrooming growth in paperwork, small businesses cried out at a White House conference and Congress responded with the passage of the Paperwork Reduction Act in 1980.

The Act has three primary objectives: one, minimization of federal reporting and recordkeeping requirements on individuals and business, especially small businesses; two, reduction in the government's cost of collecting and utilizing the information obtained from the public; and three, maximization of the value of the information obtained.

To meet these objectives, the Paperwork Reduction Act prohibits the establishment of a recordkeeping or reporting requirement unless it is approved by the Office of Management and Budget's Office of Information and Regulatory Affairs or OIRA. Prior to such approval, the agency requesting information from the public must perform an extensive assessment of the costs and benefits of the collection of information. After completing that task, the agency then sends a formal request to OIRA for approval of the collection of information. Prior to OIRA approval, that office must satisfy itself – after providing the public with an opportunity to comment – that the collection of information satisfies ten specific statutory standards which are designed to ensure that paperwork burdens on the public are minimized while still providing the federal government with necessary information.

Despite the Act and the extensive review by the agency and OIRA, the number of hours spent by the public in reporting to the federal government increased from 7.4 billion in FY 2000 to 9.2 billion in FY 2007. Thus it remains an open question of whether or not the Paperwork Reduction Act is meeting the laudable goals of minimizing paperwork burdens on the public. I am particularly interested in hearing what recommendations the witnesses have to modify the Act to achieve its goal of burden reduction without sacrificing the government need to obtain critical information.

With that I yield back.

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Statement of Rep. Jason Altmire
Committee on Small Business Hearing
"Improving the Paperwork Reduction Act for Small Businesses"
February 28, 2008

Thank you, Madam Chairwoman, for holding today's hearing to examine ways we can improve the Paperwork Reduction Act for small businesses. The average small business spends countless hours and approximately $8,000 in annual costs to deal with the more than 70,000 pages of rules and regulations in the Federal Register. In 1980, Congress passed the Paperwork Reduction Act in an effort to help ease the overwhelming paperwork burden and to clarify government communications for small businesses. However, concerns have been raised that the Act is no longer fulfilling its intended effect, and the entity that was created to enforce the law, the Office of Information and Regulatory Affairs, is not providing small businesses with the assistance they need.

Today, small businesses spend 15 percent more time on paperwork than they did three years ago. I am pleased to have the opportunity today to discuss the Paperwork Reduction Act with a number of small business owners who are faced daily with federal paperwork such as 1040 tax forms, which, according to the Office of Management and Budget, have increased by 58 pages over the past ten years. The OMB also reported that the hours spent on tax compliance have jumped from 5.3 billion to 6.4 billion.

I would like to again thank the witnesses for lending their time today. I anticipate a productive dialogue and it is my hope that from this hearing the committee will be able to develop solutions to the paperwork burden and consider ways to improve the Paperwork Reduction Act.

Madam Chair, thank you again for holding this important hearing today. I yield back the balance of my time.

# # #

STATEMENT OF
SUSAN E. DUDLEY
ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

February 28, 2008

Good morning Madam Chairwoman and distinguished Members of this Committee. I am Susan E. Dudley, Administrator of the Office of Information and Regulatory Affairs (OIRA), in the U.S. Office of Management and Budget (OMB). Thank you for inviting me to testify about improving the Paperwork Reduction Act (PRA or the Act) for small businesses. I appreciate the opportunity to discuss the PRA and OIRA's efforts to lighten the paperwork burdens the Federal government imposes on small businesses. As this is my first appearance before this Committee as OIRA Administrator, let me assure you I share your commitment to reducing the regulatory and paperwork burdens that America's small businesses confront daily, and I look forward to exploring new approaches to advancing this critically important goal.

Small entrepreneurs are the engine of economic growth in America. Small businesses represent over 99 percent of all employers and provide 60 to 80 percent of net new jobs. Yet, research by the Small Business Administration (SBA) suggests that small entities disproportionately shoulder regulatory and paperwork burdens. This research indicates that firms with fewer than 20 employees spend 45 percent more per employee than do larger firms to comply with Federal regulations. OIRA, along with SBA's Office of Advocacy and other Federal regulatory agencies, is working both to minimize unnecessary burdens, and also to help America's small businesses comply with regulatory and reporting requirements.

OIRA's Role under the Paperwork Reduction Act

The Paperwork Reduction Act of 1980 established OIRA within the Office of Management and Budget. The PRA is premised on the principle that the Federal government should not require, or ask, citizens, businesses, organizations, State and local governments, and other public entities to comply with paperwork requirements that are unnecessary, duplicative, or unduly burdensome. Reauthorizations of the Act in 1985 and 1995, and the Small Business Paperwork Relief Act (SBPRA) of 2002, have further enhanced OIRA's role in eliminating unnecessary, duplicative, and unjustified paperwork burdens, particularly on small entities, and these goals remain high priorities for my office.

While the Act makes agency Chief Information Officers responsible for the management of information resources within their agencies, OIRA plays an important oversight role and works to promote two key goals of the PRA—reducing information collection burdens on the public that "represent the maximum practicable opportunity in each agency" and ensuring "the greatest possible public benefit" from information that is collected, used, and disseminated by the Federal government. One important way that OIRA exercises this oversight authority is our day-to-day reviews of agency information collection requests. These PRA reviews seek to ensure that agencies (1) reduce the paperwork burdens that are associated with existing collections of information and (2) impose the least necessary paperwork burden when they issue new collections of information.

The PRA applies very broadly to agency collections of information, which can include reporting, recordkeeping, and third-party disclosure requirements that apply to ten or more persons, businesses, or State, local, or Tribal governments. Currently, there are over 8,500 active information collections that have been approvedby OMB. Without such OMB approval,

agencies cannot implement an information collection. The PRA process for obtaining OMB approval includes public notice and comment procedures that provide an opportunity for the public to suggest ways that agencies can reduce burden (or estimate it more accurately) and improve the usefulness and timeliness of the information collected. After OMB's initial approval of an information collection, agencies must seek and obtain extensions of OMB approval at least once every three years. Consistent with the PRA's goals, OIRA's reviews of agency information collection requests involve an assessment of the "practical utility" of the information to the agency and the associated burden that collecting this information imposes on the public.

The Paperwork Reduction Act and Small Businesses

In conducting our reviews of agency information collection requests, OIRA is particularly sensitive to collections that affect small businesses. Indeed, the PRA's statement of purposes identifies as a key PRA goal minimizing the paperwork burden on small businesses.

The PRA also provides specific direction to agencies on how they can minimize the burdens that they impose on small businesses, using approaches such as "(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or (iii) an exemption from coverage of the collection of information, or any part thereof."

When the PRA was reauthorized in 1995, Congress added a requirement that agencies certify, as part of their requests for OMB approval of an information collection, that the collection "reduces to the extent practicable and appropriate the burden" on small businesses and other small entities. OMB added this certification requirement to the OMB PRA implementing

regulations (5 C.F.R. 1320.9(c)). In addition, agency information collection requests submitted to OMB must indicate whether the information collection will have a "significant economic impact on a substantial number of small entities."

The 2002 SBPRA further reinforced the PRA's focus on minimizing small business paperwork burdens. This legislation established a multi-agency Task Force to address this issue. On June 28, 2003, the SBPRA Task Force submitted its first report to Congress, which included a number of recommendations to streamline the Federal information submission process and reduce small business paperwork burdens. Specifically, the report outlined steps to consolidate information collections, develop a listing of these collections, and allow for electronic submission of forms. One year later, the SBPRA Task Force submitted a second report to Congress that made recommendations concerning the dissemination of information by agencies to facilitate compliance with Federal paperwork requirements. The SBPRA also amended the PRA to require agencies to "make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees."

Ongoing Efforts to Reduce Small Business Paperwork and Compliance Burdens

Motivated by these statutory requirements, Federal agencies have taken a number of steps over the past several years to reduce the amount of information they collect from small businesses and to ease their compliance burdens, often through the innovative use of information technology. Nonetheless, we have seen government-wide paperwork burdens increase over time, as OMB has documented in its annual Information Collection Budget report submitted to Congress pursuant to the PRA. Government-wide PRA burden increased from 8.24 billion hours in FY 2005 to 8.92 billion hours in FY 2006, an increase of more than 8 percent.

A recurring theme of the ICB in recent years has been the disproportionate role played by the Internal Revenue Service (IRS) in the Federal government's information collection activities. Because of the Federal income tax system, the IRS is an important part of the lives of all taxpayers, including businesses large and small. This fact was again reflected in last year's ICB, when OMB reported that the IRS was responsible for about 78 percent of the Federal government's total reporting burden on the public in FY 2006.

Despite these broader trends of aggregate burden increases, agencies have been able to achieve some notable burden reduction successes. Let me highlight just a few examples.

Internal Revenue Service: Employer's Annual Federal Tax Program

As reported in last year's ICB, the IRS Office of Taxpayer Burden Reduction recently launched an initiative to reduce burden on small business taxpayers who owe $1,000 or less in Employment Tax (ET) by establishing new rules and processes that will allow them to file their ET returns, as well as pay the ET tax due, on an annual rather than a quarterly basis. As long as these filers remain at $1,000 or less in total Employment Tax they will remain filers of Form 944, the Employer's Annual Employment Tax Return. Those businesses that exceed this threshold will be subject to the requirement to file Form 941, the Employer's Quarterly Employment Tax Return. By allowing smaller businesses to file annually instead of quarterly, IRS estimated that reporting burdens would drop by almost 30 million hours.

Small Business Administration: The Business Gateway Initiative

SBA's Business Gateway Initiative offers businesses a single access point to Federal regulatory and paperwork compliance resources, including forms, and tools. The initiative, which includes Business.gov, Forms.gov, and data harmonization activities, reduces the amount of time and money business owners spend on complying with Federal regulations and associated

paperwork so that they can spend more time running their business. Specifically, Business.gov simplifies and improves businesses' ability to locate government compliance guides and forms they deal with on a regular basis, thereby reducing the effort needed to comply with government regulations.

Business.gov is an innovative, search-focused, website where businesses can access up-to-date regulatory and paperwork compliance information and save time doing so. The information available through Business.gov was assembled by reaching across agency silos to make content accessible and relevant to the business community. Business Gateway epitomizes the spirit and intent of the PRA by helping business save time getting answers to important questions including: (1) What laws and regulations apply to me?; (2) How do I comply?; and (3) How do I stay in compliance?

The Business Gateway Initiative also promotes "data harmonization," which is defined as the reduction of regulatory reporting burden on citizens and business by reducing the complexity of reporting processes and improving the reuse and distribution of information across Federal, State, and local agencies. Business Gateway supports data harmonization by advocating for and supporting data harmonization solutions.

