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ANOTHER YEAR, ANOTHER BILLION HOURS: EVALUATING PAPERWORK EFFORTS IN THE FEDERAL GOVERNMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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ANOTHER YEAR, ANOTHER BILLION HOURS: EVALUATING PAPERWORK EFFORTS IN THE FEDERAL GOVERNMENT

TUESDAY, JULY 18, 2006

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

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2203, Rayburn House Office Building, Hon. Candice S. Miller (chairman of the subcommittee) presiding.

Present: Representatives Miller, Schmidt, Lynch, and Waxman, ex officio.

Staff present: Ed Schrock, staff director; Rosario Palmieri, deputy staff director; Benjamin Chance, clerk; Karen Lightfoot, senior policy advisor and communications director; Brian Cohen, minority senior investigator and policy advisor; Alexandra Teitz and Krista Boyd, minority counsels; and Cecelia Morton, minority office manager.

Mr. LYNCH. I'm Stephen Lynch, ranking member here. This is the season where we have multiple hearings going on at the same time. It's just the nature of the beast.

I did talk to Chairman Miller a little earlier today, and she said she'd be along directly.

Right on time.

Mrs. MILLER. The subcommittee will come to order. I appreciate you all being here today. Catch my breath, running up the stairs here.

I certainly want to welcome everyone, those in the audience as well, for coming to today's hearing on paperwork reduction efforts in the Federal Government.

Although we have established a very strong system and eliminated literally hundreds of millions of hours of unnecessary paperwork, we have also added billions of hours of paperwork burden even faster. Since its passage in 1980, we have increased total governmentwide burden by over 400 percent, to 8.4 billion hours in fiscal year 2005.

Our record continues to be certainly less than satisfactory, and in a time of increasing global competitiveness, the United States must be the best place in the world to do business and to accomplish that we need to make sure we're not tolerating collections of information and burdens on businesses that are unnecessary.

In 1995, we amended the act to include, among other items, a set of certification requirements to force agencies to do the tough work of justifying their information collections. These requirements forced agencies to prove that they were avoiding duplication of information, that they were reducing burden on the public small entities, as well as writing their forms in plain English, a piece of legislation that Ranking Member Lynch and I have proudly introduced together, and that the information that they were collecting was really necessary to their programs.

The GAO has conducted a comprehensive study of agency certifications and found them wanting. Agencies were missing or provided partial support for 65 percent of the collections in GAO's sample. Most agencies are not fulfilling their requirements for public consultation either.

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

OIRA's annual budget—excuse me, their annual report is the Information Collection Budget [ICB], of the Federal Government, which tracks our progress in paperwork reduction. The ICB is required to contain a summary of accomplishments and planned initiatives to reduce burden, a list of all violations of the PRA, a list of any increases in burden, including the authority for each such collection and a list of agencies that in the preceding year did not reduce information collection burdens and recommendations to assist those agencies to reduce their information collection burdens.

The specific burden reduction targets of the 1995 PRA were not accomplished. That act required a target for reducing government-wide burden by 40 percent between 1996 and 2001. And if that would have been achieved, total burden would have measured 4.6 billion hours in 2001 rather than 7.5 billion hours—I think we have a reference chart attached at some point that would show that—and we wouldn't stand at 8.5 billion hours today. Any excessive and unnecessary hours of burden we impose on individuals and small business owners is less time they can spending being productive citizens, of growing their business or spending time with their families.

Opportunities to amend the Paperwork Reduction Act to enhance our ability to achieve these goals still lie ahead of us, but working vigorously to implement the current provisions and accomplish reductions is certainly our obligation.

At this time I'd like to recognize Mr. Lynch for his opening statement.

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

Statement of Candice Miller
Chairman
Subcommittee on Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, DC
July 18, 2006

Good afternoon. I would like to welcome everyone to today's hearing on paperwork reduction efforts in the Federal government.

Although we have established a strong system and eliminated hundreds of millions of hours of unnecessary paperwork, we have added billions of hours of paperwork burden even faster. Since its passage in 1980, we have increased total government-wide burden by over 400% to 8.4 billion hours in Fiscal Year 2005. Our record continues to be less than satisfactory.

In a time of increasing global competitiveness, the United States must be the best place in the world to do business. To accomplish that, we must not tolerate collections of information and burdens on business that are unnecessary.

In 1995, we amended the Act to include among other items a set of certification requirements to force agencies to do the tough work of justifying their information collections. These requirements forced agencies to prove they were avoiding duplication of information, reducing burden on the public and small entities, writing their forms in plain English, and that the information they were collecting was really necessary to their programs.

The GAO has conducted a comprehensive study of agency certifications and found them wanting. Agencies were missing or provided partial support for 65% of the collections in GAO's sample. Most agencies are not fulfilling their requirements for public consultation either.

The watchdog for these agencies is the office we created in 1980 within the Office of Management & Budget known as the Office of Information & Regulatory Affairs or OIRA. OIRA reviews each of these collections and can approve its use for up to three years. The office has also had the responsibility of coordinating percentage reduction targets between agencies and reporting annually to Congress on progress toward burden reduction. OIRA's annual report is the Information Collection Budget (ICB) of the Federal government which tracks our progress in paperwork reduction.

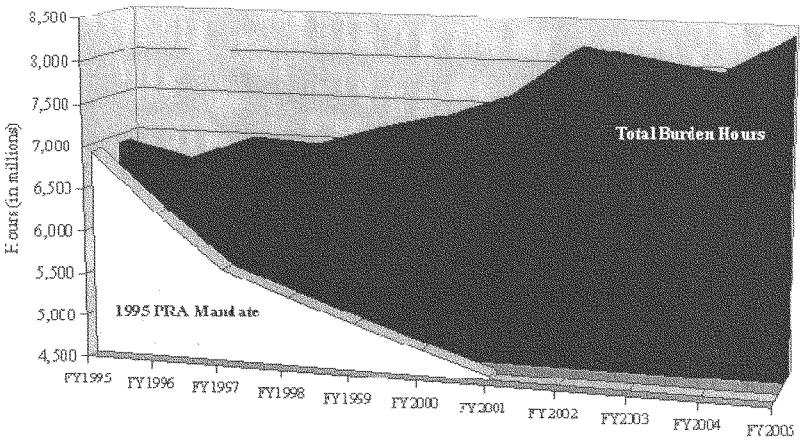
The ICB is required to contain a summary of accomplishments and planned initiatives to reduce burden; a list of all violations of the PRA; a list of any increases in burden, including the authority for each such collection; and a list of agencies that in the

preceding year did not reduce information collection burdens; and recommendations to assist those agencies to reduce information collection burdens

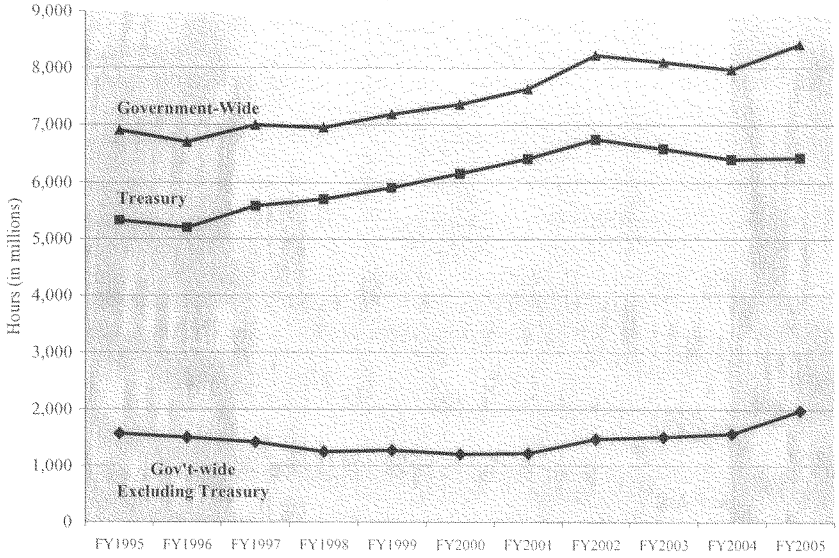
The specific burden reduction targets of the 1995 PRA were not accomplished. That act required a target for reducing government-wide burden by 40% between 1996 and 2001. If that would have been achieved, total burden would have measured 4.6 billion hours in 2001 rather than 7.5 billion hours. [Reference Chart] And we wouldn't stand at 8.4 billion hours today.

Any excessive and unnecessary hours of burden we impose on individuals and small business owners is less time they can spend being productive citizens, growing their businesses, or spending time with their families. Opportunities to amend the Paperwork Reduction Act to enhance our ability to achieve these goals still lay ahead of us. But working vigorously to implement the current provisions and accomplish reductions is our obligation.

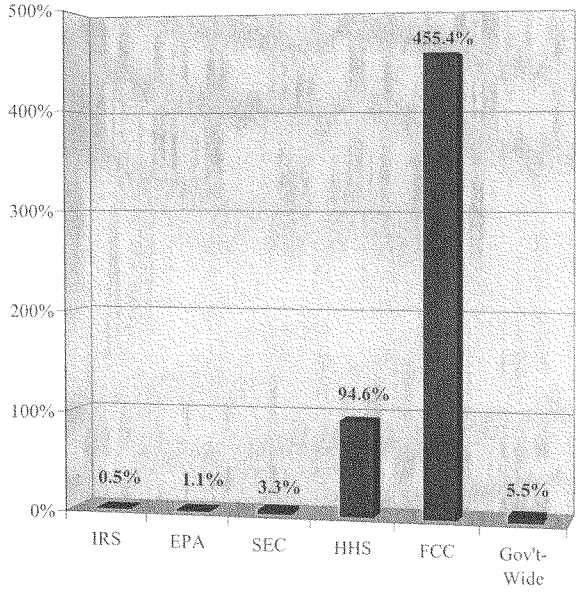
Total Federal Government Burden Hours FY95-FY05 vs. 1995 PRA Mandate



Federal Government Burden Hours FY95-FY05 (Treasury vs. Other Agencies)



Agency Burden Hour Increase FY04 to FY05



Mr. LYNCH. Thank you, Chairman Miller. Welcome all. I want to thank all of the panelists who are about to appear before us today for their assistance in helping this committee with its work.

In spite of all the best efforts and the tough talk about reducing paperwork, the report that has been assembled by the minority staff, and that Mr. Waxman and I are releasing today, shows that the reality is far different than our intentions.

Rather than reducing paperwork since 2000, under this current administration we have required Americans to spend about 1 billion more hours each year filling out government paperwork than they did in the year 2000. So it's not even close.

The paperwork burden in 2005 was 8.4 billion hours, and it is expected to rise again this year to a whopping 8.7 billion hours. That adds up to about 39 hours for every adult living in the United States.

On the other hand, there have been some, in my opinion, misguided efforts to roll back some very important environmental, health and safety protections such as eliminating the filing requirement under the Toxics Release Inventory, which companies are required to disclose when they dump toxic chemicals into the environment. Some folks have worked at reducing that reporting requirement.

The dynamic will not work, however, because both EPA and the Department of Labor each only account for about 2 percent, 2 percent of the total paperwork burden, while on the other hand, my friends at the IRS are responsible for about 76 percent of government paperwork that the American people have to fill out each year.

Much of the recent increase in paperwork has been driven by laws proposed by the current administration and passed with the active support of this current Congress, with the support of a Republican-led House and Senate, and I would suggest that one good way to reduce the time spent on paperwork is to make the requirements easier to understand. And that's where Chairman Miller and I have tried to work for a plain-language, hopefully English requirement that agencies should focus on in making the information they put out clear and understandable.

The 800-pound gorilla out there was the Medicare prescription drug benefit that added enormous complexity and enormous burden in terms of the hourly requirement for complying with that program. It is badly designed, and recently I just concluded my 16th hearing, town meeting, in my district, going from town to town to try to explain this program. There is no end in sight. It's very confusing, and there are troublesome parts of it with inaccurate information being put out by various groups, including some of the drug programs that are sponsoring the benefit. That's costing seniors far too much time and causing them too much frustration.

One thing is clear: that we have not lived up to our obligations and our promises to reduce paperwork. Americans, especially all of the small businesses across the country that are struggling just to keep their businesses running, deserve better; and I think that's where the chairman and I are in total agreement.

Chairman Miller, I do ask unanimous consent to enter into the hearing record a copy of the report prepared by the Government

Reform Committee minority staff. It's entitled "Government Paperwork Burdens Have Increased Substantially Under the Bush Administration."

Mrs. MILLER. Without objection, those will be entered into the record.

Mr. LYNCH. Thank you, Chairman Miller.

Mrs. MILLER. OK. As we go to our first panel, if you could all rise, please, and raise your right hands. Because we are an oversight committee, it is the practice of the committee to swear in all of our witnesses.

[Witnesses sworn.]

Mrs. MILLER. Our first witness this afternoon is Dr. Steven Aitken. He is Acting Administrator of the Office of Information Regulatory Affairs at OMB. Prior to assuming his current position, Mr. Aitken worked as Deputy General Counsel at OMB and was an Assistant General Counsel at OMB as well. He has served a total of 17 years at that agency.

Earlier in his career he also served the Department of Justice in several positions. So we certainly appreciate your willingness to appear before the panel today and look forward to your testimony, sir.

STATEMENTS OF STEVEN D. AITKEN, ACTING ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET; BETH TUCKER, DIRECTOR, COMMUNICATIONS, LIAISON AND DISCLOSURE, SMALL BUSINESS/SELF-EMPLOYED DIVISION, INTERNAL REVENUE SERVICE; AND MATTHEW BERRY, DEPUTY GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF STEVEN D. AITKEN

Mr. AITKEN. Thank you.

Chairman Miller, Ranking Member Lynch and distinguished members——

Mr. LYNCH. I'm not sure if your mic is on.

Mr. AITKEN. Thank you.

Chairman Miller, Ranking Member Lynch and distinguished members of the subcommittee, I am Steven Aitken, Acting Administrator of OIRA, an office within the Office of Management and Budget. Thank you for inviting me to this hearing today and for giving me the opportunity to testify on OMB's annual report to Congress under the Paperwork Reduction Act, which is the Information Collection Budget of the U.S. Government, and our efforts to reduce paperwork burdens on the American people.

By way of background, as the chairman noted, I have worked at OMB for 17 years, most recently serving as Deputy General Counsel before becoming Acting Administrator at the beginning of last month. This is my first appearance before the subcommittee.

The Federal Government should not require or ask the public, individuals, businesses, organizations, State and local governments and others to respond to Federal paperwork requirements that are unnecessary, duplicative or unduly burdensome. Eliminating unnecessary, duplicative and unjustified paperwork burdens in exist-

ing collections of information and preventing such burdens in new collections is one of OIRA's highest priorities.

This year's Information Collection Budget [ICB], presents a picture of our efforts to balance the Federal Government's need for information against the burden imposed on the public of gathering that information. We are making progress in reducing the paperwork burden on individuals, small businesses and local and State governments. As the ICB reports, of the 15 Cabinet departments, 12 achieved net reductions in burden resulting from discretionary actions in fiscal year 2005. This is up from 10 departments in fiscal year 2004.

I would like to offer two examples that are in the report. The Internal Revenue Service redesigned the Form 1041, which is the U.S. income tax return for estates and trusts, to streamline the requirements and make it easier and quicker to understand and file. This reduced taxpayer burden by 18.8 million hours.

And the Department of Agriculture collects information to ensure that multifamily housing applicants meet program requirements and repay loans. USDA consolidated 13 regulations into a single regulation to reduce burden, assure quality housing for residents, and improve customer service and improve the agency's ability to manage the loan portfolio. This reduced reporting burden by 1.28 million hours.

Although agencies made significant efforts to reduce paperwork, the burden overall increased 441 million hours, of which 419 million, or about 95 percent, were due to the implementation of important new statutes. The two statutes that resulted in the largest increases in paperwork burden during fiscal year 2005 are, first, the Medicare Prescription Drug Improvement and Modernization Act of 2003, which the ICB reports accounts for an increase in burden of 224 million hours in fiscal year 2005 and an expected additional 4.7 million hours in fiscal 2006.

This act established the important new Medicaid benefit of the new voluntary prescription drug coverage. As of June 11, 2006, 38.2 million Medicare beneficiaries have comprehensive drug coverage.

The other statute is the CAN–SPAM Act, which accounts for an increase in burden of 116 million hours. This statute regulates unsolicited commercial e-mail by requiring every unsolicited commercial e-mail to include information about how the recipient can have the sender remove the recipient's e-mail address from the sender's mailing list. This requirement that the sender of the e-mail include this disclosure qualifies as a collection of information under the Paperwork Reduction Act, and therefore it is counted as burden.

I would like to note that with respect to the Medicare Modernization Act we have received information this morning from HHS that suggests that the paperwork burden of this statute may be, in fact, less than previously estimated and reported in the ICB. If that is correct, it would be welcome news. Once we can verify a new estimate, we will communicate it to the subcommittee immediately.

Of the 441-million-hour total increase during fiscal year 2005, the increase in burden due to actions within agency discretion was 180,000 hours. However, it is important to take into account the benefits that are to be derived from each collection of information

or, in the terminology of the Paperwork Reduction Act, the practical utility of the collection.

For example, the Federal Communications Commission issued new regulations on truth in billing in order to make it easier for the public to understand their telephone bills. This requirement resulted in an increase in burden on the telephone companies of 2.6 million hours.

The ICB also documents the successful efforts of OMB and Federal agencies to sharply reduce agency violations of the Paperwork Act. As a result of the efforts of OMB and the agencies, the executive branch has completely eliminated the considerable backlog of unapproved collections and has dramatically reduced the incidence of new violations.

The ICB also includes a chapter that describes the new methodology that the IRS has begun using to estimate reporting burden on individual taxpayers. The new methodology estimates taxpayer burden more accurately by taking into account the remarkable increase in the use of computerized preparing-and-filing software.

Finally, in my written testimony I provide an update about OMB's new information system for the Paperwork Reduction Act, which we are planning to activate next week. This new system will make it easier for the public and Congress to obtain information about OMB's review of information collections, and the system will enable OMB to track more accurately and efficiently the paperwork burden that is imposed by the Federal Government.

This concludes my prepared statement. Thank you again for the opportunity to testify in today's hearing, and I would be happy to answer any questions you may have.

Mrs. MILLER. Thank you very much. Appreciate that.

[The prepared statement of Mr. Aitken follows:]

STATEMENT OF
STEVEN D. AITKEN
ACTING ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM,
UNITED STATES HOUSE OF REPRESENTATIVES

July 18, 2006

Chairman Miller, Ranking Member Lynch, and distinguished Members of this Subcommittee, I am Steven D. Aitken, Acting 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 this hearing and for giving me the opportunity to testify today on OMB's annual report to Congress under the Paperwork Reduction Act (PRA), the Information Collection Budget of the United States Government and our efforts to reduce paperwork burdens on the American people. As way of background, I have worked at OMB for 17 years, most recently serving as Deputy General Counsel before becoming Acting Administrator at the beginning of last month. This is my first appearance before this Committee.

The Federal Government should not require, or ask, the public (individuals, businesses, organizations, State and local governments, and others) to respond to Federal paperwork requirements that are unnecessary, duplicative, or unduly burdensome. Eliminating unnecessary, duplicative, and unjustified paperwork burdens in *existing* collections of information, and preventing such burdens in *new* collections, is one of OIRA's highest priorities. Under the

Paperwork Reduction Act of 1980 and its successor, the Paperwork Reduction Act of 1995, OIRA works with Federal agencies – and reviews their proposed collections of information – 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.

This year's Information Collection Budget (or "ICB") presents a picture of our efforts to balance the Federal Government's need for information against the burden imposed on the public of gathering that information. We're making progress in reducing the paperwork burdens on individuals, small businesses, and local and state governments. Of the 15 Cabinet departments, 12 achieved net reductions in burden resulting from discretionary actions. This is up from 10 in FY 2004. Examples to improve service to the public include providing customer service support electronically and simplifying agency forms to make them easier to understand and fill out. A number of these examples involve reform of taxpayer forms and other paperwork requirements:

- *Internal Revenue Service (IRS): Form 1041.* IRS redesigned the Form 1041, U.S. Income Tax Return for Estates and Trusts, to streamline the requirements and make it easier and quicker to understand and file. IRS' action reduced taxpayer burden by 18.8 million hours.
- *Internal Revenue Service: Form 8879.* Form 8879, IRS e-file Signature Authorization, is completed when the Practitioner PIN method is used. IRS simplified and streamlined the 2005 Form 8879 by making a number of editorial changes, which reduced paperwork burden by 560,000 hours.

- *Department of Justice (DOJ): Controlled Substances Ordering System.* DOJ issued new regulations to allow the use of its new electronic Controlled Substances Ordering System to detect the diversion of controlled substances and provide customer service support. This agency action resulted in a burden decrease of 1.1 million hours.
- *Department of Agriculture (USDA): Rural Rental Housing Program.* As part of this program, USDA collects information to ensure that Multi-Family Housing (MFH) applicants meet program requirements and repay loans. USDA consolidated thirteen regulations into a single regulation to reduce burden, assure quality housing for residents, improve customer service, and improve the Agency's ability to manage the MFH portfolio. Streamlining these regulations reduced reporting burden by 1.3 million hours.
- *Environmental Protection Agency (EPA): Streamlining of National Pretreatment Program.* EPA streamlined monitoring and oversight requirements for industrial dischargers to sewage treatment plants. This agency action reduced burden by 242,645 hours.

Although agencies made significant efforts to reduce paperwork, the burden overall increased 441 million hours, of which 419 million—or about 95 percent—were due to the implementation of important new and worthwhile statutes, including the new Medicare prescription drug bill and the CAN-SPAM act, which helps prevent the email in-boxes around the country from being flooded from unsolicited commercial e-mail.

In this environment, and in the context of greater agency responsibility under the PRA of 1995, OIRA continues its efforts to enhance its implementation of the PRA, through greater agency compliance and improvements in its information collection approval process.

The Information Collection Budget

First, I would like to summarize some of the information OMB presents in the ICB. OIRA prepares the ICB annually based on data provided by the 27 participating agencies during the year through their requests for paperwork approvals and in response to data requests specific to the ICB. The information presented in the ICB is the result of a collaborative effort between OMB and the agencies to present an accurate description of information collection activities during the past fiscal year and looking forward to the next.

In Fiscal Year 2005, the public spent 8.4 billion hours providing information to the Federal Government or keeping records or passing information on to third parties in response to Federal requirements. Each of these requests or requirements for information and the burden it imposes were approved by OMB after a review by both OMB and the responsible agency to ensure the information collection met the standards of the PRA. These standards include that the Federal Government has a need for the collection, that the information has practical utility, and that the collection would be conducted in the least burdensome manner practicable.

As mentioned, the FY 2005 burden represents an increase of 441 million hours over the FY 2004 burden. Of these 441 million hours, 419 million hours resulted from new programmatic responsibilities imposed by recently enacted statutes. These new statutes include the following.[1]

- The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 accounts for an increase in burden of 224 million hours in FY 2005 and an expected additional 4.7 million hours in FY 2006. This Act established the most important new Medicare benefit in the program's 40-year history: new voluntary prescription drug coverage. As of June 11, 2006, 38.2 million Medicare beneficiaries have comprehensive prescription drug coverage.
- The CAN-SPAM Act accounts for an increase in burden of 116 million hours. This statute regulating unsolicited commercial e-mail requires every unsolicited commercial e-mail to include information about how the recipient can have the sender remove the recipient's e-mail address from the sender's mailing list. The disclosure is a "collection of information" under the PRA and is counted as burden.

Of the 441 million hour total increase during FY 2005, the increase in burden due to actions within agency discretion was only 180,000 hours.[2] However, this small change, in aggregate, does not present a complete picture. As I mentioned earlier, 12 of the 15 Cabinet departments in FY 2005 achieved net reductions in burden resulting from discretionary actions; this was an improvement from FY 2004, in which 10 Cabinet departments achieved net reductions in burden

[1]Table 2 in the ICB presents additional statutes that increased burden during FY 2005. Appendix B presents specific information about collections related to recently enacted statutes.

[2]The remainder of the 441 million hour increase is due to revised estimates of burden or due to factors that were independent of legislative or administrative action, such as increased reporting that results from increased economic activity or demographic changes. These changes are classified as "adjustments" in Tables 4 and 5 of the ICB.

through discretionary action. In considering the other agencies for which the net burden increased during FY 2005 due to discretionary action, it is important to take into account the benefits that are to be derived from the collection of information—or, in the terminology of the Paperwork Reduction Act, the "practical utility" of the collection. For example, the Federal Communications Commission issued new regulations on "Truth in Billing" in order to make it easier for the public to understand their telephone bills; this requirement resulted in an increase of burden on telephone companies of 2.6 million hours.

The Record on PRA Violations

The ICB also documents the successful efforts of OMB and Federal agencies to reduce sharply agency violations of the PRA. In the late 1990s, many agencies frequently violated the PRA by allowing OMB's approval for their ongoing collections of information to lapse. OIRA staff and officials worked diligently with agencies across the government to address this issue. As a result of these collective efforts, the Executive Branch has completely eliminated the considerable backlog of unapproved collections and has dramatically reduced the incidence of new violations. Appendix C of the ICB documents these violations.

Appendix C also describes additional collections being conducted without OMB approval that were discovered during FY 2005. In most cases, these violations were discovered by the agencies themselves and easily resolved in cooperation with OMB. This list of collections represents a significant success, since it shows the increased awareness within the agencies of the requirements of the PRA and the seriousness with which OMB approaches potential infractions.

A New Estimate of Individual Taxpayer Paperwork Burden

The ICB includes a chapter that describes the new methodology that the IRS has begun using to estimate the reporting burden imposed on individual taxpayers. The new methodology estimates taxpayer paperwork burden more accurately by taking into consideration the remarkable increase in the use of computerized preparation and filing software.

Information Technology to Improve OMB Review

Finally, I would like to update the Subcommittee with information about OMB's new information management system for the Paperwork Reduction Act. As you may know, OMB has been working for several years on a new paperless system for processing PRA information collections. OMB is planning to activate this system next week.

This new electronic system will make OMB's review of information collections more efficient and allow OMB to track more accurately the burden imposed by the Federal Government. The new system will also:

- provide the public with a direct link to forms and other instruments maintained by Business Gateway's Forms.gov, an online catalog of forms;
- provide greater public access and transparency to OMB's review process (which will benefit the public and the Congress); and
- help OMB monitor agency compliance with the Privacy Act and other Information Resources Management requirements.

To expand on those first two points, the public will have direct access to the information collections, including the agency's rationale for the collection and any forms or supporting materials, during OMB review. The public will also have direct access to approved information collections and historical statistics.