Business Gateway's seminal data harmonization project is called Single Source Coal Reporting (SSCR). Previously, the coal mining industry submitted highly redundant, paper-based forms to regulators. Under this pilot program, the industry has been able to submit data and pay fees using a single online form, and have it automatically sent to appropriate regulators. While changes may be forthcoming to the project's structure, the Federal partners have included the IRS and the Departments of Labor and Interior; the State partners have included Pennsylvania and Virginia. Additional data harmonization projects are being explored with the National

Aeronautics and Space Administration, the Environmental Protection Agency (EPA), and the Department of Commerce.

OMB and SBA: Compliance Assistance for Small Businesses

The SBPRA requires Federal agencies to designate one point of contact to act as a liaison between the agency and small business concerns. SBPRA also requires OMB, in conjunction with SBA, to publish on the Internet a list of compliance assistance resources available at Federal agencies for small businesses. In accordance with the SBPRA, Business.gov published a "Federal Compliance Contacts" page which gives the names, phone numbers and e-mail addresses of individuals at Federal agencies who can help small business answer regulatory and legal questions. Business.gov also publishes Small Business Guides that include links to Federal, State and local agency resources that help small businesses meet their regulatory requirements. This information is presented together so that if a small business owner does not find the information they are seeking, a "live" person to assist them is readily identifiable.

EPA: National Emission Standards for Hazardous Air Pollutants

In December 2005, EPA issued a final rule permanently exempting certain categories of "non-major" industrial sources that are subject to national emission standards for hazardous air pollutants (NESHAP) from the requirement to obtain an operating permit under title V of the Clean Air Act. The five exempted source categories are dry cleaners, halogenated solvent degreasers, chromium electroplaters, ethylene oxide sterilizers and secondary aluminum smelters. EPA estimated that this final rule will provide regulatory relief for over 38,000 sources, many of which are small businesses. This reform was an outgrowth of OMB's 2004 public solicitation for specific reforms to regulations, guidance documents or paperwork requirements that would improve manufacturing regulation.

OMB: Zero-Tolerance of PRA Violations

In complying with the PRA, agencies must ensure that they have OMB approval to implement new or revise existing information collections, prior to their use. Whenever an agency implements a new information collection, or revises an existing collection, without obtaining OMB's approval to do so, it is considered a violation of the PRA. To help the public and the agencies monitor compliance with the information collection provisions of the PRA, OMB annually publishes a list of violations in the ICB. Last year, OMB reported the lowest number of violations (resulting from the lapse of OMB's approval for an ongoing collection) that it has ever reported since implementing a "zero tolerance" approach to violations of the PRA. During FY 2006, the agencies reported only 12 PRA violations. OMB was also pleased to report that 64 percent of the agencies included in the ICB reported zero violations in FY 2006, which was up from 57 percent in FY 2005.

Improving the PRA for Small Businesses

The PRA has been reauthorized twice since it was originally enacted in 1980, and each of these reauthorizations made important improvements in how the Act functions. Further, the 2002 Small Business Paperwork Relief Act has helped to focus agency efforts on easing paperwork burdens on small entities. Yet, as I mentioned earlier, we continue to see information collection burdens increase.

I strongly support the PRA's goal of reducing government reporting burdens while improving the management of agency information resources, and I generally believe it is having a positive effect. However, there may be things we can do administratively and statutorily to improve it further. For OIRA's part, we must continue to work with agencies, such as IRS and

EPA, which impose paperwork burdens that are particularly challenging for small businesses, to minimize the burden and maximize the utility of the information collected.

It will be challenging, however, and I see two dimensions to this challenge. One involves reducing the amount of information being collected, and the other involves streamlining the method of collection to ease the burden, particularly on small businesses.

Let me illustrate with OMB's efforts with the IRS and its Office of Taxpayer Burden Reduction. The example I provided earlier, where small business taxpayers who owe Employment Taxes of $1,000 or less can file annually rather than quarterly, illustrates the first dimension, where we are actually reducing the amount of information reported. Other efforts have focused on the second of these dimensions, and include simplifying and redesigning forms; increasing the use of technology and electronic commerce; and reengineering processes. Despite all these efforts, statutory requirements and increased usage of tax forms—part of the first dimension I mentioned—have more than offset IRS initiatives to reduce paperwork burden. Given IRS's disproportionate share of government-wide paperwork burdens, this has made it impossible for the Federal government to achieve the aggregate reductions in burden called for by the PRA.

The challenge of reducing IRS paperwork burden—which is largely driven by the Internal Revenue Code—reflects the broader dynamic that we have observed over the years: changes in burden due to new statutory requirements. As OMB has reported in its annual Information Collection Budget, agency implementation of new statutes has continued to increase paperwork burdens. In each session of Congress, laws are passed that create new programs for Federal agencies to implement and, quite frequently, new agency demands for information. Typically, new legislative initiatives and amendments require more, not less, data collection.

This is the biggest challenge we face in trying to minimize paperwork burdens, in large part because there are real tradeoffs associated with new collections. For example, third-party disclosure requirements, such as labeling requirements on food, may be the most effective and least intrusive method of protecting consumers. Surveys and other data collection may improve the design and enforcement of regulations, making them more effective and less burdensome in the long run. Nevertheless, it would be valuable for legislators, as they draft new legislation, to consider the paperwork implications of alternative proposals, particularly as they affect small entities.

Conclusion

Let me conclude my testimony by expressing my willingness to discuss further these and similar ideas with members of the Committee to improve the effectiveness of the PRA.

Thank you very much for the opportunity to testify in today's hearing. I would be happy to answer any questions you may have.

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Testimony
of the
American Hospital Association
before the
Committee on Small Business
of the
U.S. House of Representatives

"Improving the Paperwork Reduction Act for Small Businesses"
February 28, 2008

Good morning, Madame Chairwoman. I am Linda Brady, M.D., president and CEO of Kingsbrook Jewish Medical Center (Kingsbrook) in Brooklyn, NY. Kingsbrook is a medical training institution, comprised of an acute-care hospital and an adult and pediatric skilled nursing long-term care facility. In addition to our celebrated Kingsbrook Rehabilitation Institute, our centers of excellence include Brooklyn's only New York State-licensed traumatic brain injury and coma recovery unit, and a geriatric inpatient psychiatry service, a premiere program serving the mentally challenged elderly throughout the borough. On behalf of my organization and the nearly 5,000 hospitals, health systems and other health care organizations served by the American Hospital Association (AHA), and its 37,000 individual members, I appreciate the opportunity to share with you and your colleagues the administrative burdens faced by hospitals and what should be done to reduce them.

As a valued and trusted public resource, our society holds hospitals in special regard. As a result, hospitals are closely monitored and evaluated by local, state and federal, as well as private regulators who are charged with protecting the public and, in some cases, ensuring that public funds are spent wisely and in the public's best interest.

But those who provide care – hospitals, physicians, nurses and others – are increasingly concerned that health care regulation is out of control and has lost a sense of fairness and common sense. These providers know first-hand that many of today's health care regulations are too complex and inefficient, yet new ones are imposed on the system every day. Health care workers strive to keep up with these regulatory requirements but are frustrated when their time and energy is diverted from their primary purpose – providing quality health care to patients – to trying to decipher and comply with bureaucratic controls that often seem detached from good care and efficiency.

Currently, administrative costs – costs not associated with the delivery of patient care – comprise between $145 and $294 billion of our nation's health care spending[i] and are a chief factor in the growth of that spending. Overall, administrative costs comprise approximately one-quarter of hospital spending.[ii]

It is time for dramatic change. Should all regulations be eliminated? No. Appropriate oversight is important. The issue is not whether to regulate, but how. Just as hospitals, physicians and nurses constantly work to ensure that what they do benefits patients first and makes prudent use of resources, government must do the same by standardizing requirements, being efficient in its demands and eliminating some of the redundant administrative burden placed on health care providers.

CURRENT CHALLENGES

Certain laws and regulations – combined with the very complex health care payment system – make the already difficult task of operating on the front lines of American health care more challenging than it should be.

Financial Challenges

Hospitals are grossly underpaid by the federal and state governments for the majority of care they provide. As a result, every dollar is precious to preserving our mission. Payment rates for Medicare and Medicaid, with the exception of managed care plans, are set by law rather than through the negotiation process used by private insurers. Hospital participation in Medicare and Medicaid is voluntary; however, as a condition of receiving federal tax exemption for providing health care to the community, hospitals are required to care for Medicare and Medicaid beneficiaries. And, unfortunately, these programs today pay less than the *cost* of providing care. Medicare reimburses hospitals only 91 cents for every dollar of care they provide to a Medicare patient. Medicaid payments are worse, reimbursing only 86 cents for each dollar of services. In 2006 alone, this combined underpayment totaled $30 billion. That is on top of an additional $31 billion in uncompensated care – care provided by hospitals for which no payment is received.

Unfortunately, hospitals' financial challenges are bound to grow. Last year, the Centers for Medicare & Medicaid Services (CMS) proposed to cut hospitals' Medicare payments for inpatient care by $20 billion over the next three years. CMS chose to ignore the view of 269 House members and 63 senators, who specifically requested that they not make this cut. CMS claimed the cut was necessary in anticipation of how hospitals might respond to a new, refined classification system for conditions and co-morbidities.

In September Congress stepped in, passing legislation (H.R. 3668) that reduces the cuts by half over the next two years but leaves the 2010 cut of 1.8 percent intact. The changes will result in a restoration of $2.5 billion over the next two years and $7 billion over the next five years, assuming no additional retrospective adjustments are made. While hospitals are thankful for the relief, these cuts will still have an enormous impact.

Furthermore, President Bush's 2009 budget proposal contains nearly $200 billion in new cuts to the Medicare and Medicaid programs over the next five years, of which $135 billion would come from hospitals. This budget blueprint would have a disastrous impact on the health care that millions of patients and families depend on.

Marketplace Challenges

In addition to this volatile payment environment, confusing changes in the marketplace are adding to hospitals' administrative burden, taking time away from providers' real work of caring for patients while driving up the cost of care and placing hospitals in an even more precarious financial position.

Myriad Insurer Requirements. There are more than 1,000 private health insurance companies in the U.S., in addition to many employers who self-insure for their employees' health care. Each of these insurers offers an array of policies, and each policy can have several combinations of covered and excluded services, patient co-payments and deductibles.[iii] They each have different billing forms and requirements. Most hospitals also must process claims from Medicare, Medicaid and other public programs. The result: unnecessary and redundant administrative costs.

Together, the multiplicity and redundancy of these programs represents a significant burden for hospitals. In 1999, the average U.S. hospital devoted 24.3 percent of its spending to administration.[iv] Studies have shown that one hour of care provided in the emergency department generates one hour of paperwork for hospital providers and administrators. Likewise, one hour of home health care generates 48 minutes of paperwork. That is unacceptable.