Conclusion

In conclusion, I would like to emphasize four points for the Subcommittee.

- While the Federal Government added to paperwork burdens in FY 2005, we are working aggressively to minimize new burdens and are always looking for ways to eliminate unnecessary paperwork burdens through technology and other means.
- Sometimes, the burden imposed by the Federal Government grows because of the Federal Government's need to provide new services and protections for the American people. Most of the increased burden over the past five years has been due to the enactment of statutes, including a one-time surge this year for the launch of the Medicare prescription drug benefit. In addition, Federal paperwork burden grows due to factors beyond the control of agencies, such as increases in population and business formation.
- OMB continues its efforts to ensure 100 percent compliance with the PRA. As the ICB explains, the backlog of inadvertent violations due to a lapse of OMB approval has been eliminated, and the incidence of new violations involving such ongoing collections has also been all-but eliminated.
- OMB will soon roll-out a new electronic information management system that will provide the public and the Congress with more information about Federal information

collections, creating transparency and public access to OMB and agency activities under 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.

Mrs. MILLER. Beth Tucker is our next witness this morning. She is the Director of Outreach, Communications and Disclosure, Small Business/Self-Employed Division, at the IRS. In this position she oversees numerous IRS service-wide programs including the governmental liaison and disclosure program office, which is responsible for ensuring the protection of taxpayer and employee confidentiality.

She began her career as a revenue agent in Dallas and since then has held a variety of positions in the IRS.

And as my colleague has stated, the IRS is responsible for about 76 percent of the paperwork we're going to be discussing here today, so we appreciate very much your willingness to come before the committee and look forward to your testimony, Ms. Tucker.

STATEMENT OF BETH TUCKER

Ms. TUCKER. Thank you.

Madam Chairman, Ranking Member Lynch and members of the subcommittee, my name is Beth Tucker; and in addition to being the Director of Communications, Liaison and Disclosure in the Small Business/Self-Employed Division of IRS, I am also very pleased to be the Acting Director of the Office of Taxpayer Burden Reduction.

The IRS has a firm commitment to impose the least amount of burden necessary for taxpayers to meet their tax obligations. The IRS strategic plan is very clear in articulating this responsibility and making it a goal of each and every IRS employee. But we face, as you have mentioned, significant hurdles in our efforts to reduce paperwork requirements and overall burden on taxpayers.

It probably will not shock you to learn that the first of these hurdles is the complexity of the Tax Code. We fully expect that absent fundamental tax reform, the aggregate burden taxpayers face will, in fact, continue to grow. A cornerstone of our tax system depends upon each taxpayer's voluntary self-assessment of their tax liability. However, increasing complexity hinders every American's efforts to accurately assess their tax liability and may, in fact, serve as a disincentive to comply with tax obligations.

The second hurdle we face is the systemic growth every year as more individuals and businesses file returns.

The third hurdle is, of course, enactment of new legislation that adds to or modifies existing tax laws.

While new tax legislation often provides many worthwhile benefits or incentives for taxpayers, the tradeoff is often additional complexity and increased burden. For example, the Katrina Emergency Tax Relief Act of 2005 provided significant benefits to taxpayers who desperately needed tax relief in the hurricane-ravaged region, but it's also required over 230 changes to 78 tax products and two new tax forms.

Each year, all Federal agencies are required to report to OMB the burden imposed by their paperwork requirement. Our estimated fiscal year 2006 burden is 6.65 billion hours. This compares with 6.4 billion in 2005, for an increase of approximately 251 million hours. Reflected in this increase is the growth in the number of new forms, as well as changes to existing forms dictated by 10 different pieces of legislation enacted in 2005.

Madam Chairman, my written statement offers a detailed description of many of the steps we're taking to reduce paperwork and burden on taxpayers. However, I would also like to update you on a few of our latest accomplishments.

First, we developed a new schedule K–1 for Form 1041, which is used with estates and trusts. The new form provides streamlined instructions for beneficiaries and should reduce approximately 4.27 million hours of burden for over 3.5 million taxpayers.

Second, on January 1, 2006, we began implementing the Form 944, annual filing of pay program. This change affects 950,000 taxpayers and allowed businesses with a total employment tax liability of less than $1,000 to file annually rather than quarterly.

Third, our Office of Taxpayer Burden Reduction led IRS efforts to create a single automatic 6-month extension, thereby decreasing the number of extension forms taxpayers must submit.

Madam Chairman, we recognize that a key factor in reducing burden is communication with our stakeholders. We routinely seek feedback from a variety of stakeholders including citizen, practitioner, industry groups and our colleagues in other government sectors.

As previously mentioned, we have also developed a new way of estimating taxpayer burden. The new method is based on taxpayers' reporting of the time they spend and the costs they incur preparing and filing their income tax returns. According to the model based on 2004 data, individual taxpayers on average spend 23.4 hours and $186 gathering information, preparing and submitting their tax returns.

In conclusion, it is important to know that the operating philosophy that Commissioner Mark Everson has instilled in the IRS is that service plus enforcement equals compliance. Nowhere is that more important than in burden reduction.

We have taken steps both in the area of prefiling of returns and reducing the burden associated with compliance actions. We have also attempted to shorten the duration of compliance activities throughout initiatives such as the alternative dispute resolution and our compliance assurance program.

Thank you, Madam Chairman, for the opportunity to appear today, and I can assure you that burden reduction is everyone's job at the IRS. I look forward to answering any questions you may have.

Mrs. MILLER. Thank you very much. We appreciate that. Some very interesting statistics there.

[The prepared statement of Ms. Tucker follows:]

WRITTEN TESTIMONY OF
BETH TUCKER
DIRECTOR, COMMUNICATIONS, LIAISON AND DISCLOSURE, SMALL BUSINESS/SELF-EMPLOYED DIVISION OF THE INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS
ON
PAPERWORK REDUCTION
JULY 18, 2006

Madam Chairman Miller, Ranking Member Lynch and members of the Subcommittee, I am happy to be here this morning to address IRS' efforts relative to paperwork reduction. My name is Beth Tucker and in addition to being the Director of Communications and Disclosure within the Small Business/Self Employed division of the IRS, I am also the acting Director of the Office of Taxpayer Burden Reduction (OTBR).

The IRS remains firm in its commitment to impose the least amount of burden necessary for taxpayers to meet their tax responsibilities. The IRS Strategic Plan, outlining our vision for 2005-2009, is very clear in articulating this goal and making its achievement the responsibility of each and every IRS employee.

In spite of our continuing efforts, reducing taxpayer burden and helping taxpayers understand our very complicated and ever-changing tax code remains a formidable challenge. Madam Chairman, we were gratified to hear the comments from you and Mr. Lynch at the March 8th hearing that demonstrated a keen appreciation for the fact that much of the burden attributed to the compliance with the tax law is the result of systemic growth, tax complexity and legislative mandates.

IRS Burden Reduction Challenges

Although we are taking aggressive action to diminish taxpayer burden, we fully expect that, without fundamental tax reform, the aggregate burden taxpayers face will continue to grow. Part of this growth is systemic in that it is simply the result of more people and businesses filing returns each year. In addition to the systemic growth, burden increases as a result of added complexity because of changes in and additions to the tax law.

Our tax system relies upon voluntary self-assessment of tax liability by taxpayers. Increasing complexity hinders the ability of every American to assess their tax liability accurately, and may serve as a disincentive for taxpayers to comply with their tax

obligations. Moreover, the increasing complexity of our tax laws hinders our ability to provide the American taxpayers with the service they deserve.

Impact of Recent Legislation

Each year all Federal agencies are required to report to the Office of Management and Budget the burden imposed by their paperwork requirements. Our estimated FY 2006 burden is 6.65 billion hours. This compares with 6.4 billion in FY 2005, an increase of approximately 251 million hours.

Reflected in this increase is an increased number of new forms as well as changes to existing forms dictated by 10 different pieces of legislation that were enacted in 2005.

While new tax legislation often provides worthwhile new benefits or incentives for taxpayers, the tradeoff is often additional complexity and increased burden. For example, the Energy Policy Act (enacted August 8, 2005) required over 600 changes to 107 tax products (tax forms, instructions, and publications) and 7 new forms. The Safe, Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy for Users (enacted August 10, 2005) required over 90 changes to 33 tax products. The Katrina Emergency Tax Relief Act of 2005 (enacted September 23, 2005) required over 230 changes to 78 tax products and two new forms. The Gulf Opportunity Zone Act of 2005 (enacted December 21, 2005) required revisions to 77 tax products and development of a new publication. Taxpayers' paperwork burden will increase based on these new reporting requirements.

However, the IRS continues to provide ways to help taxpayers file accurate and timely tax returns to reduce unnecessary burden.

Burden Reduction Process

Over the last several years, we have developed a number of processes that provide opportunities to reduce burden without compromising our tax administration objectives. We have opened a dialogue with numerous external stakeholders including taxpayers, practitioners, citizen groups, industry groups, software developers, and state and federal agencies to receive suggestions for reducing unnecessary taxpayer burden.

We also meet with the Department of the Treasury, the Office of Management and Budget (OMB), and the Small Business Administration (SBA). These discussions are very important because they advance the burden reduction dialogue. We have developed comprehensive strategies to effectively communicate the delivery of programs designed to reduce burden. Over the last year alone, we have communicated to taxpayers about our many programs focused on reducing and simplifying forms, publications and notices, and promoting less burdensome rulings, regulations, and law.

Here are a few of the institutionalized vehicles we used to solicit ideas from the public and third party stakeholders:

- Form 13285A, Reducing Taxpayer Burden on America's Taxpayers was created so the public could participate in identifying taxpayer burden reduction. This form provides taxpayers with a process for submitting ideas for consideration directly to the Office of Taxpayer Burden Reduction. The form is available on irs.gov.

- The Industry Issue Resolution (IIR) program was created to give taxpayers, industry associations, and other interested parties a vehicle for submitting burdensome business tax issues for possible resolution through published or administrative guidance. The goal is to quickly resolve tax issues that are common to a significant number of business taxpayers by providing targeted guidance on specific tax issues. Under the program, the IRS has issued guidance that has reduced costs, burden, and uncertainty for taxpayers.

- Practitioner and Small Business Forums with national and local level tax professionals and small business associations provide an opportunity for external customers to share feedback on burden reduction initiatives before they are implemented. These forums also provide a means for identifying and resolving burden issues and communicating initiatives as they become available.

- The Information Reporting Program Advisory Committee (IRPAC) and the Internal Revenue Service Advisory Council (IRSAC) both play a significant role as external evaluators regarding burden reduction initiatives. Both groups advise the IRS on our initiatives on a regular basis.

- The Taxpayer Advocacy Panel consists of citizen volunteers from all fifty states and acts as a two-way communication/feedback mechanism serving, among other important roles, as a focus group for the IRS by providing input on strategic initiatives, new or simplified notices, as well as providing a venue for raising issues identified by citizens. This panel is also routinely called upon to make suggestions and to identify ways to reduce taxpayer burden.

- Our Fed/State program has worked in close partnership with state and federal agencies to reduce burden. For instance, the Federation of Tax Administrators, which represents taxing agencies nationwide, is regularly called upon to vet ideas and to provide input.

To further promote burden reduction, we use established national and local networks to ensure we disseminate important information about these valuable programs as broadly as possible. All of the vehicles mentioned above are fully engaged in this delivery. In addition:

- IRS News Releases announcing burden reducing initiatives are sent through media channels, including small business and trade publications.

- Practitioner Institutes serve as part of an overall practitioner education curriculum that includes nationwide Tax Forums, liaison meetings, and Tax Talk Today, a monthly program about current tax issues and policies. The Institutes provide a much-needed venue for delivering burden reducing initiatives to those who prepare countless tax returns for the public each year.

- Small Business Tax Workshop materials developed by the IRS are delivered to taxpayers through educational institutions across the country. Public notices of available workshops are posted on irs.gov. For those interested in a self-directed workshop, the On-Line Classroom, a video streaming of a Small Business Tax Workshop, is available. These materials are routinely updated to include burden reducing initiatives.

- The Small Business Resource Guide CD, a one-stop tax information/management tool, is also updated annually to include burden reduction efforts.

We also make a concerted effort to engage IRS employees in suggesting and implementing burden reduction strategies. It is important to note that most of the significant taxpayer burden reduction initiatives require a considerable commitment of our resources to accomplish. Systems must be reprogrammed, processes must be changed, and personnel must be trained. Taxpayers, practitioners, federal and state agencies, and software developers must be included in the process so that changes are as open, transparent, and helpful as possible.

The Office of Taxpayer Burden Reduction

In 2002, the Service established the Office of Taxpayer Burden Reduction (OTBR) to lead Service-wide burden reduction efforts. Since its inception, that Office has aggressively pursued reduction initiatives and enabled the IRS to reduce burden by more than 200 million hours. OTBR has reduced burden by focusing on simplifying forms, publications, and notices; streamlining internal policies, processes, and procedures; promoting less burdensome rulings, regulations, and law; assisting in the development of a burden reduction methodology and model; and partnering with internal and external stakeholders to more effectively and efficiently identify and address burden reduction initiatives.

Since last year's hearing, OTBR, working with other IRS offices, made progress in leading the IRS in a number of initiatives, and as a result of their collective efforts:

- We completed the redesign of the 2005 Schedule K-1 (Form 1041) received by trust and estate beneficiaries and used to report income, deductions, and credits on their income tax returns. The format was changed to resemble the redesigned 2004 Schedules K-1 for partners and shareholders, making it easier for taxpayers to determine where to report amounts from the Schedule K-1 on their income tax returns. The schedules were simplified to reduce common errors and the burden associated with preparation and filing requirements. The schedules are scannable,

eliminating the risk of transcription errors. The instructions are also streamlined. The redesign incorporates input from the tax professional community, public comments, and focus groups. We project that the changes will decrease 18.8 million hours of burden for 3.5 million taxpayers.

- We are establishing an annualized Form 941. Beginning in January 2007, eligible taxpayers will file annual Form 944 rather than quarterly Forms 941 (for the taxable period January 2006 through December 2006). The new Form 944 was made available to the public in February 2006. The project, which originated with plans to help in-home day care providers, targets taxpayers who owe $1,000 or less per year in total employment tax liability. Annualizing Form 941 (i.e., the new Form 944) offers small businesses a significant burden reduction, in that taxpayers can file a single return rather than four returns per year and they will make a single payment with their return.

- We are also progressing with our redesign of the Form 940, Employer's Annual Federal Unemployment Tax Return, and its associated processes to reduce the burden placed on 5.6 million taxpayers annually (effective for tax year 2006). We will be revising Form 940 and 940PR, revising all related instructions, and ensuring optical scanning of the new form in the 2007 processing season.

- Further out on the horizon, we are exploring the feasibility of creating new forms to improve employment tax Forms 941, 943, 944, and 945 (effective 2008).

Reducing Pre-Filing Burden

If we can eliminate confusion and errors before a return or form is ever filed, taxpayers will be spared numerous unnecessary communications and burdens.

To achieve this goal, we created dedicated taxpayer education and pre-filing organizations, as well as pre-filing tools to help taxpayers better understand their responsibilities without imposing undue burden. We have built into all of our business divisions the principle of working with taxpayers and industry groups before they file their returns. We have also dedicated our efforts to create administrative thresholds and safe harbors to minimize recordkeeping.

For example, we have created the Pre-Filing Agreement (PFA) program to provide large corporate taxpayers an opportunity to request that revenue agents examine and resolve potential issues before tax returns are filed.

The IRS has one of the most rigorous paperwork review processes in the Federal government. In contrast to most information collections, which are generally subject to the Paperwork Reduction Act (PRA) process every three years, most IRS forms are subject to the PRA process on an annual basis. For example, all annual tax returns (such

as IRS Form 1040 and its schedules and attachments) have been reviewed annually under the PRA for the past 25 years. This continuous analysis and review of tax forms over the years has, we believe, resulted in tax forms that comply fully with statutory standards.

The IRS has made burden reduction an integral part of the forms development and revision process. Our objective is to ensure the tax law is accurately reflected in the forms, instructions, and publications while finding ways to reduce or eliminate unnecessary taxpayer burden. For example, since the last hearing we have made the following changes to reduce the pre-filing burden:

- Extension of Time to File - We eliminated the need for filing Form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return, by allowing the taxpayer to get a 6 month extension to file initially. Previously, a taxpayer received a 2 month automatic extension and needed to file Form 2688 to get an additional 4 months. This change eliminates over 3.7 million forms and 2.2 million hours of taxpayer burden.

- Earned Income Tax Credit (EITC) eligibility and computation of the allowable credit – The EITC Assistant, an on-line tool launched during the 2005 filing season helps taxpayers determine their eligibility for EITC, filing status, and estimated EITC amount. The updated version of the EITC Assistant incorporates the changes from the new uniform definition of child rules, especially as it affects filing status.

- Alternative Minimum Tax (AMT Calculator) – This filing season, the IRS launched an AMT calculator on www.irs.gov to assist taxpayers in determining whether or not they might be subject to the AMT and whether they need to complete Form 6251.

- Disaster-related Burden Reduction – As a result of recent disaster legislation, victims of hurricanes Katrina, Rita, and Wilma who experienced smaller earned incomes in 2005 can elect to compute their EITC and Additional Child Tax Credit using their larger 2004 earned income. A new IRS.gov feature – *Your 2004 Earned Income Option* – gives hurricane victims who lost their tax records immediate, 24/7, access to their 2004 earned income, allowing them to take advantage of this special election without filing delays. Taxpayers can access their 2004 earned income amount, by entering two shared secrets to protect their confidential data. Hurricane victims without Web access can retrieve the same information through an automated phone application via a disaster hotline. Additionally, the EITC Assistant on IRS.gov helps hurricane victims estimate which year's earned income results in a larger EITC credit.

Reducing the Burden Associated with Compliance Actions

The IRS continues to redesign and simplify taxpayer notices. We worked with the contractors who were awarded the Private Collection Agency contracts to ensure their letters conformed to the same standards we are using for IRS notices. We are developing two additional courses for notice writers incorporating the design features that help guide readers through complex information. Creating notices with a similar look and feel will make notices easier for taxpayers to understand. The successes we have experienced in improving notices are in many instances the result of feedback from surveys of taxpayers, tax practitioners, and advisory groups.

One of our biggest success stories is that one of the most complex notices, the CP 2000, has received three awards from both public and private writing and communication organizations. The IRS sends this notice to approximately 3.7 million taxpayers each year, when the information they report differs from the information the IRS receives from financial institutions.

Examination issues, especially those involving the EITC are among the most complex issues facing taxpayers. In response to taxpayers' interactions and concerns with the EITC program, a team was created to modify letters and forms used in the EITC examination and appeals process. The new notice for initial contact provides taxpayers more information earlier in the process and an earlier opportunity to resolve their audit. This change is a major step forward in effectively communicating the examination and appeal processes and the steps taxpayers must take to exercise their rights under the law. The team received the National Taxpayer Advocate's award for their work.

Taxpayers claiming the EITC, who have been denied the credit during a past audit, are required to prove their EITC eligibility the next time they claim the credit. We revised the letter notifying taxpayers of this requirement and created a new notice to inform taxpayers when they had successfully met the requirement. The letter and notice will alleviate the confusion many taxpayers were experiencing.

We conduct correspondence examinations with taxpayers who file less complex tax returns. In the past, we sent taxpayers a lengthy publication explaining the examination process, which contained some information not usually relevant to these types of examinations. Last year, we developed a more concise publication and also provided taxpayers with a simple form they can complete to request an appeals conference. This has reduced both the information the taxpayer has to read and understand and provides a less burdensome method to disagree with audit findings.

We also clarified the appeal rights section of the math error notices. The revised section clarifies the procedures and relieves taxpayers from the burden of unnecessary correspondence.

Other revisions to forms and notices this year include:

- Forms 669 A-H, Certification of Discharge (or Subordination) of Federal Tax Lien: This family of forms was written in particularly archaic and difficult

"legalese." These notices were rewritten in "plain language," while retaining their legal meaning.

- Forms 872-A-P and SS-10, Consent to Extend Time to Assess Tax: As a result of a TIGTA audit, this family of forms was amended to include a paragraph on taxpayers' rights, informing them that they had the legal option of not agreeing to the extension of time requested by the IRS. This paragraph was also rewritten in "plain language" so it could be more easily understood.

- CP 575 A-F, Assignment of EIN and 13 related notices (576s, 577, 582s, 583s, and 584): These notices were poorly written and virtually impossible to read and comprehend. The entire family of notices was rewritten to make them grammatically correct and easily understandable.

Shortening the Duration of Compliance Activities

Recognizing the considerable time, money, and anxiety associated with the length of time it takes from when a tax return is filed to the resolution of an issue with the IRS, or cycle time, as we call it, we have a number of initiatives to shorten time frames.

Alternate Dispute Resolution

We have a number of programs that embrace alternative resolution strategies as a means of shortening cycle time. Just one example is the Industry Issue Resolution (IIR) Program.

The IIR Program was designed to resolve business tax issues where the tax treatment is uncertain, frequently disputed, or burdensome and affects a significant number of taxpayers. Under the program, tax issues are identified by industry associations or other groups and submitted to the IRS. Issues submitted are screened at least semi-annually to determine if an IIR project should be started.

For each issue selected, an IIR team consisting of IRS and Treasury personnel meets with taxpayers or other interested parties affected by the issue. The team's goal is to recommend clear guidance that business taxpayers can use, thus, reducing the burden, time and expense associated with resolving issues on a case-by-case basis during tax examinations. Since its inception, 16 IIR projects have been completed.

Examination Reengineering

Our field processes have been redesigned to shorten the time it takes between the time a taxpayer files his or her return and the time an examination is concluded. Once a return has been selected for examination, the process for that examination has been redesigned to reduce taxpayer burden by placing added emphasis on planning, documenting, analyzing risk and communicating. These four concepts, when brought together in the examination process, produce an efficient, less-intrusive, and quality audit. From the

onset of the audit, the taxpayer is informed of the issues to be examined. This reduces the areas of concern for the taxpayer and reduces the documentation required.

We have also improved the front end process of selecting and classifying returns for examination, reducing the number of returns that are selected for audit that are in substantial compliance.

Additionally, we have designed the Limited Issue Focused Examination (LIFE) process to reduce taxpayer burden by eliminating mandatory compliance checks and limiting the examination to the most material issues (after a full and robust risk analysis is performed). The result is a reduction in the number of hours required to perform the examination and a reduction in the length of time to complete the examination.

Taxpayers tell us they have experienced burden reduction from the LIFE process, and our tracking supports that conclusion.

We are also operating a Compliance Assurance Program (CAP) for our largest corporate taxpayers. This is a real-time approach to compliance review that allows us, working in conjunction with the taxpayer, to determine tax return accuracy prior to filing. We believe the CAP is more efficient than a post-filing examination—as it provides corporations certainty about their tax liability for a given year within months, rather than years, of filing a tax return.

This win-win program greatly reduces taxpayers' compliance burden and their need for contingent book tax reserves. For the IRS, it allows us to increase the currency of our examinations and allows for more efficient use of our resources. In 2005, we had 17 large corporations participate in the pilot CAP program. All 17 signaled their willingness to continue for a second tax cycle in 2006. We plan to add other companies to the pilot in the coming years.

We have also developed a Decision Support Tool that will assist EITC examiners in making timelier, more accurate, and consistent decisions in EITC audits.

Other Taxpayer Burden Reduction Accomplishments

The IRS has a number of initiatives that are in various stages of implementation that will reduce burden by helping us respond to taxpayers' inquiries about their accounts, improve telephone service, and facilitate timely responses to taxpayer correspondence.

- We are planning a test to send bulk electronic delivery of notices to Reporting Agents to reduce their paper handling burden. We developed a brochure for Business Master File (BMF) taxpayers designed to encourage them to e-file their tax returns.

- The Desktop Integration System (DI) provides an IRS call center assistor with access to various IRS systems to determine the status of a taxpayer's account.

This system should reduce the amount of time needed for account resolution and reduce the associated stress for the taxpayer. In addition, this system will allow an assistor to provide timely, quality responses to the taxpayer.

- The Correspondence Imaging System (CIS) improves the quality of customer service by providing on-line access to images of taxpayer correspondence, which aids in the efficient resolution of subsequent phone and written inquiries. Taxpayers are able to obtain information about their accounts accurately, quickly, and conveniently when interacting with Customer Service Representatives. The automated issuance of timely interim letters reduces taxpayer burden by eliminating a reason for second correspondence on a case. This system should benefit taxpayers by decreasing the overall time spent resolving cases. More than 10 million cases are received and worked each year. When fully implemented, the project forecasts that 11.2 million cases per year will be processed through CIS based on FY 2004 receipts.

- Contact Recording provides the technology to record customer contacts (audio & screens) and, based on business-defined rules, deliver them to managers and reviewers for quality review purposes. This enables employees to receive practical feedback and enhances their ability to accurately answer customer inquiries and save time for taxpayers by reducing repeat calls because of wrong answers. Approximately 36 million calls were handled by IRS Call Center assistors in fiscal year 2005 that will be impacted by this initiative.

- The Remittance Transaction Research Project will increase quality of service to taxpayers through early resolution of misapplied payments to taxpayer accounts because images of vouchers and checks will be available for on-line research. This initiative will reduce taxpayer burden because imaged checks and vouchers are available to assistors so that taxpayers are no longer required to provide a copy of their cancelled check. Approximately 3.5 million taxpayers are impacted annually by this initiative.

- Queuing Management Release 1, deployment of the Q-Matic equipment, will reduce taxpayer burden by providing an automated means to route customers to a specific assistor with the appropriate skill set and/or language to resolve the contact. Q-Matic equipment has been deployed to 100 percent of the Taxpayer Assistance Centers Service-wide.

- The Correspondence Examination Automation Support (CEAS) solution is being developed to process data more efficiently and quickly in order to handle more cases. Correspondence examinations are employed when the IRS requires specific documentation from the taxpayer to support the tax liability or credit. Many returns share the same non-compliance issues, resulting in systematic adjustments and form letters to the taxpayer. Automating this process allows the IRS to increase timeliness and accuracy of examinations, and allows more time to deal with questions raised by taxpayers during the audit.

Reducing Filing Burden (E-File Initiatives)

Electronic Tax Administration (ETA)

There is perhaps no area where the potential is greater to reduce paperwork for both taxpayers and IRS than the area of electronic tax administration. The benefits of electronic filing are clear and compelling. Many taxpayers find it more convenient and beneficial to do business electronically than sending paper through the mail. Other benefits of electronic filing include faster refunds, increased accuracy of returns, and acknowledgement of receipt of the e-filed return.