In an era of serious health care worker shortages, particularly when nurses, pharmacists and medical technicians are needed, we must use our caregivers' time as efficiently as possible. When health professionals find themselves spending less time devoted to bed-side care and more time coping with regulatory paperwork and compliance, it is no wonder that recruiting and retaining experienced, caring professionals – much less attracting future health care workers – becomes difficult.

Medicare Advantage (MA). Changing regulations for government-sponsored plans are further adding to the confusion and burden. Over the years, Congress has made many changes to the MA program, an effort to enroll more and more seniors in private-sector insurance plans. As a result, the burden for patients and hospitals alike has grown.

Some seniors are purchasing MA coverage that they don't understand. Many seniors have approached insurers looking for new Medicare Part D drug benefit coverage. In some cases, insurers have enrolled them in their MA fee-for-service plans with drug coverage. When this happens, seniors sometimes do not understand that they are no longer in the traditional Medicare program. They may show up at the physician's office or hospital, present their old Medicare card and find that their claims are often later denied. And if a physician or hospital cares for a patient only to find out they have MA coverage, they are deemed to have agreed to the insurance company's payment, pre-

authorization and other terms. The result: more burden, more paperwork and more frustration.

Regulatory Challenges

Duplicative and unnecessary regulations divert resources from patient care, increase hospitals' administrative burden and jeopardize their precarious financial position. Hospitals have about 300 external reporting requirements, many of which overlap. Nearly 30 federal agencies regulate hospitals and almost no coordination exists among them, or between similar agencies at the state and local levels. Within the Department of Health and Human Services (HHS), the major federal regulator of hospitals, at times there is little coordination among its different divisions. The following is a sample of the types of regulatory mechanisms hospitals are subject to and how, while providing a service, their lack of coordination and standardization adds to hospitals' administrative burden and drives up costs.

Recovery Audit Contractors (RACs). Ensuring the integrity of its health care programs is a key goal of the federal government as it attempts to ensure that taxpayer money is spent wisely. To that end, CMS conducts six types of activities to protect against improper payments, waste, fraud and abuse: cost report auditing, medical reviews, benefit integrity, Medicare secondary payer reviews, provider education and matching Medicare and Medicaid claims. Quality improvement organizations, fiscal intermediaries (FIs), Medicare administrative contractors, carriers, program integrity officers and RACs, among others, are all tasked with carrying out these activities to one degree or another. While each contractor has an individual purpose, they often seek the same information, requiring duplicate effort by doctors, nurses, medical record departments, patient accounting staff and other hospital personnel who must pull, review and process patient charts and appeals time and time again.

In the *Medicare Modernization Act of 2003,* Congress established the RAC program as a demonstration in California, Florida and New York to identify errors in Medicare payments – both overpayments and underpayments. Under the demonstration, RACs are paid on a contingency fee basis, receiving a percentage of the payments they collect from providers. RACs use automated proprietary software programs to identify potential payment errors, such as duplicate payments, FI mistakes and coding errors. In addition, in "complex reviews" RACs may request medical charts to review coverage, medical necessity or coding documentation for overpayments or underpayments.

In the *Tax Relief and Health Care Act of 2006*, Congress authorized the expansion of the RAC program to all 50 states by 2010. This was done before the demonstration program was complete or a thorough evaluation of its appropriateness and problems was made. So far, CMS has expanded the program to Massachusetts and South Carolina. Although hospitals support oversight for payment accuracy, we find the RAC program particularly troublesome because RACs are paid on a contingency fee basis, meaning they keep a percentage of the payments they recover, with limited risk to the RAC for making wrong decisions that unfairly hurt providers. This bounty hunter-like payment mechanism has led to aggressive denials on the part of the RACs.

Kingsbrook, for example, was aggressively targeted by the New York RAC, and many cases in which skin tissue had to be surgically removed (debridement) were denied for being incorrectly coded. In 119 cases, the RAC claimed Kingsbrook used the improper ICD-9 code because physicians did not write the word "excisional" in the medical record. The charts in question contained skin biopsy results, clearly demonstrating that skin had been removed for testing, but the RAC was unwilling to accept clinical addenda to the medical record as documentation – despite the fact that every medical/legal expert Kingsbrook consulted, including the American Health Information Management Association, said such documentation was sufficient to make a determination.

Of the denials Kingsbrook decided to appeal, 64 cases totaling $894,000 were overturned as of December 31. Fifteen cases are still pending. While we were heartened by this, the cost to Kingsbrook in terms of money and man hours expended to overturn these erroneous denials was great. At the same time, reimbursement was withheld pending the outcome of the appeal, impeding the medical center's cash flow. Even after winning the appeals, it took up to, if not more than, 60 days to recoup the money that we were owed in the first place.

Unbelievably, Kingsbrook has again been subjected to denials for the same documentation issue because the RAC program lacks a feedback loop. The reasons behind decisions made at the appeals stage are not communicated back to the RACs, who in turn continue to issue denials that will most likely be overturned on appeal. This is true even after a similar case has been overturned by an Administrative Law Judge.

Ironically, hospitals are told that they must learn from the process and "get smarter." And we are undertaking every effort to do so. For example, Kingsbrook has hired additional documentation specialists to monitor clinical documentation on the floor. Unfortunately, RACs are not held to the same standards. The hospital field has asked CMS to require its contractors to develop electronic platforms for providers, the RACs, and the FIs to exchange data, medical records and outcomes on RAC audits. The development of an electronic platform is critical to fostering learning and information sharing, and reducing the burden of the RAC on providers.

This example only hints at the levels of confusion and waste – of hospital and government funds, and both hospital and CMS employees' time – caused by duplicative efforts. Kingsbrook decided to aggressively fight back against these senseless and labor-intensive denials. However, many organizations are overwhelmed by the sheer volume of RAC requests and lack the resources necessary to pursue appeals.

Accreditation and Licensure. It is possible for a hospital to be inspected up to four times in a matter of weeks to maintain its accreditation status. First, a hospital could be inspected by The Joint Commission, which takes several days and involves many hospital staff members, pulling them away from their day-to-day duties. The hospital could then be inspected again by CMS to check on the accuracy of The Joint Commission's surveyors. It could then be inspected a third time by a state survey agency. If the state

surveyors find something they believe The Joint Commission missed, the hospital could then be subjected to yet another inspection. These steps also are necessary to satisfy Medicare's Conditions of Participation. In addition, each state maintains its own licensure requirements and can impose their own requirements on hospitals.

Not only might a hospital be inspected multiple times, but the standards and/or interpretation of those standards often differ. For example, Kingsbrook operates an inpatient geriatric psychiatry unit. Because of the age and condition of the patients, safety is a major concern for this unit. Prior to opening the unit, we undertook a strenuous process with state regulators to determine which type of patient beds would provide both safety and prevent potential suicidal acts and, at the same time, allow for the medical needs of an older adult population with many medical co-morbidities, to be considered. The needs of these patients called for the use of traditional medical beds rather than the more typical captain beds used in a unit with younger, medically healthy patients.

The unit passed its opening inspection with the New York State Department of Health and the Office of Mental Health and yearly inspections by state accrediting agencies, as well as triennial inspections by The Joint Commission, without any mention of these beds. However, upon a CMS inspection, the agency's surveyors indicated that the beds must be removed, as they were not permitted. While we immediately complied and bore the cost of replacing the 30 beds, this has represented a hardship, and I believe a danger, for patients and staff on this unit. We are aware that there is marked inconsistency in how these regulations are interpreted and applied from institution to institution, and attempts to rectify this situation, even in part, have been met with bureaucratic rigidity or disinterest.

Quality Reporting/Pay for Performance. Strides in reporting of quality measures and the introduction of pay-for-performance programs have contributed to an increased focus on health care quality, and the data suggests, real performance improvement. But it also has increased data collection and reporting burdens for hospitals because each payer has instituted its own unique program. For example, CMS requires hospitals to report on 27 measures to receive a full annual Medicare inpatient payment update. Hospitals that fail to do so face a two percentage point reduction in their updates. Kingsbrook has had to add staff to comply with this regulation. We are fortunate to be able to make use of technology to lessen the burden on staff and ensure better outcomes on core measures.

In addition, several state Medicaid programs and private payers have launched similar initiatives. However, the measure sets are not standardized. As a result, hospitals must develop systems for tracking and reporting a multitude of quality measures to various payers.

New requirements are being added every day. For example, the *Deficit Reduction Act of 2006* (DRA) required CMS to identify at least two preventable complications of care that could cause hospital inpatients to be assigned to a higher-paying DRG and begin to pay hospitals as though the complication was not present. The DRA also required hospitals

to submit information on complications (secondary diagnoses) that are present on admission when reporting payment information for discharges to CMS.

As a result, hospitals are now required to code – for every inpatient – whether a series of conditions is "present on admission" so that CMS can try to determine whether a care complication occurred in the hospital. That means a hospital will now have to check whether a patient has one of hundreds of conditions as he or she checks into the hospital.

For many conditions, it is not always possible to know whether it is present on admission. And some of these conditions are not reasonably preventable in the first place. In an effort to create incentives for better care, this is an example of regulation applied in impractical ways with unintended consequences.

Disclosure of Financial Relationships (DFRR). In September 2007, CMS proposed a new mandatory reporting system for hospital relationships with physicians – the DFRR – that requires community hospitals to submit information on physician investments in hospitals and compensation arrangements between hospitals and physicians unrelated to whether those physicians have an investment interest. CMS stated that it would use the information to examine the compliance of each hospital with the physician self-referral law, and to assist in developing a disclosure process for all hospitals.

CMS understated the burden for responding to the compensation questions, estimating that the average burden for hospitals will be six hours. In most instances, that will not cover the time devoted just to copying the documents that need to be submitted. CMS requests information on nine different categories of compensation arrangements. For those categories most commonly engaged in (e.g., recruitment arrangements), it asks for copies of every contract in effect during a calendar year. Depending on the size of the hospital, documents will be required for hundreds or thousands of contracts.

Anecdotally, the burden estimates for hospitals also may include:

- At least 200 hours just to identify and assemble all the relevant contracts.
- Three to four weeks to fully respond, assuming no vacations or holidays for involved staff.
- Two to three months to respond with one full-time equivalent employee's time.

Smaller hospitals will have fewer contracts, with fewer staff to complete the work, and have a greater need for outside attorneys or auditor support. In addition, hospitals with a fiscal year that is not a calendar year are required to include arrangements from two fiscal years, doubling their workload.

CMS seems to believe that electronic record systems have been created specific to the terms of the DFRR, and the threat of a $10,000-per-day penalty for late responses suggests that hospitals had a pre-existing duty to anticipate this type of demand. This is simply not the case.