Significant challenges remain in transitioning from a paper-based environment to an electronic-based environment. The IRS developed an E-Strategy for Growth which outlines the IRS' plans to reduce taxpayer burden. To achieve the strategic goals, the IRS will develop and implement e-file marketing strategies, continue to expand the use of electronic signatures, and enhance IRS web site services for both practitioners and taxpayers. Ultimately, the goal of the Service is to offer all taxpayers and their representatives the ability to conduct nearly all of their interactions with the IRS electronically.

Taxpayers who transmit their Form 1040 tax returns electronically give high marks to the IRS' electronic filing programs. The American Customer Satisfaction Index (ACSI) shows customer satisfaction scores for IRS e-file exceed the averages for both the Government and retail sectors and rival those of the financial services sector. Customer satisfaction and burden reduction initiatives are fundamental to the IRS' continued efforts to maintain taxpayer trust and compliance.

The present e-filing system has demonstrated measurable success with regard to individual taxpayer satisfaction. From its modest beginning as a pilot program in 1986, when 25,000 returns were filed electronically, the number of e-filed returns has dramatically increased, with more than 71 million returns filed electronically in the past filing season. These taxpayers received the many benefits that electronic filing provides including:

- Faster refunds: Direct deposit can speed refunds to e-filers in about two weeks or less. Through early July 2006, over 55 million refunds were direct deposited, up from the 51.8 million refunds for the same period in 2005. The average direct deposit refund in 2006 is $2,594.

- More accurate returns: E-filed returns are automatically checked for errors or missing information. Processing is more accurate and the likelihood that a taxpayer might receive an error letter from the IRS is reduced.

- Quick electronic confirmation: E-filers receive an acknowledgement that we have received their returns.

- Free Internet Filing: Now in its fourth year, Free File allows millions of taxpayers to prepare and file their Federal tax returns on-line for free. The program is a partnership between the IRS and an alliance of tax software companies that offers free on-line tax return preparation and e-filing services to at least 70 percent of the nation's 130 million taxpayers. As of June 29, 2006, Free File volume was almost 4 million returns. Free File was principally designed to advance and increase e-filing receipts and assist taxpayers, particularly in underserved and disadvantaged communities. While each of the 20 companies participating in the program sets its own qualifying criteria for its free services, the majority of the offerings are designed to serve lower-income individuals or families who claim the earned income tax credit. Others are based on the taxpayer's age, military service, or state residency.

- Easy payment options: E-filers with a balance due can file early and schedule a safe and convenient electronic funds withdrawal from their bank account, or pay with a credit card.

- Federal/State e-filing: Taxpayers in 37 states and the District of Columbia can e-file their Federal and state tax returns in one transmission to the IRS. The IRS forwards the state data to the appropriate state agency.

E-Services

E-Services are a suite of Internet based products that allows tax professionals and payors to do business with the IRS electronically. These services include Preparer Taxpayer Identification Number (PTIN) applications with instant delivery, Taxpayer Identification Matching (TIN) matching for third-party payors, on-line registration for electronic e-Services, and on-line initiation of the electronic return originator application. The e-Services' Incentives Products offered to increase e-filing are on-line disclosure authorization, electronic account resolution, and transcript delivery system. Due to industry demand, the availability of incentives to those tax professionals and payors that e-file has been lowered from 100 to 5 individual returns filed.

As of July 10, 2006, over 162,000 practitioners have registered for e-Services since its launch in autumn 2003. The TIN Matching program continues its rapid growth with 4.5 million Interactive TIN Matches. Bulk Matching is over 126 million with a potential of collecting $23 million in tax revenue. Forty-nine percent of e-file applications are received on-line from new applicants. Tax Practitioners have submitted 79,000 disclosure authorizations and 16,500 account-related issues for resolution with a cost saving of $300,000. The popularity of accessing transcripts on-line has proven to be very cost-effective: practitioners received 956,000 transcripts - saving $5 million; while employees requested 5.8 million transcripts at a savings of $15.4 million. Overall, total savings to date as a result of e-services are in excess of $44.5 million.

Modernized E-File System (MeF)

Modernized e-File, begun in 2004, is an electronic filing program that gives corporations and tax exempt organizations the ability to file annual tax returns electronically over the Internet. (MeF) processes Form 1120, 1120S (and all of the attached forms and schedules) and Forms 990/990EZ/990PF and 1120-POL. Building on the successful implementation in 2004, MeF has accepted over 385,000 1120/1120S returns in 2006, which exceeds the projected volume for the year by more than 134 percent. As a burden reduction initiative, MeF will a single point of filing for corporate state filing and Tax Exempt filing starting in 2006. Cost savings to both the commercial and state stakeholders will be realized.

On January 11, 2005, IRS announced the e-file requirement that corporations with assets of $50 million or more that file at least 250 returns must electronically file their 2005 Form 1120 or 1120S tax return. Throughout the year, IRS has been very involved in stakeholder outreach to ensure that taxpayers are adequately educated on this mandate. The IRS has worked to ensure that it has sufficient system capacity for the large sizes of the returns. We have also been proactively partnering with external groups to minimize the impact to the large corporations and software developers. While waivers are available, we don't anticipate the need as a result of our extensive outreach work with all of the stakeholders.

In fact, on May 31, 2006, the nation's largest tax return was filed electronically by General Electric. If the return had been filed on paper it would have been more than 24,000 pages long. Within an hour, GE received an acknowledgement of receipt from the IRS.

After the first effective year of mandatory e-filing, the requirement will be extended to corporations that have assets of $10 million or more and file at least 250 returns annually. During 2006, again we will continue our outreach to affected businesses.

Fed/State Electronic Federal Tax Payment System (EFTPS)

The IRS and the Treasury Department's Financial Management Service are developing a pilot in conjunction with South Carolina and Illinois. The pilot is scheduled to begin in January 2007, and will enable Illinois taxpayers (South Carolina will participate in a later phase) to pay all their federal and certain state taxes online via the Treasury's Electronic Federal Tax Payment System (EFTPS). This initiative will provide one stop for taxpayers to make their federal and state tax payments.

Internet Refund Fact of Filing (IRFOF)

The inquiries to the on-line "Where's My Refund?" has increased to over 22 million this year, as opposed to 19.9 million in the 2005 filing season. The increased use of "Where's My Refund?" has reduced the number of phone calls from taxpayers seeking their refund status.

In fact, our entire suite of e-services has reduced both the number of calls answered on our toll free lines as well as walk in contacts at our Taxpayer Assistance Centers. Calls were down over 5 percent in the latest filing season and walk-in at out TAC centers were down over 11 percent. Visits to IRS.gov, however, were up over 11 percent.

Future Electronic Initiatives

In the near future, the IRS will be offering additional incentives to taxpayers to file their returns electronically. These initiatives will reduce taxpayer burden. These incentives include:

- Web services & Fed/State MeF: In 2006, the IRS will partner with states to develop Corporation and Tax Exempt state filing and have begun initial work on state partnership returns.
- 1040 e-file: Taxpayers will be able to electronically file six new forms in 2006.
- MeF: Form 1120 Amended returns and the Form 1065 will be available in the MeF system in 2007.

In addition, the Administration's budget request contains a legislative proposal to expand the IRS's authority to require electronic filing by large businesses and exempt organizations. This will encourage more taxpayers to electronically file their returns.

Support of Government-Wide Paperwork Burden Reduction

The IRS has been supportive of all Government-wide efforts to reduce the burdens imposed on our customers, including aggressively addressing the requirements of the Small Business Paperwork Relief Act (SBPRA) of 2002. The IRS is well represented on the SBPRA task groups addressing Government-wide burden, making it easier for small businesses to understand their regulatory requirements, identifying ways to integrate and consolidate data, and making recommendations to improve the electronic collection and dissemination of data collected under Federal requirements. As the 2002 SBPRA Task Force recommended, the IRS is working with the Business Gateway E-Government Initiative to make it easier for businesses to interact with the Federal government and help to reduce burden through data harmonization and forms consolidation. In addition, meetings are held with SBA and OMB to discuss burden reduction efforts and to identify partnering opportunities.

Taxpayer Burden Models

IRS has developed a new way of estimating taxpayer burden. The new method is based on taxpayers reporting of the time they spend and costs they incur preparing and filing their income tax returns. This approach to estimating burden reflects the changes in the way taxpayers prepare and file their returns. According to the model results for tax year 2004, individual taxpayers, on average, spend 23.4 hours and $186 gathering information, preparing and submitting their tax returns. This estimate includes recordkeeping, tax

planning, form completion, form submission, and other activities. The largest amount of time, 17.3 hours, is spent on recordkeeping and tax planning, while only 3.8 hours is spent on form completion and form submission. The estimates are nationwide averages; particular taxpayers will experience burden that may be larger or smaller than the averages.

The complexity of the return has a significant impact on burden and affects both time and out-of-pocket expenses. Other factors that affect overall burden levels include the taxpayer's familiarity and skills with tax preparation and tax software, the type of paid preparer or software used, and costs in the taxpayer's geographic area.

Taxpayers choosing to use a paid professional, generally trade-off higher out-of-pocket expenses for the benefit of spending less of their time on taxes along with greater assurance that the return is prepared accurately. Tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer and geographic area.

Conclusion

Madam Chairman and members of this panel, reducing taxpayer burden is one of my strategic priorities and is the cornerstone of the service aspect of our working equation at the IRS – "Service *plus* Enforcement *equals* Compliance." Burden reduction is everyone's job at the IRS. Again, I appreciate the opportunity to testify before your subcommittee and I welcome any questions.

Mrs. MILLER. Our next witness is Matthew Berry, Deputy General Counsel for the Federal Communications Commission. Mr. Berry has recently served at the Department of Justice as Counselor to the Assistant Attorney General for the Office of Legal Policy, and before that he served as the Attorney Advisor in the Justice Department's Office of Legal Counsel. We are certainly pleased to have Mr. Berry with us today.

And the floor is yours.

STATEMENT OF MATTHEW BERRY

Mr. BERRY. Thank you. Madam Chairman, Ranking Member Lynch and distinguished members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the FCC's efforts to reduce the information collection burdens placed by the Federal Government on the American people.

The Commission is continuously looking for ways to reduce unnecessary or duplicative paperwork burdens. For example, since March 2005, the FCC has reduced its number of information collections by 36. In order to fulfill its statutory responsibilities, however, the FCC sometimes must impose information collection requirements.

In recent years, the FCC has instituted such collections to implement important statutory mandates such as improving consumers' ability to make sense of their telephone bills, giving the public the ability to block unwanted telemarketers' calls and protecting citizens from unwanted commercial faxes.

OMB's fiscal year 2006 information collection budget indicates that the paperwork burden imposed by Commission regulations grew from approximately 26 million to 145 million hours in fiscal year 2005, or an increase of about 456 percent. The Commission recognizes that this increase is a significant one; however, the overwhelming majority, over 97 percent, resulted from the Commission's implementation of recently enacted statutes. Specifically, information collections associated with the CAN–SPAM Act accounted for most, or 115 million hours, of this increase.

Congress passed the CAN–SPAM Act to address unwanted electronic messages being sent by some businesses, and Congress specifically directed the FCC to deal with commercial messages that are sent directly to an e-mail address for delivery to a subscriber's wireless device.

In deciding how best to fulfill its congressional mandate, the FCC chose the option that it concluded would be both the most effective in protecting citizens from receiving unwanted commercial messages on their wireless devices and would create the least amount of paperwork for business.

Consistent with Congress' direction, the Commission prohibited businesses and others from sending mobile service commercial messages absent the recipients' express prior authorization. In addition, because of the need for senders of these messages to distinguish between e-mail addresses associated with wireless devices and other e-mail addresses, the FCC created a list of Internet domain names associated with commercial mobile services.

Those sending commercial messages are required to regularly check that list and ensure that they do not send unsolicited mes-

sages to e-mail addresses using the domain names on the Commission's list.

The Commission estimated that over 5 million businesses would be burdened both by the rule requiring senders of commercial messages to obtain express prior authorization from recipients and the requirement to check the Commission's list of domain names associated with wireless devices.

It is important to note, however, that these rules only impose a burden on businesses to the extent that they wish to send unsolicited commercial e-mail messages. If businesses do not send such messages, the Commission's regulations impose no paperwork burden on them whatsoever.

Moreover, the FCC realizes that the estimate of the burden hours associated with our CAN–SPAM regulations may be far too high because we may have significantly overstated the number of businesses that would be burdened. In some situations, estimating the paperwork burden associated with information collections is more art than science. Here, the FCC made its best estimates based on available information and guidance provide by OMB. When the FCC seeks renewal of its CAN–SPAM information collections, it will use a new and more informed burden estimate, which should be significantly lower than 115 million hours.

I also would like to briefly discuss one other new Commission rulemaking triggered by congressional action that resulted in a significant increase in our overall information collection burden. Three months ago the FCC adopted rules implementing the Junk Fax Prevention Act of 2005. Consistent with the statute, the Commission's rules require those sending unsolicited advertisements to fax machines to provide notice and contact information to allow recipients to opt out of receiving unwanted facsimiles, and our rules that businesses honor such opt-out requests.

I note that while the FCC's initial burden estimate for these information collections, as reflected in the Information Collection Budget, was almost 25 million hours annually, our final submission to OMB revised that estimate downwards to just over 13 million hours, or 12 million hours less.

I would like to close by sharing with the members of the subcommittee that the FCC takes its duties and responsibilities under the Paperwork Reduction Act very seriously. By eliminating unnecessary information collections and carefully crafting new information collections, we seek to minimize the burdens placed on businesses and the general public.