CMS' justification for this survey relies largely on the DRA, which directed CMS to "develop a strategic and implementing plan" to address issues of concern to Congress regarding "physician investment in specialty hospitals" as the basis for its action. This is a laudable goal with which we agree. However, the DRA did *not* direct CMS to study compensation arrangements between community hospitals and physicians. CMS has not demonstrated a problem or concern that would merit this costly and burdensome demand on community hospitals.

Translation of Medicare Beneficiary Notices and Forms. Language barriers can have a detrimental effect on the health care of those in racial/ethnic minority groups and immigrants. Health care providers, as well as the federal government, are required to provide language services to federal program participants who have limited English proficiency (LEP) to ensure that they are able to benefit from these programs under *Title VI of the Civil Rights Act of 1964* and under *Executive Order 13166 on Improving Access to Services for Persons with Limited English Proficiency*, signed by President Clinton on August 16, 2000.

As with the U.S. population as a whole, the number of Medicare LEP beneficiaries is growing. According to the U.S. Census Bureau's American Community Survey, in 2003 there were 2.5 million people over the age of 65 in the United States with LEP. About half are Spanish-speaking. The number of other languages is growing rapidly.

Hospitals and others have pressed CMS for years to provide a centralized bank of translations of key Medicare beneficiary notices and forms in the languages that are most frequently encountered by health care providers – to no avail. CMS sometimes provides translations in Spanish, but not in other languages. Health care providers are prohibited from changing any of the language in these notices, except to fill in individual patient information. Because CMS will not provide translations, hospitals are faced with having to do so individually. This painstaking process diverts time and resources.

REDUCING THE BURDEN

The AHA, its member hospitals and health systems, and the millions who work within these facilities urge the administration and Congress to work together to ease the regulatory burden confronting health care providers. A necessary first step is to create a more common-sense approach to developing and issuing future regulations. Equally critical, though, is the need to quickly provide relief from the most burdensome, inefficient or ineffective regulations – those that take away from critical time spent with patients.

Halt and Evaluate the RAC Program. Hospitals are committed to doing the right thing the first time to ensure quality, patient safety and payment accuracy. However, duplicative oversight mechanisms only increase confusion and drive up costs for both hospitals and the health care system as a whole, as well as the government.

Hospitals are deeply concerned about the Medicare RAC program. We believe CMS should not expand the RAC program until a full assessment of the demonstration is completed and major program flaws are corrected. The AHA has shared with CMS hospitals' concerns about the demonstration program and proposed rollout plan and continues to urge the agency to make changes before rolling out a permanent RAC program to all 50 states. In addition, Reps. Lois Capps (D-CA) and Devin Nunes (R-CA) introduced H.R. 4105, the *Medicare Recovery Audit Contractor Program Moratorium Act of 2007*, which would place a one-year moratorium on RAC activities in states in which RACs are currently operating and prevent CMS from entering into new RAC contracts in other states. By delaying implementation, the moratorium would allow time for program evaluation and time to address serious problems with RACs, including more appropriate payment incentives, and greater oversight and transparency.

Evaluate New Agency Requirements. Government agencies should be required, as part of any proposed rulemaking process or other change in agency policy, to undertake a rigorous examination of existing mechanisms for waste and duplication, and fully justify the value of each new agency or oversight program. As part of any new or proposed regulatory change process, agencies should be asked to identify areas of potential overlap or duplication with other government or private activity. We need smarter rather than greater regulation and oversight.

Provide Interpretive and Advisory Guidance on Medicare Payment Requirements. Medicare requirements for provider participation and payment are increasingly voluminous and complex, making compliance difficult, while penalties for compliance failures are increasingly severe. CMS should establish query mechanisms for individual providers and their associations on the appropriate interpretation or application of Medicare rules in specific situations. CMS' responses should be timely and readily available to others in an easily accessible format (such as an indexed file on the Internet).

Include the Cost of Implementing Significant Regulations into Medicare Payment Updates. The initial cost of implementing significant new regulations is not captured by Medicare prospective payment rate updates. Like new technology and productivity improvements, these costs should be taken into account by the Medicare Payment Advisory Commission when it makes its annual rate update recommendations to Congress.

Enable Providers to Challenge Questionable Policy Actions in Court. Unlike other federal agencies, Medicare program policy decisions made by the Secretary of HHS are insulated from judicial review. Health care providers are required to exhaust all administrative processes and remedies before they can file suit against HHS. However, there is no such process to exhaust on questions about whether the Secretary has exceeded his authority or failed in his duty. This effectively means that providers can bring a suit only if they violate Medicare requirements so significantly that they are thrown out of the Medicare program. HHS policy decisions should be subject to the same level of judicial review as other federal regulatory agencies.

Coordinate the Orderly Release of Federal Regulations to Allow for More Seamless Compliance. Government agencies with jurisdiction over hospitals need to release regulations in a coordinated manner so that implementation does not overwhelm hospital personnel and systems. That means establishing a point of accountability to coordinate regulatory activity across major federal agencies, as well as within HHS. As the predominant federal regulator of hospitals, HHS should periodically evaluate its overall federal regulatory framework applied to health care providers for clarity and expected behavior from providers.

Seek Greater Provider Input on New Rules and Regulations. Federal regulators need to become more acquainted with real-world hospital operating environments so that practical implementation issues can be minimized before a regulation goes into place. Agencies should conduct outreach efforts to obtain early input from the health care field, including publishing notices of intent; making relevant databases, cost estimates, assumptions, and methodologies publicly available early on; holding field hearings; and conducting site visits.

Restrict Use of Interim Final Rules. HHS has increasingly issued new rules as interim final rules; that is, issued and implemented before the agency takes public comment. To reduce the disadvantages of this approach – which negates the public comment process – HHS should be required to issue final rules within a year.

Make Translations of Medicare Beneficiary Notices and Forms Routinely Available. It would be significantly more efficient for CMS to prepare translations and then make them available to health care providers via their Web site. The Social Security Administration does this through its multi-language gateway for 15 languages, and the Department of Agriculture makes food stamp forms available in 36 languages. Individual providers translating routine forms is an increasingly heavy burden, especially for small health care providers.

CONCLUSION

Madame Chairwoman, the mission of every hospital in every community in America is to provide the best care possible to people in need. And while regulation and oversight play an important role in guaranteeing patient safety and eliminating fraud and abuse, many of today's regulations are outdated, inefficient and burdensome.

We look forward to working with this committee and staff to forge ahead toward a shared goal: easing the regulatory burden so the people of America's hospitals can spend more time with patients and less time with paperwork.

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Statement of Robert P. Daly, Jr.
President

National Roofing Contractors Association

ON: **"Improving the Paperwork Reduction Act for Small Businesses"**

TO: **Committee on Small Business, U.S. House of Representatives**

DATE: **February 28, 2008**

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Introduction

Thank you, Madame Chairwoman, ranking member Chabot, and distinguished members of the committee, for the opportunity to appear before you today to discuss government paperwork burdens on small businesses. My name is Robert P. Daly, Jr. and I am president of Kaw Roofing & Sheet Metal, Inc., a small business in Kansas City, Kansas. I also serve as president of the National Roofing Contractors Association (NRCA) and am testifying on behalf of NRCA today.

Established in 1886, NRCA is one of the nation's oldest trade associations and the voice of professional roofing contractors worldwide. It is an association of roofing, roof deck, and waterproofing contractors; industry-related associate members, including manufacturers, distributors, architects, consultants, engineers, and city, state, and government agencies; and international members. NRCA has more than 4,600 members from all 50 states and 54 countries and is affiliated with 105 local, state, regional and international roofing contractor associations. NRCA contractors typically are small, privately held companies, and the average member employs 35 people in peak season, with sales of just over $3 million per year.

First, I want to commend you, Madame Chairwoman, for your leadership on federal issues of importance to small business. Your tireless efforts on behalf of working Americans are greatly appreciated by NRCA. We commend you for holding this hearing today on an issue that is critical to the economic vitality of our nation. I also want to commend Representative Chabot for his strong leadership on behalf of small business as ranking member of this committee.

NRCA welcomes the opportunity to testify on the growing problem of the excessive and time-consuming paperwork burden on small businesses and provide suggestions for how the Paperwork Reduction Act may be improved as Congress considers reauthorizing this important law. I will provide an overview of the paperwork regulatory burden on small businesses by relating some of my own personal experiences, and then will offer suggestions for how Congress might take action to address this problem.

Let me state at the outset that small business owners recognize the need for sensible regulation in order to protect employees, consumers, and the environment. However, it is critical that the implementation of regulations and the required paperwork be governed by the type of common sense and practicality that small business people must employ every day if they are to survive in today's competitive markets. Congress must develop mechanisms that enable government agencies to constantly be held accountable for making the implementation of our nation's laws as efficient and effective as possible. We appreciate this committee's past efforts to hold federal agencies accountable and look forward to working with you on new ventures in this area.

Scope of the Problem

Today, many of NRCA's members are drowning in a constantly rising flood of paperwork, with the majority arising from the need to comply with continually expanding government regulation at the federal, state and local levels. This situation is borne out by a recent study conducted for the U.S. Small Business Administration (SBA), which estimated the nationwide annual

regulatory burden at an astounding $1.1 trillion! This burden is felt most acutely by the heart and soul of our economy - small businesses, which bear an annual cost of government regulation of over $7,600 per employee, according to the SBA study. In addition, the cost of the regulatory burden is 45% greater on small businesses compared to the cost borne by large businesses.

These statistics are not, unfortunately, at all surprising given my personal experiences with excessive paperwork requirements brought about by an often bewildering array of new government regulations. Paper files that I must keep that used to be one-quarter or one-half inch thick are now anywhere from 6 to 12 inches thick. The paperwork requirements in our business are at least 10 times what they were 20 years ago.

Another way to think of the paperwork problem is this: If you are a small business person today, forget about filing cabinets. Instead, you need to think in terms of entire storage rooms to accommodate your ever-increasing paperwork!

Unfortunately, the rise of electronic and internet commerce has not diminished paperwork requirements at all. In fact, the use of electronic commerce greatly accelerates the pace of business and actually increases the paperwork burden. In order to protect your business, you must print out virtually everything done electronically and keep a paper file. Failure to do so can end up costing your business if you cannot produce hard copies as evidence of compliance with various government regulations.

The paperwork requirements in our relationships with general contractors (GCs) are demonstrative of the difficult paperwork-related challenges we face. Just a few years ago, we had to provide the GC of a given project with duplicates or at most three copies of various types of government paperwork. Today, we often have to provide six copies of this paperwork. To show you how voluminous and time-consuming this is, there have been instances in which my firm provided three copies of certain paperwork to a GC, and the GC has called us to demand an additional three copies, rather than just making the copies itself. Please note that I am not targeting GCs as the cause of this problem, because they are simply trying to cope with the growing paperwork burden, too.

Another example of onerous paperwork requirements are Material Safety Data Sheets required by the Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard. OSHA regulations require that this large compendium of documents be physically present at each work site and employees must be fully trained in its procedures. Furthermore, this is but one facet of my company's required written safety program which must be submitted in order to qualify for jobs. I understand that OSHA has a mission to improve worker safety, and we fully subscribe to that mission, but there must be a way to streamline the proliferation of paperwork that is involved while still achieving the ultimate goal.

The paperwork burden is most acute for small businesses that wish to work on federal projects. In my experience, 10-15 years ago our firm would often bid on federal contracts and the paperwork was manageable. Now, paperwork requirements for federal projects are so excessive that a construction firm basically has a difficult choice to make. You either don't bid on federal contracts, or if you are going to bid on federal contracts, you must hire additional staff just to

deal with the extra paperwork demands. Of course, this drives up overhead costs and puts small businesses at a disadvantage to larger competitors in the market for federal contracts.

Growing paperwork demands take a toll on small business persons because the paperwork and underlying regulations are often confusing and difficult to comply with. Small businesses often do not have the resources capable of tracking all the new regulations issued by federal, state and local governments. As such, due to the large volume and complexity of federal regulations, even the most diligent and conscientious small business owner may inadvertently make an error or miss deadlines associated with government paperwork. It is particularly disturbing to be hit with fines or penalties for inadvertent and/or minor paperwork violations, especially if it is a first-time offense. Resources used to pay fines are resources that cannot be invested in efforts to grow your business.

The paperwork burden on small businesses today is truly alarming. The implications of this problem for the strength of our economy are also alarming. As you know, small businesses are the primary source of economic innovation and job growth. As such, bringing the paperwork requirements for small business under control is vital to sustaining a vibrant economy that provides good jobs for American workers.

NRCA strongly urges Congress to take concrete steps to address this growing problem, especially at this time of economic uncertainty. While Congress has enacted legislation over the past few decades in an attempt to address this problem, success has been limited. Clearly a renewed effort to simplify and reduce government paperwork by Congress is desperately needed.

Possible Solutions

I hope my relating of personal experiences gives members of the committee a vivid portrayal of the scope of the immense paperwork burden that now confronts small businesses. Now I would like to discuss possible solutions that may address this problem for your consideration.

First, NRCA recommends that Congress provide increased funding for the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget. As you know, OIRA was created by the Paperwork Reduction Act of 1980 for the purpose of reducing the federal paperwork burden and generally maximizing the effectiveness of government regulations. However, OIRA's budget and staff have been reduced in recent years, while the growth of federal regulation by federal agencies continues unabated.

OIRA has had some success over the years in reducing or streamlining federal paperwork requirements in its role as gatekeeper for new federal regulations. However, the office has been greatly constrained in recent years by declining budgets. If Congress is truly committed to reducing the paperwork burden on small business, it will provide a greater level of funding for OIRA so this office can be reinvigorated in its efforts to review regulations and reduce paperwork requirements.

NRCA welcomes the testimony of the OIRA representative testifying at today's hearing. We look forward to working with OIRA and the committee members to move forward on strategies

and recommendations from the administration for reducing paperwork burdens on small businesses.

Second, in order to address the problem of inadvertent paperwork violations, NRCA urges Congress to consider the Small Business Paperwork Relief Act of 2007 (H.R. 456) introduced by Rep. Randy Neugebauer (R-TX). This legislation would amend the Paperwork Reduction Act to direct federal agency administrators not to impose civil fines for first-time paperwork violations in certain circumstances. Specifically, civil fines would not be imposed for paperwork violations unless there is potential for serious harm to the public interest; the detection of criminal activity would be impaired; the violation is not corrected within six months; the violation is of the Internal Revenue Code or a law concerning the assessment or collection of any tax, debt, revenue, or receipt; or the violation presents a danger to the public health or safety.

H.R. 456 also gives an agency administrator the discretion to not impose a fine for a violation that presents a danger to public health or safety *if* the violation is corrected within 24 hours after receipt by the small business owner of notification of the violation. Finally, the legislation would not be applicable to any violation by a small business of a requirement regarding the collection of information by an agency if the small business previously violated any requirement by that agency.

The Small Business Paperwork Relief Act will prevent federal agencies from imposing excessive civil fines on small businesses *only* for first-time, inadvertent paperwork violations. It is critical to point out that the bill does *not* exempt any business from existing paperwork requirements. It merely gives a small business owner acting in good faith some leeway to correct a first-time mistake. If the business does not comply within a six month period, the fine will be imposed.

This is a common sense solution to reducing the regulatory burden on small businesses while still providing for the safety and health of workers and our communities. The bill strikes a reasonable balance between the urgent need to reduce paperwork costs on small businesses and our overarching responsibility to protect our communities and the environment.

NRCA urges the committee members to take a serious look at H.R. 456 as a proposal that could be taken as a first step to address the paperwork burden on small businesses. We would welcome the opportunity to improve and refine this or similar legislative approaches that members may have in this area.

Conclusion

NRCA again wants to commend Chairwoman Velazquez for holding this hearing and providing the opportunity to provide input on this critical small business issue. We understand that this is a highly complex problem that will require creative and innovative approaches if it is to be successfully addressed. We look forward to working with members of the committee and other members of Congress to develop effective solutions and have them enacted into law.

Thank you, again, for considering NRCA's views and suggestions.

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

before the House Committee on Small Business

on February 28, 2008

on "Improving the Paperwork Reduction Act for Small Businesses"

Good morning, Chairwoman Velázquez and Members of the Committee. Thank you for inviting me to testify today on "Improving the Paperwork Reduction Act for Small Businesses." In the mid-1990's, I served as the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) and was involved in the discussions that led to the 1995 Reauthorization of the Act. I also was responsible for implementing the Act (before and after the 1995 revisions) during my tenure as Administrator (1993-1998) and as the Deputy Director of Management of OMB from 2000 to January 2001.

This Committee is to be commended for its efforts to protect and promote the interests of small businesses, which play such an essential role in our economy. One of the concerns most frequently expressed by the small business community is that federal regulations (including paperwork) disproportionately burden small businesses. The Paperwork Reduction Act (PRA), 44 U.S.C 3501, *et seq.*, was enacted to "minimize the paperwork burden for . . . small businesses . . ."– indeed, that is the first subject identified in the enumerated purposes of the Act. (PRA § 3501(1)) More recently, this Committee supported amendments to the PRA which were enacted into law as the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3520, *et seq.* It is therefore most appropriate to ask, as you do in your letter inviting me to testify, how the PRA functions to lessen paperwork burdens on small firms and what changes should be made to improve it.

At the outset, let me acknowledge that there is, in fact, a paperwork burden. The amount of time (and other resources) spent filling out forms or responding to other information collection requests (ICRs) by the federal government is very large – roughly 8 to 9 billion hours annually – and growing every year. (*See* Office of Management and Budget, *Information Collection Budget for Fiscal Years 2004-2007, available at* http://www.whitehouse.gov/omb/inforeg) But references to total burden hours (and their increases (or decreases were that to occur)) are, I believe, somewhat misleading because not all hours spent have the same consequences. For example, hours spent filling out IRS forms result in a liability imposed on the taxpayer (even if the return yields a refund because the taxpayer has overpaid the liability) while hours spent filing out a form for a small business loan result in a benefit.

I am not saying that the SBA form should not be as streamlined and simplified as possible so that the burden on the applicant is reduced to a minimum, without sacrificing information essential for programmatic accountability; after all, we expect the

government to be able to verify that only those eligible for a loan are approved, and we want the SBA to have sufficient information to be able to evaluate whether the loan program is achieving its objectives. The point I want to make is that calling the paperwork for a benefits program a "burden," and counting the hours spent filling out the form to obtain the benefit as part of the total burden imposed on the American public, masks the qualitative difference between those forms and those imposed by the IRS.

To be sure, the IRS accounts for over 80% of the total paperwork burden. This number is affected in part by the large number of people who fill out the Form 1040 (or the simplified version Form 1040EZ). But the size of the IRS burden number is also a factor of the complexity of the Internal Revenue Code (which the PRA cannot change) and the often very detailed forms that sophisticated corporations and their legions of accountants and lawyers fill out to obtain special (beneficial) tax treatment that Congress has decided is not only appropriate but also desirable. Consider the form for accelerated depreciation or the form for oil and gas depletion allowances. Surely those who spend the hours filling out those forms have made a calculation (however informal) that the burden of doing the paperwork is outweighed (often greatly outweighed) by the benefit of obtaining the resulting tax advantage. Thus, even to treat the hours of the individual struggling through the 1040EZ the same as the hours spent by the trained lawyers and accountants is to produce a total burden number that is not very informative about the nature of the problem and thus how best to address it.

I have been speaking about the burden – or cost – of paperwork. Before focusing on ways to lessen the effect of this burden on small businesses, let me also briefly mention the benefit of paperwork. This is not something the small business community, nor any regulated entity, typically mentions. Yet the PRA specifically included the benefit side among the purposes of the Act. (*See* PRA § 3501 (2), (4)) Indeed, the very earliest attempts to manage government information collections explicitly recognized that information in the hands of individuals or the private sector was needed by federal agencies for informed and rational decision making, and further, that much of the information collected by the government was subsequently disseminated to the public – for example, weather information, census data (stripped of personal identifiers), and economic indicators – information which is highly valued by industry and those at universities and is frequently used by them to enhance our safety, decide on marketing strategies or make investment decisions.

Recall also that the "total burden hours" data so frequently cited include forms to obtain a myriad of benefits – Social Security, Medicare, veterans benefits, and student loans, in addition to the small business loans I mentioned above, to name only a few. And burden hours also include so-called third-party disclosures, such as nutrition labeling for food – which provide consumers with data for informed choices affecting their health (and possibly their safety) – requirements for employers to post a notice when toxic chemicals are present in the workplace, and requirements that pharmaceutical companies supply package inserts to explain the correct use of a drug and provide other relevant medical information, to name just three. This raises the issue of whether such information requirements – however burdensome – may be the least onerous regulatory

alternative. Consider the last two examples just mentioned. Are not the disclosure requirements less burdensome, less costly, and less intrusive than if the government were to ban the toxic chemicals from the workplace or to require doctors or pharmacists to read the medical insert information to all patients before sale?