Thank you for the opportunity to testify before you today, and I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Berry follows:]

Written Statement

Of

Matthew Berry
Deputy General Counsel
Federal Communications Commission

On

Another Year, Another Billion Hours:
Evaluating Paperwork Reduction Efforts in the Federal Government

Before the
Subcommittee on Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives

July 18, 2006

Good afternoon, Chairman Miller, Ranking Member Lynch, and distinguished members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the Federal Communications Commission's compliance with the Paperwork Reduction Act (PRA) and the FCC's efforts to do its part to reduce the information collection burdens placed by the Federal government on the American people.

The Commission is continuously looking for ways to reduce unnecessary or outdated regulations. We do so through several processes, including, but not limited to, regularly reviewing, pursuant to the Regulatory Flexibility Act, rules having a significant impact on a substantial number of small businesses, *see* 5 U.S.C. § 610, and conducting a biennial review of all regulations issued under the Communications Act that apply to the operations and activities of any provider of telecommunications service to determine whether they are no longer in the public interest as the result of meaningful economic competition between providers of telecommunications service, *see* 47 U.S.C. § 161. In this vein, the Commission also is always looking for ways to reduce unnecessary or duplicative burdens associated with existing information collections. For example, since the beginning of Fiscal Year 2006, the FCC has already discontinued or consolidated a total of 16 previously-approved information collections.

In order to fulfill its statutory responsibilities, however, the FCC sometimes must impose information collection requirements, generally on the entities that it regulates. In recent years, for example, the FCC has instituted information collections as part of its efforts to implement important statutory mandates, such as improving consumers' ability to make sense of their telephone bills, giving the public the ability to block unwanted telemarketers' calls through the do-not-call list, and protecting citizens from unwanted commercial facsimile messages. The Commission has also engaged in information collections in order to fulfill the Commission's

statutory mission of "promoting the safety of life and property through the use of wire and radio communications," such as by enhancing 911 emergency telephone call reliability.

In designing information collections, however, the Commission takes care to ensure that it does not impose unnecessary paperwork burdens on businesses or the general public. Before the FCC implements an information collection, it must comply with the Paperwork Reduction Act and obtain approval from the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB). To obtain OMB approval of a collection of information, the FCC must demonstrate that it has taken every reasonable step to ensure that the proposed collection of information is the least burdensome necessary for the proper performance of FCC functions to comply with legal requirements and achieve program objectives; is not duplicative of information otherwise accessible to it; and has practical utility. 5 C.F.R. 1320.5(d)(1).

The FCC complies with the PRA through a transparent process designed to minimize the burdens associated with information collections. Individual Bureaus and Offices within the FCC initiate all information collections. These information collections result from agency rule-making activities associated with new statutes, congressional requests for information, and other needs of the Commission and its program offices, such as the need to track communications outages following last year's hurricanes. The Office of Managing Director's Performance Evaluation and Records Management Division (OMD/PERM), a separate office from the initiating office, then reviews and approves all information collections before they are submitted to OIRA. OMD/PERM thoroughly scrutinizes each information collection before certifying that the collection meets PRA standards. Indeed, in recognition of the trust OIRA places in the work of OMD/PERM, the FCC is one of only two agencies in the Federal government to have

received delegated authority to internally review and approve renewals of information collections with total annual burdens of 5,000 hours or less and a burden of 500 hours or less per respondent. 5 C.F.R. Part 1320 App. A.

OMB's Fiscal Year 2006 Information Collection Budget indicates that the paperwork burden imposed by Commission regulations grew from approximately 26 million hours to approximately 145 million hours in Fiscal Year 2005, which represents an increase of approximately 456 percent. The Commission recognizes that this increase is a significant one. However, the overwhelming majority of this increase -- over 97 percent -- was the direct result of carrying out congressional mandates contained in recently enacted statutes. *See* OMB FY2006 Information Collection Budget at 45.

Specifically, information collections associated with implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) accounted for most of the increase in the paperwork burden imposed by Commission regulations during FY2005, or about 115 million hours. In fact, the CAN-SPAM regulations currently account for 72.9 percent of the FCC's total public burden hours.

Congress passed the CAN-SPAM Act to address the unwanted, and sometimes fraudulent and deceptive, electronic messages being sent by some businesses. Consumers complained, and Congress responded. While the Department of Justice and the Federal Trade Commission are primarily responsible for enforcement of the CAN-SPAM Act, the FCC was given an important role to play under the Act. The Commission's role is directed to commercial messages that are sent directly to an electronic mail address provided by a wireless carrier for delivery to a subscriber's wireless device, such as text messages sent to a wireless e-mail address. Specifically, the FCC was directed by Congress to "provide subscribers to commercial mobile

services with the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender." 15 U.S.C. § 7712(b)(1). The FCC was also directed to "consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message." 15 U.S.C. § 7712(c).

All of the information collections adopted by the FCC to implement the CAN-SPAM Act were designed to minimize the paperwork burden associated with the Commission's regulations. For example, the FCC considered one alternative that would have created a list of the e-mail addresses of those individuals who did not want to receive commercial messages sent directly to their wireless devices. The Commission concluded, however, that such a list, similar to the Do-Not-Call List, would have imposed an unnecessarily significant burden on businesses and would have significantly jeopardized the privacy of those individuals placing their e-mail addresses on the list.

In deciding how best to fulfill its congressional mandate, the FCC instead chose the option that it concluded both would be the most effective in protecting citizens from receiving unwanted commercial messages on their wireless devices and would create the least amount of paperwork. Consistent with Congress's direction, the Commission prohibited businesses and others from sending mobile service commercial messages absent a recipient's "express prior authorization." The Commission determined that prior authorization could be written or oral, and required that requests for authorization include certain disclosures. See 47 C.F.R. § 64.3100(d).

In addition, because of the need for senders of these messages to distinguish between e-mail addresses associated with wireless devices covered by the Commission's regulations and

devices that do not fall within the Commission's jurisdiction under the CAN-SPAM Act, the FCC created a list of Internet domain names associated with commercial mobile services. Two information collections were necessary to make this list effective in preventing unwanted commercial messages. First, commercial service providers are required to regularly update the Commission's list of domain names with those domain names associated with their wireless devices. And second, those sending commercial messages must regularly check that list and ensure that they do not send messages to e-mail addresses using the domain names on the Commission's list. 47 C.F.R. § 64.3100(f).

The bulk of the estimated burden of the CAN-SPAM information collections resulted from the FCC's determination that millions of businesses in the United States would seek to send mobile service commercial messages. Consequently, we estimated that millions of businesses would be burdened both by the rule requiring senders of commercial messages to obtain express prior authorization from recipients and the requirement to check the Commission's list of domain names associated with wireless devices. It is important to note, however, that these rules only impose a burden on businesses to the extent they wish to send commercial e-mail messages. If businesses do not send such messages, the Commission's regulations impose no paperwork burden on them whatsoever. Indeed, the Commission's regulations save many businesses the expense associated with the receipt of unwanted commercial e-mail messages. Furthermore, the FCC published notice of these information collections in the Federal Register twice, but no public comments were received. Even after OMB approved these information collections, no one challenged the FCC's CAN-SPAM rules in court. As a result, we believe that the substantial benefits of the Commission's CAN-SPAM regulations, coupled with the apparent lack of

concern from the business community on whom the burdens fall, support the FCC's method of implementing the statute.

I would also like to make two points concerning the Commission's burden estimate of approximately 115 million hours for the CAN-SPAM regulations. First, the FCC realizes that the estimate may be far too high because it may have significantly overstated the number of businesses that would incur burdens as a result of the Act. Not every business in the United States sends mobile service commercial messages. In fact, the Senate Report on the CAN-SPAM Act noted that mobile service commercial messages are sent more by direct marketing associations and companies than by individual businesses. Senate Report No. 108-102, at 12. At the time that the FCC's burden estimate was prepared, however, no data related to the number of entities sending commercial messages was available. This information hopefully will become available when the FTC completes its study of a proposed do-not-e-mail list, which was mandated by the CAN-SPAM Act. At that time, the FCC plans to recompute the burden estimates contained in this information collection and file a correction sheet with OMB revising the burden estimates.

Second, the CAN-SPAM information collection burden estimates were just that – estimates. In some situations, estimating the paperwork burden associated with information collections is more art than science. In this case, the FCC made its best attempt at making these estimates based on available information and the guidance on making estimates provided for information collection filings with OMB. Additionally, this task was complicated by the fact that, unlike the typical FCC information collection affecting communications companies with which the FCC is familiar, the CAN-SPAM regulations by necessity affected a much wider range of businesses. I can report that the FCC, in its experience with the PRA, has often found

that initial estimates for first-time information collections prove to be too high. One reason for this is that the actual burdens fall as affected entities becomes more familiar with the information collection. The CAN-SPAM information collections were approved by OMB for a three-year period – until December 31, 2007. The FCC will timely seek renewal of the information collections with a new and more informed burden estimate, which we currently believe will be significantly lower than 115 million hours.

I would also like to briefly discuss one other new Commission rulemaking triggered by congressional action that resulted in a significant increase in our overall information collection burden. Three months ago, the FCC adopted rules implementing the Junk Fax Prevention Act of 2005, which codified the established business relationship exemption from the existing prohibition forbidding any entity from sending an unsolicited advertisement to facsimile machines without express permission. See 47 U.S.C. § 227(b)(1)(C); Junk Fax Implementation Order, FCC 06-42. Three information collections resulted from this rulemaking. First, consistent with the statute, the Commission's rules require senders of facsimiles making use of the statutory exceptions to the prohibition on sending unsolicited advertisements to fax machines to provide notice and contact information to allow recipients to opt out of receiving unwanted facsimiles. 47 U.S.C. §§ 227(b)(1)(C)(iii) and 227(b)(2)(D) and 47 C.F.R. § 64.1200(a)(3)(iii). Second, as required by the statute, recipients of facsimiles are allowed to file opt-out requests that must be honored by the sender by removing the person from its facsimile advertising list. 47 U.S.C. §§ 227(b)(1)(C)(iii) and 227(b)(2)(E) and 47 C.F.R. § 64.1200(a)(3)(v). Third, senders of facsimiles, in the event of a complaint by a recipient of a facsimile, are required to show that they either had express prior permission to send facsimiles to the individual in question or, based

on records kept in the ordinary course of their business, that they had an existing business relationship with the recipient.

The Commission believes that these three information collections were necessary to carry out Congress's direction to protect Americans from receiving unwanted commercial facsimiles and were designed in such a way as to minimize the paperwork burden imposed by the Commission's regulations. As in the case of the CAM-SPAM information collections, the FCC invited public comment on the Junk Fax Prevention Act information collections, but no comments were received, and OMB approved the information collections. I note that the FCC's initial burden estimate for these information collections was almost 25 million hours annually. Our final submission to OMB, however, revised that estimate downwards to just over 13 million hours, a figure that should be reflected in next year's Information Collection Budget. I also note again that these burden hours may decline even further as the public gains actual experience with the information collections.

I would like to close by assuring the members of the Subcommittee that the FCC takes its duties and responsibilities under the PRA very seriously. Through the elimination of unnecessary information collections and the transformation of paper collections to electronic collections, we are attempting to reduce the burdens we impose on the public while at the same time fulfilling our statutory responsibilities. When we seek OMB renewal of existing information collections, we review and revise not only the collections themselves but also the burden estimates based on actual experience. And, finally, whenever we adopt new information collection, we seek to minimize the burdens placed on business and on the general public.

Thank you for the opportunity to testify before you today, and I would be pleased to answer any questions you may have.

Mrs. MILLER. Thank you, Mr. Berry. I appreciate that. Since you just finished, I think I'll start my questioning right with you.

I was trying to take some notes when you were talking about how you were estimating the burden for the CAN–SPAM Act, and I guess—you mentioned perhaps it might be too high of an estimate and that you used OMB best information available to try to interpolate what all of that meant.

Could you just try to educate me on how you actually do the construct of trying to understand what the burden requirement actually is? What kind of information did OMB give you? How do you make such an estimate?

As an addendum to that, as well, if you are going to revise your estimate, this committee would be very interested to hear and to have that information when you do revise that estimate.

Mr. BERRY. First of all, we would happily provide you any revised estimate we have, and we do believe there will be a revision.

With respect to how we came up with the number, I would first say that the Commission information collections generally impact those entities in the communications business; and we have a much better understanding of those businesses and compliance burdens on those businesses than we do on all small businesses in America, which is what the CAN–SPAM regulations potentially impact.

But we started with a number that we believe we got from the Small Business Administration of 22.6 million businesses in the United States. We then had to figure out what percentage of those businesses would be impacted by our regulations.

This was the most difficult call we had to make, and to be honest, we did not really have good information with respect to how many businesses in the United States would be sending commercial messages to wireless devices; and the best estimate that we made, which I think again is probably too high, is that about one-quarter of them, or 5.6 million, would be—seek to send these messages and comply with our rules. We then took that number, 5.6 million businesses and estimated that it would take each business about 10 hours a year to obtain and process express authorizations from individuals that wanted to receive the messages.

We then looked at how long it would take a typical business to comply with our rules by looking at their e-mail list of people they wanted to send e-mails to and compare it against the domain name list that we provided that says the domain names that you can't send e-mail addresses to.