One last observation before turning to the operation (and potential improvement) of the PRA. You have heard from the small business community that it is bearing a heavy – indeed, intolerable and likely disproportionate – regulatory and paperwork burden. The proof of the validity of this claim is said to be a 2005 study by Mark Crain (W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, Sept. 2005, *available at* http://www.sba.gov/advo/research/rs264tot.pdf), which is itself an update of an earlier study by Hopkins and Crain (W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms*, 2001, *available at* http://www.sba.gov/advo/research/rs207tot.pdf). This is not the time or place to critique the study, but for present purposes two comments are in order. First, the methodology and resulting conclusions are not universally accepted; credible (and unbiased) commentators have pointed out that estimation of total regulatory costs is so inaccurate that OMB has abandoned the practice, and furthermore, that Crain's estimates for different categories of regulatory costs are at the high end. (*See e.g.*, Curtis W. Copeland, *Federal Regulations: Efforts to Estimate Total Costs and Benefits of Rules*, Congressional Research Service, May 14, 2004) Second, other than for tax compliance, Crain does not segregate the costs of paperwork from the costs of complying with other regulations, making it difficult to determine how much responsibility falls to the PRA or how much the PRA could ameliorate the situation.

Let me be clear. I recognize that paperwork poses a greater challenge to smaller firms than to large and even mid-sized companies. Among other things, some small firms do not keep all of their records electronically – and use of computers rather than manual reporting is one way that agencies have been able to achieve lower burden hours – and firms with fewer employees are unlikely to have personnel dedicated to (and hence proficient with) various forms (especially specialized forms) than firms where the cost of such overheard personnel can be spread over a much larger operation. Accordingly, it is important for this Committee to continue to press the question: whether the PRA is working to lessen paperwork burdens on small firms and can we do better? My answer to both is "yes."

While there has been no empirical study of the effect of the PRA – there being no counterfactual baseline to compare it with – I firmly believe that it has had a salutary effect. By its terms, the PRA requires agencies to provide notice to the public and an opportunity for them to comment on the draft ICR. (PRA, § 3206(c)(2)) Those being asked for information or those expecting to use the information can and should suggest ways of simplifying, streamlining, or otherwise reducing the burden of the proposed form. The agency is required to consider the comments submitted (PRA, § 3206(d)(2)(A)), and only after the agency has either accepted or rejected the comments (in the case of rejection, the agency has to explain why (PRA, § 3206(d)(2)(B))), is the ICR sent to OIRA, which again provides public notice (PRA, § 3206(b)) and undertakes

its own independent (and dispassionate) review of the ICR. The PRA thus provides several steps in the process where improvements can be made to enhance the utility of the information collected while lessening the burden of collecting the information.

During my tenure at OIRA, paperwork did not receive as much attention as the regulations we reviewed, but there were occasions when we questioned an agency about the need for an ICR or suggested changes to an ICR; on a few occasions, we declined to assign an OMB control number to an ICR that had been submitted, thus precluding the agency from issuing the ICR. I am also aware of anecdotal information (that has continued to this day) to the effect that some program offices in various agencies do not even bother to propose new ICRs, unless they are statutorily mandated, because those who favor gathering the information believe that the process is so time (and labor) consuming, and the difficulty of negotiating with OIRA is so great, that it is not worth their effort. For these reasons, I am confident that the PRA is working to lessen the paperwork burden on all segments of the American public – individuals, small businesses, state and local governmental offices, non-government organizations, etc.

This leads to the second question: How can we do better? To answer that, it is essential to identify with specificity the major barriers to burden reduction: only when you understand the source of the problem can you credibly address it.

Based on my experience at OIRA, I believe there are two critical barriers to reducing the burden of paperwork. First, as mentioned above, a not insignificant portion of the demands for information are mandated by acts of Congress. OMB's recent reports to Congress indicate that new statutory mandates equal or exceed the burden reduction efforts the agencies have been making in areas within their discretion. (*See* Office of Management and Budget, *Information Collection Budget for Fiscal Years 2004-2007, available at* http://www.whitehouse.gov/omb/inforeg) I suspect that even as we sit here talking about reducing the paperwork burden, other Committees in both Houses of the Congress are considering new legislation that would require new information collections – whether to enable better informed policy choices, to promote accountability in government programs, or to enhance national security. This is, after all, the "information age," and without reliable, relevant information, the American public would be less well off. In any event, once Congress has made its decision to call for more information, there is nothing the PRA can do; the PRA cannot trump other statutes.

There is a second barrier to burden reduction – also based in legislation – which explains, in part, the multiple requests for the same or similar information from different program offices or different agencies. This Committee is well aware of this phenomenon. Virtually every form filled out by a small business calls for the name of the establishment, the address, the tax identification number, the sector code, a contact person with telephone number, etc. This information is straightforward and some steps are underway to enable a single submission of such data and its subsequent use in other required forms. (*See e.g.*, the Business Compliance One Stop Initiative, described in Office of Management and Budget, *Report of the Small Business Paperwork Relief Act Task Force*, 2004, *available at* www.whitehouse.gov/omb/inforeg/sbpr2004.pdf) But

most forms also ask a series of specialized questions, often using terms (or categories) which have unique (or idiosyncratic) definitions (or cutoffs) (*e.g.*, the definition of the term "employee," which may differ from agency to agency or even from program to program within an agency), so that the answers on one form cannot simply be incorporated wholesale into another form. The differences and distinctions are not because of agency silliness or stubbornness, but rather are the result of their authorizing statutes. Again, an agency cannot change the law even for the very best of reasons. And were we to proceed very far down the path of consolidating information received from private individuals or firms into a centralized data base (computer matching being a good example), it is almost certain that the relief from submitting information repetitively would be replaced by concerns about confidentiality and/or privacy. These are highly charged issues which we have made little progress in resolving since recent technological advances have given new life to the fear of "Big Brother."

This dilemma has been with us for some time, and an attempt to make progress in this area was apparently one motivation for the passage of the Small Business Paperwork Relief Act of 2002 (SBPRA). (44 U.S.C. 3520, *et seq.*) Among other things, that Act authorized an interagency task force to study and recommend ways of reducing the paperwork burden on small businesses, with the first item on the agenda for the group being to "identify ways to integrate the collection of information across Federal agencies and programs and examine the feasibility and desirability of requiring each agency to consolidate requirements regarding collections of information with respect to small business concerns within and across agencies, without negatively impacting the effectiveness of underlying laws and regulations regarding such collections of information." (SBPRA § 3520(c))

The final report pertaining to this item was submitted to the Congress on June 28, 2003. (Office of Management and Budget, *Report of the SBPRA Task Force*, 2003, *available at* www.whitehouse.gov/omnb/inforeg/sbpr2003.pdf) The report provides a brief description of the challenges faced by the task force, including:

> "Seemingly duplicative information collections may not be appropriate for consolidation due to the nature or utility of the data collected. For example, definitions across similar data collections may not be harmonized due to differences across industries or underlying statutes. Consolidation of such reporting requirements may lead to confusion, rather than simplification." (P.18)

And:

> "Consolidated reporting, particularly among agencies, and even more so between Federal, state and local agencies will pose additional barriers that will need to be addressed. Consolidation issues include cost sharing, validation routines, enforcement, and confidentiality and privacy rights. For example, statistical agencies collecting data under a confidentiality pledge cannot share information with other agencies such as OSHA and IRS. Nor can the IRS share taxpayer information absent statutory authority or the authorization by the taxpayer to do so. This holds true, even when the disclosure of such information is for the purpose of validating the same information provided by the taxpayer to another agency." (P.19)

In this (and in the second report, Office of Management and Budget, *Report of the Small Business Paperwork Relief Act Task Force*, 2004, *available at* www.whitehouse.gov/omb/inforeg/sbpr2004.pdf), there are a number of accomplishments and additional recommendations in the related areas of consolidating information dissemination, providing compliance assistance, and enhancing electronic collections, all of which could have a salutary effect on reducing paperwork burden on respondents generally, including specifically small businesses. But on the particular issue of consolidation of information collection requests – *i.e.*, the elimination of multiple requests from various governmental sources – the response is regrettably very sparse. The reader is directed to Appendix 5, which lists fewer than 10 instances where reporting requirements have been consolidated (some going back several years). More disturbing is that there is no roadmap for further progress – for example, a compilation of instances where the agencies believe that information requests could be consolidated if there were technical changes to statutory (or regulatory) provisions – such as harmonizing definitions, thresholds for filings, time period covered, etc. – which would not adversely affect the ability of the program to achieve its objectives or the ability of the agency to be accountable to the public. Some of the currently existing distinctions may in fact be purposeful and determinative; others might have arisen because there were different committees of jurisdiction drafting the different statutes, or simply as a result of a lack of awareness of other related provisions. If agencies were to offer examples of these statutorily created differences, then this Committee, working with the committees of jurisdiction, could likely act to ameliorate the situation, producing benefits for all respondents, including small businesses.

In short, I believe there is real opportunity for reducing paperwork burden on small businesses – and all respondents to ICRs – not by reinventing the wheel or adding other provisions to the PRA, but by pursuing the ideas underlying the Small Business Paperwork Reduction Act and pressing for meaningful responses to the tasks set forth in that Act.

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

Testimony

of Drew Greenblatt

Marlin Steel Wire Products, LLC

on behalf of the National Association of Manufacturers

before the Committee on Small Business, United States House of Representatives

on the Paperwork Reduction Act

February 28, 2008

COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2008

Chairwoman Velázquez, Ranking Member Chabot and members of the Committee on Small Business, thank you for the opportunity to testify today on behalf of the National Association of Manufacturers (NAM) about the Paperwork Reduction Act and the work of this committee to improve it for small businesses.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Three-quarters of the NAM's membership are small and medium manufacturers. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. We represent the 14 million men and women who make things in America.

My name is Drew Greenblatt and I am the President and Owner of Marlin Steel Wire Products, LLC. We make steel wire baskets and wire hooks. We used to make wire bagel baskets but international competition forced us to change our business model. Marlin Steel Wire now makes custom-built wire products for materials handling, automotive and aerospace manufacturing. We employ 27 people in Baltimore, MD. We have grown 33% in the last two years and tripled in the last ten years. We are adding people. We want to keep adding people, not adding paperwork.

The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

The manufacturing community — especially small manufacturers like me — welcomes today's hearing. My business complies with paperwork and regulatory requirements from the IRS, EPA, OSHA, other parts of the Department of Labor, the Department of Commerce, the State Department, and other federal, state and local agencies. I compiled all the forms my business fills out in a single year and when piled on top of each other, they are more than 6 feet tall. Take a look at this photo of my plant manager, Simon Matthews and our Production Specialist, Nan Brand next to last year's paperwork. I have often heard that the Code of Federal Regulations when piled up extends to 19 feet. Please remember that each one of those regulations has potentially tens of pages of paperwork and recordkeeping requirements associated with them, for every company like mine. That's why it is no surprise to me that the federal government reported that it imposed 9.2 billion hours of paperwork on the public in 2007.

Although paperwork is a distinct kind of regulatory compliance, it can not be totally separated from it. All paperwork requirements come from a regulation which comes from a statute. So estimates of paperwork burden and costs are generally included in total regulatory costs. In the Crain report produced by SBA's Office of Advocacy, the costs of tax compliance are counted by paperwork burden and costs to hire outside assistance to fill out the paperwork, rather than by any inefficiencies of the

current tax code. So I will refer to regulatory and paperwork costs interchangeably throughout my testimony.

As the final 2004 OMB Report to Congress on the Costs and Benefits of Federal Regulations notes, federal regulations hit the manufacturing sector especially hard. Because manufacturing is such a dynamic process, involving the transformation of raw materials into finished products, it creates more environmental and safety issues than other businesses. Thus, environmental and workplace health-and-safety regulations and accompanying paperwork have a disparately large impact on manufacturers.

Another report entitled The Impact of Regulatory Costs on Small Firms, by Mark Crain and Thomas Hopkins, issued in 2001 and updated by Dr. Crain in 2005 for the Office of Advocacy of the Small Business Administration, makes the same point. The burden of regulation falls disproportionately on the manufacturing sector. In this most recent report, Dr. Crain found that the manufacturing sector shouldered $162 billion of the $648 billion onus of environmental, economic, workplace and tax-compliance regulation in the year 2004.

Overall, Crain found that the per-employee regulatory costs of businesses with fewer than 20 employees were $7,647. That is 40% more than the cost per worker of $5,282 for firms with more than 500 employees.

In manufacturing, this disparity was even wider. The cost per employee for small firms (meaning fewer than 20 employees) was $21,919 or 118% higher than the $10,042 cost per employee for medium-sized firms (defined as 20–499 employees). And it was 150% higher than the $8,748 cost per employee for large firms (defined as 500 or more employees).

In December 2003, the NAM released a report, "How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness," which has received considerable attention from media, business and policy experts. This report, which is available at www.nam.org/costs, examined structural costs borne by manufacturers in the United States compared to our nine largest trading partners: Canada, Mexico, Japan, China, Germany, the United Kingdom, South Korea, Taiwan and France. The principal finding was that structural costs—those imposed domestically "by omission or commission of federal, state and local governments"—were 22.4% higher in the U.S. than for any foreign competitor. NAM subsequently updated that study and found them to be 31.7% higher in 2006.

The structural costs included regulatory and paperwork compliance, along with excessive corporate taxation, the escalating costs of health and pension benefits, the escalating costs of litigation and rising energy costs.

As a result, we welcome the continued leadership of Chairwoman Velázquez in this Congress to address the problems of small business. Improving the Paperwork Reduction Act (PRA) is a necessary and noble enterprise. I would simply caution that as you embark on this mission to fix the PRA that you be wary of those that would attempt to weaken it. It would do no small business any good to end up with a PRA bill that weakened the Office of Information & Regulatory Affairs (OIRA) or in any way interfered with its other critical responsibilities. This committee has long recognized the disproportionate burden of regulatory and paperwork costs on small businesses and especially small manufacturers. We are anxious to assist you in this effort.

The Paperwork Reduction Act while well intentioned has produced disappointing results. Since its passage in 1980 paperwork burden has increased by more than 400%. They are even more disappointing since the improvements to the PRA in 1995, which passed the U.S. House of Representatives by a vote of 423-0, did not accomplish any of its percentage reduction targets for decreased burden imposed on the public. If the PRA of 1995 had been successful, then paperwork burden hours would have stood at 4.6 billion hours in 2001 instead of at 7.5 billion hours and we wouldn't be surpassing 9 billion hours today.

I understand that these government-wide totals are imperfect. I know that many increases are due to adjustments to calculations or the number of respondents for a form increasing. But even if you strip away the largest single contributor, the IRS with about 78% of the total government burden, you still find significant increases over the last several years due to program changes in the hundreds of millions of hours. Agencies will likely complain that it is the fault of Congress because you keep passing new laws. But the agencies didn't seem to take the PRA of 1995 seriously, so I'm not sure why they assume that you want y them to only take seriously the laws that increase the burden on the public.

My bottom line is that the federal government can do better. No one can say with a straight face that we've eliminated as much of the unnecessary burden that we can. No one can say that there is no "fat" in the system. As a businessman who is constantly worried about my costs and how I can reduce them, I know that there is always room for improvement. It is what keeps the American economy moving.

Unfortunately the last time Congress and this Committee did try to do something about paperwork burden, someone did say we've done all we can with a straight face. Thanks to this Committee, the Small Business Paperwork Relief Act of 2002 became law. One of its first requirements was the establishment of an interagency task force to reduce the burden of paperwork on small business. Its first report to Congress said,

> The task force assumed that Federal agencies collect the minimum information necessary to fulfill statutory or programmatic responsibilities consistent with the [PRA]. The recommendations concentrate on ways to minimize the burden associated with existing requirements, rather than eliminate requirements.

Efforts to improve the PRA must start with a better premise. I would suggest the central idea behind any improvements that you make is that the federal government is a vast and disconnected bureaucracy. One agency can never truly know what the other agencies of government are doing and in fact has trouble knowing what all of its own offices are doing. Finding ways to identify true duplication of information collection requirements within agencies and across agencies is one place to start. But OIRA currently has no way to validate an agency certification of non-duplication. They just take agencies at their word. And the internal check on the program offices of agencies, the CIO shops, also have no way to verify that certification. They just take the program office's word for it.

All of this, coupled with the small staff and resources of OIRA, has turned a bold sunset and review of paperwork requirements into a pointless exercise. As the government has demanded more of the office that reviews hundreds of regulations and

thousands of paperwork collections a year, the government has given it fewer resources. As the size and scope of government has increased, OIRA has shrunk. It would be a different story if we were able to achieve significant burden reductions while shrinking OIRA. That would be a great story about the efficiency of government. Instead, as OIRA's staff shrunk from the 90 to 50 employees, the staff dedicated to writing, administering and enforcing regulations has increased from 146,000 in 1980 to 242,000 today. And as OIRA's budget shrunk by $7 million in inflation-adjusted terms, the agencies' budgets have increased from $7.6 billion to over $40 billion. Obviously, OIRA needs additional resources to accomplish its mission and reduce the paperwork burden on small business.

Every hour that I spend on this paperwork is an hour of lost productivity. And lost productivity means I am unable to hire that next employee, make capital equipment purchases, or spend time marketing and growing my business. In a globally competitive marketplace where seconds count and every penny of increased cost per unit could price my products out of existence, the federal government must seriously consider every hour of burden it imposes.

Let me give you an idea what I would do with the freed-up time. We sell a great deal of our product to foreign companies. Toyota is my second-biggest client. Today we are running jobs through our plant for English drug maker, Glaxo Smith Klein, and last month for Unilever, the Dutch English consumer products manufacturer. In the last six months our company exported wire products to the UK, Mexico, Belgium, Canada, Japan and my all-time favorite, TAIWAN. How neat is that? Marlin Steel exports wire

baskets to Taiwan. I wonder what they think when they open the box in Taiwan and it says, "Made in the USA."

We are doing many things right. We design products with the most sophisticated computer-aided-design, like this basket for Hubert, a company in Congressman Chabot's district in Harrison. We make high-quality products that don't get returned.. But we also have to do some less-productive work. First, we farm out a lot of the paperwork we must file. We are so afraid that we will make a mistake and the liabilities are so huge, that we pay someone else to do the paperwork. We have to find a suitable reputable vendor and then we have to change our systems to conform to their new system, all so we can meet government dictates. Millions of small businesses like mine pay such fees to outsiders, fees that our competition in China and India do not. In Marlin's case, our fees to outside vendors so we can manage the rules of our 401k pension plan and manage the rules of payroll deductions require us to use two outside vendors. We pay them so much a year that I cannot purchase another 75,000 watt welder or hire a $15 per hour person to work on the production floor. We would be more competitive if we hired that person. And he or she would have a job. A job here in America. Thus paperwork actually reduces employment because we are diverting cash from hiring more workers to paying vendors to shuffle government paper.

In addition, we have to hire talented people internally that can fill out the documents. These coworkers are set on tasks to research data for the government reports. There are meetings to discuss whether a poorly-written government phrase applies to us. The team member who has to focus on this distraction is unfortunately not

being utilized to strategize on "how to improve our product?" or "How to ship better quality? How to ship faster?"

We want our small businesses vibrant since we hire people and take the risks to grow. Government's goal should be take off the shackles of the small business hiring machine.

Again, Madam Chairwoman, thank you for this opportunity to testify. I would be happy to respond to any questions.

STATEMENT OF
ROBERT A. GARBINI
PRESIDENT
NATIONAL READY MIXED CONCRETE ASSOCIATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS

ON

IMPROVING THE PAPERWORK REDUCTION ACT FOR SMALL BUSINESSES

FEBRUARY 28, 2008

STATEMENT OF
ROBERT A. GARBINI
PRESIDENT
NATIONAL READY MIXED CONCRETE ASSOCIATION
BEFORE THE
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FEBRUARY 28, 2008

The National Ready Mixed Concrete Association (NRMCA) appreciates this opportunity to share its views on federal paperwork burdens faced by the ready mixed concrete industry and to offer specific insight on how the federal government can go about reducing the amount of paperwork filled out by America's small businesses.

NRMCA is a national trade association representing producers of ready mixed concrete and those companies that provide materials, equipment and support to the ready mixed concrete industry. While the vast majority of NRMCA producer members are classified as small businesses, the ready mixed concrete industry is big business with annual production of over 450 million cubic yards generating $30 billion in revenues. Nationwide, there are roughly 7,000 ready mixed concrete plants and 70,000 ready mixed concrete mixer trucks that deliver product to the point of placement.

As with any small business, owning a ready mixed concrete company means that you are responsible for everything (ordering inventory, hiring employees, meeting environmental and labor regulations, and dealing with an array of mandates from federal, state and local governments). That is why, seemingly simple government regulations, particularly when it comes to the paperwork they generate, can be of great consequence. The less time ready mixed producers spend with "bureaucratic overhead," the more time the can spend pouring concrete, employing more people and strengthening America's economy.

PAPERWORK REDUCTION ACT

Since 1942, with the passage of the Federal Reports Act (FRA), Congress has been interested in promoting the quality, integrity, and utility of information collected and disseminated by the federal government. The FRA established the policy goals of minimizing the paperwork burden on U.S. businesses and assuring the necessity and usefulness of information collected from the public and used or disseminated by the government.

However, the federal paperwork burden continued to balloon over the decades and in 1980 Congress again took steps to reduce the paperwork burden on U.S. businesses and to promote the utility and quality of data collected and disseminated by federal agencies

by passing the Paperwork Reduction Act (PRA). This act marked the first effort by Congress to comprehensively manage the federal government's information collection activities. The PRA was enacted for the primary purpose of minimizing the federal paperwork burden on the public, and maximizing the utility of collected and disseminated information. Notably, small businesses were specifically identified as intended beneficiaries of the PRA reforms.