We estimated it would take about 5 hours to set up the system for them to compare their e-mail list to our domain name list, and that's a one-time implementation burden; and then about 6 hours on an annual basis to regularly purge their e-mail list of e-mail addresses that would appear on our domain list. And pursuant to our rules, you have to basically do a purge once every 30 days because once a domain name has been added to our list for 30 days, the sender is responsible for not sending unsolicited e-mail messages to it. So that's how we went about doing the estimate.

I think, in hindsight—and we're going to do an additional study, but the 5.6 million figure for businesses impacted was probably significantly high, and I therefore think, and will share this informa-

tion with you, that we're going to end up revising the 115 million hours estimate down.

Mrs. MILLER. That's great. Anything that can go down is a positive trend.

Along those same lines, perhaps I could ask you how an agency like yours interacts with OIRA as they try to assist you on burden reduction and estimating and all those kinds of things. How does that all work out? Do you have any comment on that?

Mr. BERRY. I think we have a very cooperative relationship with OIRA. I could just walk you through the process that we follow at the Commission.

Information collections initiate in our substantive bureaus and offices. This one, for instance, on CAN–SPAM originated in the Consumer and Governmental Affairs Bureau; they developed the proposed information collection. And then it goes to our Office of Managing Director, and they scrutinize it to make sure it complies with the Paperwork Reduction Act and ensure there is adequate support.

Once our Office of Managing Director signs off, we will send it to OIRA to make sure they believe it complies with the Paperwork Reduction Act. We have to provide a supporting statement and justification both for estimates and that we have tried not to have duplicative burdens or to reduce unnecessary burdens.

At that point, sometimes if we've done our work really well, OIRA will sign off on it; other times it's a more interactive process. They'll come back to us with questions, concerns and the like.

I think generally we have a very cooperative relationship with them, and I think most of the time it's very smooth because thankfully we've done our homework and made sure we comply with the act.

Mrs. MILLER. Mr. Aitken, I know that you're new to your position there, but if I could ask you for your initial assessment or observation, do you think OIRA has adequate resources in order for you to be able to accomplish your mission there? Is there anything you want to share with the committee in regards to personnel or budgetary kinds of things or what we can do to assist you?

Mr. AITKEN. As you noted, Madam Chairman, I have just been at OIRA for 6 weeks now, and that's one of the issues I will look at being Acting Administrator; but now I'm not prepared to make any statements regarding that issue.

Mrs. MILLER. Perhaps a wise way to address that.

I have some additional questions, but I'll wait until the second round, and at this time recognize Mr. Lynch.

Mr. LYNCH. Mr. Aitken, you weren't taking the Fifth, were you?

Let me start—and thank you, Madam Chair.

In your opening statement, you said Medicare Part D, and there was a number that was offered, 224 million hours for Medicare Part D. Now I know there are about 40 million seniors and handicapped Medicare-eligible folks that would be seeking to comply with Part D, and it looks—just based on my numbers, 224 million, it would appear that half of that is attributable to me explaining Part D to my mother-in-law, who is a very bright woman and has a very good grasp of financial and legal concepts.

But, seriously, how did you come up with—sort of the opposite side of the question that the chairman asked Mr. Berry, how did you come up with this, what did you do to pin it down do 224 million hours? Because just based on the confusion that's out there on this, I would have expected the number to be much higher.

Mr. AITKEN. Ranking Member Lynch, before turning to how that would be estimated, I would just want to make two clarifications.

Mr. LYNCH. You don't have to make it very complicated. Just how many hours per person.

Mr. AITKEN. The lead agency for developing the initial estimate of burden would be the agency that is engaging, or in the case when they send a collection to OMB for review and approval, the proposing agency. So in that case, it would be HHS and, specifically, the Center for Medicare and Medicaid Services.

So it's that agency, as is the case with the FCC in the CAN–SPAM Act, that has the primary responsibility for developing an estimate, its best estimate, of what the burden will be based on its experience with operating the program or its best guess with respect to a new program, on how much that burden will be for the regulated entities and other members of the public. So in the case of the Part D program, as in other collections, it would have been the responsibility of the proposing agency to develop that estimate.

As I mentioned in my opening statement, we have heard from HHS this morning that they believe that the estimate may have been too large for the Part D program, which comprised a large percentage of the burden for the Medicare Modernization Act. I believe that according the ICB, Part D was 212 million hours of the total 224 million hours; and so HHS is currently reviewing that and they are in the best position to determine what the appropriate burden would be.

And as the FCC witness explained, when you're implementing a new program, you don't have a lot of experience to go by, and so it's necessarily based on estimates and guesses of what the burden will be. Under the Paperwork Reduction Act, an agency needs to obtain OMB's renewed approval at least once every 3 years, and during that period an agency will be able to develop better estimates based on experience and also from input from the public during that time.

Mr. LYNCH. So in terms of my question, how did you come up with 224 million? You're saying HHS came up with that and you're just repeating that number?

Mr. AITKEN. HHS came up with that number. They then submitted it to OMB, along with its submission package, for our review and approval—and I'm not intimately familiar with the details of the package that HHS sent to us, and then our review of the package, but typically it's the agency that's proposing the collection.

Mr. LYNCH. I understand. You said that already. I'm just asking you about your ability to vouch for the number, I guess.

Mr. AITKEN. Our number is based on the HHS number.

Mr. LYNCH. That's fair enough.

Let me just ask Mr. Berry a followup on the chairman's question.

The CAN–SPAM Act, do we have any best practices out there that you could look at? It would seem to me that this would be something that software could be enormously helpful with, right;

once that roster or that list is established, that it could just be a matter of a function that eliminates any of those, rather than anything that's very, very time-consuming for any individual.

I understand the burden that's been estimated here, but also there is another burden that we all go through, which is to delete all that spam; that's the other side of this. So if you're not doing that, if you're not having a small group of people doing what you're requiring them to do under the act, you get a whole lot of us out there, clicking away, trying to delete all that spam, and that would just make you crazy after a little while.

But are there some prospective mechanisms or some ideas for down the road where we could greatly reduce that and maybe have that whole system automated so that we don't have so much labor for our small businesses, especially those that are engaged in that type of activity?

Mr. BERRY. First of all, Ranking Member Lynch, I think that you point out an important thing that I mentioned in my written testimony, which is, the unwanted messages that go to wireless devices with respect to both businesses' and individuals' wireless devices do, in many cases, impose real costs both in terms of time and expense on those businesses and individuals. So that burden is reduced by the CAN–SPAM Act.

But with respect to your specific question, I have been advised that there are ways through—there's software that can be use that would take an e-mail list and would purge it of those addresses that use domain names that are on the Commission's list, so that it can be done. You have to run that again once every month to be sure you're keeping up with the domain names on the Commission's list. So technology can be an important part of the answer here.

Also, we generally find at the Commission that the compliance burden with respect to information collection goes down over time as businesses and individuals become more familiar with the information collection. So I do think the longer these regulations are in effect, you're just going to see a natural decline in the hours burden as well.

Mr. LYNCH. I will yield back at this point.

Mrs. MILLER. OK.

Mr. Aitken, I was listening to and am very interested in how you actually did the construct, as well, in the Medicare prescription drug benefit, and what that all meant. And I think it is difficult. I know that the Congress is hoisting things on these agencies that do require a lot more burden, paperwork, etc., not only on the agencies but on the general public as well.

Sometimes—hopefully, when we do these—it's difficult to go to seniors that have never had prescription drug benefits, and now there are over 32 million that do, and say, we really shouldn't have helped you with your prescription drugs because it's a lot of paperwork burden on everybody.

So sometimes you have to think about what it is that government is all about, I suppose. I will just tell you in regards to also trying to help explain to seniors a brand-new program for the first time in 40 years, actually, it was great to have the help of senior advocacy groups and AARP and other kinds of groups. I don't know

if that goes into, again, the construct of how you try to understand the paperwork reduction or the burden, additional burden, placed on the beneficiaries of those kinds of things.

In my congressional district alone we have over 100,000 seniors that have signed up at an average savings on prescription drugs of about—well, this year, about $100 million. So sometimes we have to look at those kinds of things as well.

As Mr. Berry was testifying about consumer protection, for instance, in the event it is more paperwork; but I think it's a worthwhile thing for government to mandate that people can understand what their phone bills are actually telling them and some of those kinds of things.

But could you talk a little bit about—did any of the kinds of things that were happening out in the field with, as I say, some of these senior advocacy groups, or AARP, did that go into the equation, are you aware of that, or how do you actually measure those kind of things?

Mr. AITKEN. Madam Chairman, I'm not aware with respect to the part D program whether HHS included that within their development of the burden estimates. We can look into that and provide that information for the record.

Mrs. MILLER. I would be very interested to know that.

Ms. Tucker, as we talked about the IRS, it is interesting, you hear some of these numbers that the compliance costs for Americans every year just to fill out their tax forms. I have heard way over $200 billion, from $225 to $250 billion, who knows; but I think as a result of those kinds of staggering numbers and every one of us having personal experience trying to fill out our own tax forms without the advantage of having a tax attorney, we do recognize—that, I'm sure, is the impetus for a lot of debate under the dome here about the flat tax, fair tax, etc.

But I was interested in one of the things that you mentioned, and if you could flesh this out a bit for me, about how you attempted, your agency, to simplify or streamline the quarterly tax payments for businesses. Obviously the government wants to get their money as quickly as they can. And I think you mentioned there were about a thousand businesses that were advantaged by your new program.

What is the benchmark for a small business not to have to file quarterly? Just seems like, having come from a small business background and filling out those forms, what a relief it would have been, even if we had to only do it twice a year.

Ms. TUCKER. Absolutely.

To kind of also reassure you, in our taxpayer burden reduction program and the stakeholder liaison program that I manage, we do go out and conduct forums with the small business communities. And the frequency of touches on forums is one of the No. 1 things we hear back, make my interaction with you—why they don't want to interact with IRS. It hurts our feelings a little bit, but believe it or not, they are looking for less.

Actually, on the 944, the tolerance is $1,000; it actually applies to 950,000 small business owners. So, in other words, we looked at what was the cutoff for small businesses that only had an employment tax reporting of $1,000 or less, and we said, well, why are

they having to go to the trouble of filing four times a year when we could just annualize that to a one touch.

So we launched that in January 2006; we are in our first year of operation. We are doing some quality control to see how it's going, talking our small business taxpayers. But the good news, I think this one is a good example of how you can not only reduce burden on the small business, but the reality is, that also reduces burden on IRS because that's three less submissions that we're also have having to use our resources on.

So we'll be glad to share with you after we have our first full year of operation and then what our next steps are as far as looking at other opportunities for similar burden reduction initiatives.

Mrs. MILLER. I'm sure the committee would be very, very interested in having that kind of information.

Does the IRS have the ability to just make those kinds of decisions? Do you require legislative——

Ms. TUCKER. A lot of our burden reduction initiatives we can do through administrative provision or regulatory, but obviously a good example—and let me share this one with you, because I do think at some point we've talked to one of the committees—we're looking at an initiative right now on office in the home. That is a form that frustrates and confounds millions of small business/self-employed taxpayers where you go through multiple calculations. And that's one where we're actually looking at, is there a possibility of a standard deduction to give you the option if you don't want to go through—almost like, for those of us that are familiar with Schedule A, you can choose, do you want to itemize your home mortgage interest or medical expenses, or you can choose the flat deduction for your filing status.

So on that one, that is one that in talking with Treasury most likely will require a legislative proposal.

So it really depends. There are literally hundreds of form and regulatory adjustments we make in any given year without having to go the legislative route.

Mrs. MILLER. Sometimes—well, it's always scary when the government starts talking about tax reform, tax simplification, which always ends up being more of a burden; at least that's the way the trend has always gone. It always seems, I think, that the customers, the end users of all of these things that conceptually sound fine here in Washington, but the practical reality or application of them out in a small business or individuals and that is sometimes an unintended consequence from what we were looking for.

Does the IRS have a format where taxpayers can make the kinds of suggestions that it's always good to hear from them and then do you actually listen to them? I would be interested in looking at how you actually get a comment from an individual taxpayer or small business owner and then what happens to it. Does it get filed in the circular file?

Ms. TUCKER. You would actually be very interested to see a lot of the suggestions, and in fact, we'd be very pleased to share those with you.

A lot of taxpayers do correspond with us. We actually have a form, and I'll be glad to provide it to you, it's Form 13285A, a very scientific sounding form, but basically that's what we use for tax-

payers or small businesses, or even industry groups can write their suggestion down and send it to IRS.

Two months ago we did issue an updated release that went out through all of our distribution networks, talking about how serious IRS is about burden reduction and asking our stakeholders and taxpayers to give us their ideas. Currently the process we use, members of my staff do the initial vetting and then we assign those out to the different functions within IRS to give us feedback and suggestions.

Of course, the most popular burden reduction suggestion we are getting from taxpayers is, I'd just as soon not pay any taxes; but I think you would probably agree, that one is a little difficult for our agency to administer.

Mrs. MILLER. Thank you very much.

Mr. Lynch.

Mr. LYNCH. Thank you.

Ms. Tucker, just following up, there were numbers in one of the reports I read, it might have been the one that you provided, that did give an estimate of the additional burden that was proximate to the 2005 changes that we did in the AMT. We modified it a little bit. So it was a number in here about what those modifications cost us in terms of burden. I accept those as being fairly accurate.

The question I have, though, what about the encroachment issue where you have millions more Americans that sort of march into—they get captured; now they are subject to the AMT. What is that doing to the burden that you're seeing imposed upon taxpayers?