The PRA also created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget to oversee agency efforts to reduce the paperwork burden. OIRA was given broad authority to determine whether an "information collection request" (ICR) complied with the PRA, including whether the information would have a "practical utility" for the agency. In 1986, Congress reauthorized and amended the PRA and bolstered the act by including an additional charge to maximize the usefulness of the information collected and disseminated by the federal government.

Again in 1995, Congress revised, reauthorized, and codified the PRA in an attempt to enhance its overall effectiveness. Included in the revisions were a set of certification requirements to force agencies to do the tough work of justifying their ICRs. Agencies were compelled to prove they were avoiding duplication of information, reducing burdens on the public and small businesses, writing their forms in plain English, and that the information they were collecting was necessary to their programs. Perhaps the most significant addition to the PRA from the 1995 amendments was the requirement that federal agencies meet mandatory burden reduction levels each year.

Unfortunately, for the ready mixed concrete industry, things have not worked out as Congress planned under the PRA. NRMCA would like to describe one specific example of how a federal agency has persisted over the years with an arbitrary and unnecessary ICR that has placed a significant burden on our industry.

DRIVER'S DAILY LOG

The federal government has regulated the hours of service (HOS) of commercial motor vehicle operators since the late 1930s; the Interstate Commerce Commission (ICC) promulgated the first HOS regulations under the authority of the Motor Carrier Act of 1935. *See* 49 U.S.C. § 31502(b)(1). Jurisdiction over HOS regulations passed from the ICC to the Federal Highway Administration in 1995, and then to the newly created Federal Motor Carrier Safety Administration (FMCSA) in 2000.

Since its creation by the ICC in 1938, a driver's daily log form has been used to aid motor carriers and drivers alike in their efforts to observe the HOS regulations. The log has a grid format with fifteen minute increments and is completed by the driver to record the hours for each duty status. By looking at the submitted log, a motor carrier and a driver may determine the number of hours available for on-duty purposes. This is especially important for long-haul drivers in cross country dispatch that need to know the number of hours available to be on duty and be confident that the maximum HOS limitation will not be exceeded. The limitations as recorded in the log are designed to provide a general scale beyond which a driver is considered to be too fatigued to safely operate a commercial motor vehicle.

In addition, the driver's daily log has been the primary regulatory tool used by the federal government, state governments, drivers, and commercial motor carriers to determine a driver's compliance with the HOS regulations. The information obtained from the log is used to place drivers out of service when they are in violation of the maximum limitations at the time of inspection. It has also been used in determining a motor carrier's overall safety compliance status in controlling excess on-duty hours, a major contributory factor in fatigue induced accidents.

From the inception of the log requirement 70 years ago, exemptions from preparing the driver's daily log have been allowed for drivers of commercial motor vehicles who operate wholly within a specified distance from their normal work reporting location (e.g. garage, terminal or plant). Currently, a 100 air-mile (equivalent to 115.08 statute miles) radius log exemption is applicable if:

(1) The driver returns to the work reporting location and is released from work within 12 consecutive hours;

(2) At least 10 consecutive hours off duty separate each 12 hours on duty;

(3) The driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; and

(4) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records.

This exemption, which is found in 49 C.F.R. § 395.1 (e), was first provided in 1980 as part of an effort to reduce the paperwork burden on drivers and motor carriers (*See* 45 FR 22042). However, the historic basis for the exemption has always been grounded in the understanding that drivers in the short-haul trades are less subject to the fatigue related effects of extended hours of driving time associated with cross country travel. Indeed, over the years the exemption radius has been steadily increased to take into account improvements in highway designs, expansion of roadways in metropolitan areas and improved truck design (*See* 42 FR 55109, 55110).

SHORT-HAUL OPERATIONS

As noted above, the 100 air-mile exemption has been used by the FMCSA and its predecessor agencies to meet paperwork burden reduction and regulatory flexibility mandates. However, as currently promulgated it contains a fatal flaw that ironically serves to exacerbate paperwork burdens for the ready mixed concrete industry.

Like many other short-haul operators, concrete mixer truck drivers are on-call and deliver product on a just-in-time basis. They operate exclusively in the short-haul construction industry, generally beginning and ending each shift at the same plant location and rarely exceeding a 50 air-mile radius of the work reporting location. In fact, industry studies show that a concrete mixer truck driver's average delivery is only 14 miles from the ready mixed plant and concrete mixer truck drivers are actually driving only 4 to 6 hours per day.

As a result, concrete mixer truck drivers are eligible for the 100 air-mile radius log exemption contained in § 395.1 (e) and ready mixed concrete producers employing these drivers are subject to the reduced recordkeeping requirements specified in § 395.1 (e) (5). This latter provision enables a company to keep track of concrete mixer truck drivers' hours through an electronic time clock that indicates the start time, number of hours on duty, and the time the driver gets off work each day. Unfortunately, concrete mixer truck drivers are often unable to take full advantage of the 100 air-mile radius exemption. This is almost always caused by a driver surpassing the 12-hour on-duty threshold contained in § 395.1 (e)(1)(ii) due to the unpredictable nature of concrete delivery requirements. In these instances, drivers are required to complete lengthy log sheets on the days they exceed the threshold (*See* FMCSA 395.1 Interpretation #22).

The new HOS regulations afford drivers a maximum of 14 consecutive hours of on-duty time per shift (after which drivers may not drive), yet drivers who otherwise meet the requirements of the 100 air-mile radius log exemption must still complete a log if they exceed 12 hours of on-duty time during the shift. Unlike in the long-haul trades, it is very difficult in the ready mixed concrete industry to predict on any given day whether the 12-hour threshold will be surpassed. If the driver surpasses the threshold but did not expect to do so, he or she must go back and retroactively log his or her duty status for the entire day. This is simply not practical for concrete mixer truck drivers, as their duty status changes frequently throughout the day and completing an accurate log from memory is a difficult task. To preempt such difficulties, many ready mixed concrete producers have instructed their drivers to log every day just in case they happen to exceed the 12-hour threshold, which is contrary to the intent of the 100 air-mile radius logging exemption.

The FMCSA has claimed that the 12-hour return to work reporting location limit is a necessary safeguard to ensure that drivers adhere to driving time limitations. (*See* 64 FR 72373, 72375). Yet, as indicated above, concrete mixer truck drivers only drive 4 to 6 hours per day, clearly not fatigue inducing conditions. Requiring them to return to the plant within 12 hours so that they don't exceed 11 hours of driving time is regulatory overkill and unnecessarily burdensome. Notwithstanding repeated requests from NRMCA and other short-haul operators, the FMCSA has yet to provide any data to underpin the seemingly arbitrary 12-hour return time limit.

A COMMON SENSE FIX

The PRA requires agencies to ensure that their ICRs have practical utility, are not duplicative, and impose the least possible burden. In the case of the 100 air-mile radius log exemption, all three of these congressional directives have been ignored by the FMCSA. As a result, concrete mixer truck drivers and other short-haul drivers, have for years been forced to complete a burdensome paperwork requirement from which they are clearly exempt.

To show its commitment to the PRA, FMCSA should initiate a process that would provide a common-sense fix for the 100 air-mile radius exemption. The remedy would simply involve raising the 12-hour on-duty threshold in § 395.1 (e)(1) (ii) and § 395.1

(e)(1)(iii)(A) to 14 hours, thereby making these provisions consistent with the maximum allowable number of hours per shift, after which the driver may not drive. This would allow concrete mixer truck drivers to take full advantage of the 100 air-mile radius log exemption for the entire 14 hours of on-duty time.

Moreover, this small fix would provide real relief from a paperwork burden that has plagued the ready mixed concrete industry for decades. The costs associated with having to unnecessarily complete the drivers' daily log in terms of money spent on reporting, the time taken by drivers to fill out the logs, and the overall drain on manpower in the process is truly burdensome. NRMCA has offered some simple steps that can be taken to reduce this burden without compromising safety. It is our hope that FMCSA will take these steps.

NRMCA appreciates the opportunity to present this statement for the record.

U.S. DEPARTMENT OF TRANSPORTATION

DRIVER'S DAILY LOG
(ONE CALENDAR DAY - 24 HOURS)

ORIGINAL - Submit to carrier within 13 days
DUPLICATE - Driver retains possession for eight days

(MONTH) (DAY) (YEAR) (TOTAL MILES DRIVING TODAY) VEHICLE NUMBERS - (SHOW EACH UNIT)

I certify these entries are true and correct:

(NAME OF CARRIER OR CARRIERS) (DRIVER'S SIGNATURE IN FULL)

(MAIN OFFICE ADDRESS) (NAME OF CO-DRIVER)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1: OFF DUTY																									
2: SLEEPER BERTH																									
3: DRIVING																									
4: ON DUTY (NOT DRIVING)																									
	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	
REMARKS																									

Pro or Shipping No. _____

February 27, 2008

The Honorable Nydia Velázquez
Chairwoman, House Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Chabot
Ranking Member, House Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Velázquez and Ranking Member Chabot:

On behalf of Associated Builders and Contractors (ABC) and its more than 24,000 general contractors, subcontractors, material suppliers and construction related firms across the United States, I would like to take this opportunity to thank you for holding today's hearing on "Improving the Paperwork Reduction Act for Small Business". I am also writing to re-affirm ABC's position on the increasing need for reform of this act in order to better suit small businesses across the nation.

Many of our association's members have less than 50 employees and some have no more office space than the very truck they drive to the job site. In this type of challenging work environment an employer might, in some cases, inadvertently miss a paperwork filing deadline imposed by a Federal agency.

It is our view that these hard working Americans should not have fines and penalties levied against them for first-time, inadvertent paperwork violations. During the 109th Congress ABC supported H.R. 5242, the *"Small Business Paperwork Amnesty Act of 2006"*, which was introduced by Congressman Randy Neugebauer. It is our hope that similar legislation is introduced in the 110th Congress that takes into account both the public safety and the small contractor who might mistakenly miss a paperwork filling deadline.

The passage of legislation similar to the *"Small Business Paperwork Amnesty Act of 2006"* will undoubtedly assist small businesses of all types and varieties by affording them the legal cover they deserve for accidental paperwork missteps. ABC appreciates your committee taking into consideration the sometimes less than ideal work

environments many of today's small contractors and builders face as they continue to make their contributions to our nation's economy and expansion.

Thank you for calling attention to this important issue and through your leadership we hope it is addressed in a meaningful manner during the 110th Congress.

Sincerely,

William B. Spencer

William B. Spencer
Vice President, Government Affairs

CC: Members of the House Small Business Committee