Ms. TUCKER. Obviously, the AMT calculation in and of itself generates lots of questions from the taxpayers and, in fact, the practitioners that are being paid to prepare their returns.

As far as things that IRS is doing, once you are checking to see, does that apply to you, we have done a couple of things. This last filing season we did an ATM calculator or tool on our Web site where you could go in, and it would walk you through, do you need to continue with the form.

The interesting thing, and I think it was mentioned in the earlier testimony, we do have more and more taxpayers—not only individual taxpayers, small business taxpayers—that are using the commercial software. Even if they are not going to a paid return preparer, they are loading the software, coming on and using our free-file process. And that, in and of itself, seems to be changing the dynamic of return prep and what causes the burden on the forms because there is that automated calculator involved.

In fact, an interesting statistic, in 2005, roughly 88 percent of taxpayers and return preparers combined were using some form of commercial software to do automatic calculations.

Now, to get to your point, that doesn't take the sting out of owing the tax, but the use of the software we do believe assists in the computations.

Mr. LYNCH. I guess the nature of my question was a little bit different.

The continual encroachment of the AMT capturing more and more people each year—and I don't expect you to just spit it out. If you could get that information to us, I would like to see what the impact of that is, because obviously we're looking at giving

some relief to the alternative minimum tax, and that would be one more argument that we could make.

Ms. TUCKER. Absolutely. We'd be glad to.

Mr. LYNCH. Thank you. I yield back.

Mrs. MILLER. Mr. Waxman.

Mr. WAXMAN. Thank you very much. Madam Chair, I want to start by noting that in 2004 I asked my staff to examine what the President had said on paperwork reduction and to compare it to what actually has happened under his administration.

The resulting report showed that President Bush's rhetoric about reducing government paperwork was directly at odds with his actions. Now it's 2 years later; the President is still talking about reducing government paperwork, and the amount of time that Americans are spending on government paperwork is still rising. In fact, we've updated our report and found that government red tape has exploded over the last 5 years.

The reality is that this year, according to the administration's own reports, Americans will spend over 1 billion more hours filling out paperwork than when President Bush took office. The total number of hours that will be spent this year on completing government paperwork is 8.7 billion. That's an enormous number. What it means is that the average American adult will spend almost 40 hours at home and at work completing government paperwork.

Our report shows the bulk of the paperwork increase is due to changes in the law that were proposed by this administration and were passed by Congress. The single biggest factor is the Medicare prescription drug bill. The new drug program is so convoluted and complicated that it is adding 10 hours of government red tape for every person enrolled in the Medicare drug plan.

These enormous paperwork burdens were totally unnecessary. When the drug bill was passed, the simplest thing we could have done would have been to have the Medicare program run the benefit just as it runs Medicare Part A and Part B. That would have saved seniors money, saved taxpayers money and greatly reduced government red tape.

OMB, which is an important part of the Bush administration, says that the Medicare drug benefit is adding 224 million hours of paperwork burdens, but I suspect that the government's official estimate of 224 million hours of paperwork, enormous though it is, is probably low. OMB assumes the best-case scenario, not the worst-case that millions of seniors have experienced.

I would like to ask you, Mr. Aitken from OIRA, to talk a little bit about your estimates of the increased paperwork burden caused by the new Medicare drug benefit. Your numbers show for HHS the total agency-wide paperwork burden was about 277 million hours per year before the Medicare prescription drug plan went into effect. Your numbers also show that the drug benefit will add over 229 million hours of paperwork by the end of this year, with almost all of those hours falling under HHS.

This means that the drug benefit will nearly double the total HHS paperwork burden; is that correct?

Mr. AITKEN. I would have to review the numbers in terms of the base, but that is approximately the numbers in terms of the increase.

Mr. WAXMAN. It's really truly an astonishing number. That means that the drug benefit alone is causing more work for Americans than the rest of the Medicare program, Parts A and B, the entire Medicaid program and the agencies, like FDA, combined.

Because of the structure of the benefit, I can think of at least three different groups who will be hit by the paperwork burden: first, Medicare beneficiaries, who must take the time to sift through all the complicated options; second, the private plans, who must track enrollment and report to the Medicare program; and third, the Medicare program itself, which must keep track of the relationship between the plans and the beneficiaries.

Can you provide me with a sense of how the paperwork burden is impacting each of these groups, and can you provide us with any perspective on how Medicare Part D paperwork compares to the paperwork burden for other parts of Medicare.

If you don't have the answer off the top of your head, we'll give you an opportunity to provide it for the record. But do you have anything to add now?

Mr. AITKEN. The one thing I would want to clarify, and I don't know the details in terms of the particular impact, but that the burden of the 220 million burden increase was largely a one-time ramp-up establishment of this very big, new program in the last 40 years. The estimate for fiscal year 2006 is, I believe, around 5 million, something like that; the ICB has the numbers. That reflects more once the program is in place, what are the kinds of annual burdens.

And so in terms of the HHS inventory, that one-time substantiation increase for fiscal year 2004 will not be representative of the future years. In fact, it will go down much more so that it's not such a large increase over the long run.

Mr. WAXMAN. We hope that may be the case, but on the other hand, when next year comes, people start all over again. They'll look at their plan, see whether their drugs are still going to be included in that plan, find out that they fell into the doughnut hole, look for a plan that will help keep them out of that doughnut hole. And they may well look for plans that have other drugs that come on during the course of the year.

And the whole premise of the structure of this Medicare Part D was that people will shop, and if they're going to shop, that means they are going to have to go through the process of evaluating the plans. If they don't shop, then it seems to me that it's a clear renunciation of the whole philosophy, because I don't see the market, to start with, to hold down drug costs by comparing plans. But if people give up on comparing plans, then there is no real argument to make that the competition is going to pull down costs; and so far, I don't think the competition has brought down costs at all.

Do you want to comment on that?

Mr. AITKEN. Just briefly.

I believe that—and I would need to confirm and get back to the subcommittee on this—that a significant portion of the first-year burden in establishing this program fell also on the plans that provided the insurance to the seniors and that a substantial portion of that burden would not be continuing burden, but would be a one-time need to establish systems and so forth.

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

Mrs. MILLER. Thank you. And I appreciate the questions. We have had several rounds of questions, talked about the Medicare Part D extensively.

It is interesting to note that premiums for the plan originally were anticipated to be $37 a month, and now we find, because of the competition, the average premium is about $24 a month. So actually the marketplace is working as was anticipated. It's going to be a fantastic program particularly for low-income seniors as well.

With that, I'll excuse the first panel. We certainly appreciate your attendance today and your participation as well.

We'll take a brief recess while we seat our second panel.

Call the committee back to order. If you could all please rise, please.

[Witnesses sworn.]

Mrs. Miller. Thank you very much. Our first witness this afternoon—our next witness, I should say, of this panel is a very frequent visitor to our subcommittee and we welcome her back again and that's Linda Koontz. She's the Director of Information Management at GAO. She is responsible for issues concerning the collection and the dissemination of government information. She also has lead responsibility for information technology management issues at various agencies, including Department of Veterans Affairs, Housing and Urban Development and the Social Security Administration as well. So Ms. Koontz, we welcome you back to the subcommittee and look forward to your testimony, ma'am.

STATEMENTS OF LINDA D. KOONTZ, DIRECTOR OF INFORMATION MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE; ANDREW LANGER, MANAGER, REGULATORY POLICY, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; AND ROBERT HAYES, PRESIDENT, MEDICARE RIGHTS CENTER

STATEMENT OF LINDA D. KOONTZ

Ms. KOONTZ. Thank you, Madam Chairman, and members of the subcommittee. Thank you for inviting me here today to participate in the subcommittee's hearings on evaluating paperwork reduction efforts in the Federal Government.

As you know, in its annual report on implementation of the Paperwork Reduction Act, OMB reports that paperwork burden grew in fiscal 2005 and is expected to increase further in 2006. According to the estimates that OMB collected, the total burden imposed by Federal information collections increased by 441 million hours for a governmentwide total burden of 8.1 billion. This is an increase of about 5.5 percent from last year's total. OMB reports that nearly all this increase, about 95 percent, resulted from the implementation of new laws. The new law having the greatest impact on burden was the one establishing voluntary prescription drug coverage under Medicare. Implementation of that law resulted in about 224 million hours of additional burden. The rest of the increase came mostly from adjustments to the estimates. Adjustments are changes, for example, in estimation methods or the size of the population responding to an information collection, which result from external factors rather than from deliberate Federal ac-

tion. All told, adjustments accounted for a net increase in the burden of about 19 million hours.

Looking ahead to fiscal year 2006, OMB expects an increase of about 250 million hours because of the new model for estimating burden being implemented by the IRS. According to OMB, this expected rise does not reflect any real changes on the burden on taxpayers but only in how IRS estimates it. IRS and OMB believe this new statistical model will improve the accuracy and transparency of future taxpayer burden estimates.

One means of reducing burden established in the PRA is the requirement for agency chief information officers to review and certify information collections to ensure that they impose minimum burden and produce maximum utility. However, as we reported in 2005, the CIO reviews were not always rigorous. Our case study showed that CIOs provide certifications despite missing or inadequate support from the program offices sponsoring the collections. Numerous factors have contributed to these problems, including weaknesses in OMB guidance and a lack of management support and priority given by the agencies.

In our report we recommended that OMB strengthen its guidance and the four agencies we reviewed make changes to their processes. OMB and the agencies have all taken action to partially address these recommendations, but we believe more needs to be done to establish the kind of rigorous review process that the Congress envisioned in drafting the PRA.

At agencies that have given their information collections increased priority, we have seen promising results. IRS and the Environmental Protection Agency have set up alternative processes to specifically focus on reducing burden. These agencies' missions involve numerous information collections and they have devoted significant resources to targeted burden reduction efforts involving extensive outreach to stakeholders. According to the two agencies, these efforts have led to significant reductions in paperwork burden on the public. This is in contrast to the CIO process which in our case studies did not lead to reduced burden.

I think we all recognize that achieving true burden reduction is a great challenge for the government. As we have seen both in this year's PRA report and over the years, the tendency is for burden to rise unless we take active steps to reduce it. This is why we believe it's important to look for new ways to achieve the goals of the PRA.

In our 2005 report we suggested that Congress consider mandating pilot projects to target some collections for rigorous analysis along the IRS and EPA approaches. I will note, however, while these targeted approaches appear promising, they cannot be considered an easy or quick fix. Such an approach would likely be more resource intensive than the current process and might not be warranted at all agencies that do not have the level of paperwork issues that face IRS and similar agencies.

Further, the experience of EPA and IRS suggests that success requires top level executive commitment, extensive involvement and program office staff with appropriate expertise and aggressive outreach to stakeholders.

Madam Chairman, that conclusion my statement. I would be happy to answer questions at the appropriate time.

[The prepared statement of Ms. Koontz follows:]

United States Government Accountability Office

GAO

Testimony

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

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PAPERWORK REDUCTION ACT

Increase in Estimated Burden Hours Highlights Need for New Approach

Statement of Linda D. Koontz, Director
Information Management

GAO-06-974T

GAO
Accountability • Integrity • Reliability
Highlights

Highlights of GAO-06-974T, a testimony before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives

Why GAO Did This Study

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

GAO was asked to testify on OMB's burden report for 2005 and on a previous study of PRA implementation (GAO-05-424), which focused on the CIO review and certification processes and described alternative processes that two agencies have used to minimize paperwork burden. To prepare this testimony, GAO reviewed the current burden report and its past work in this area. For its 2005 study, GAO reviewed a governmentwide sample of collections, reviewed processes and collections at four agencies that account for a large proportion of burden, and performed case studies of 12 approved collections at the four agencies.

www.gao.gov/cgi-bin/getrpt?GAO-06-974T.

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

July 18, 2006

PAPERWORK REDUCTION ACT

Increase in Estimated Burden Hours Highlights Need for New Approach

What GAO Found

After 2 years of slight declines, OMB reports that paperwork burden grew in fiscal year 2005 and is expected to increase further in fiscal year 2006. Estimates in OMB's annual report to Congress show that the total paperwork burden imposed by federal information collections increased last year to about 8.4 billion hours—an increase of 5.5 percent from the previous year's total of about 8.0 billion hours. Nearly all this increase resulted from the implementation of new laws (for example, about 224 million hours were due to the implementation of voluntary prescription drug coverage under Medicare). The rest of the increase came mostly from adjustments to the estimates due to such factors as changes in estimation methods and in the numbers of respondents. Looking ahead to fiscal year 2006, OMB expects an increase of about 250 million hours because of a new model for estimating burden being implemented by the Internal Revenue Service (IRS). According to OMB, this expected rise does not reflect any real change in the burden on taxpayers, but only in how IRS estimates it.

The PRA requires that CIOs review information collections and certify that they meet standards to minimize burden and maximize utility; however, these reviews were not always rigorous, reducing assurance that these standards were met. In 12 case studies at four agencies, GAO determined that CIOs certified collections proposed by program offices despite missing or inadequate support. Providing support for certifications is a CIO responsibility under the PRA, but agency files contained little evidence that CIO reviewers had made efforts to improve the support offered by program offices. Numerous factors contributed to these problems, including a lack of management attention and weaknesses in OMB guidance. Based on its review, GAO recommended (among other things) that agencies strengthen the support provided for certifications and that OMB update its guidance to clarify and emphasize this requirement. Since GAO's study was issued, the four agencies have reported taking steps to strengthen their support for CIO certifications, such as providing additional resources and guidance for the process, and OMB has updated parts of its guidance.

In contrast to the CIO review process, which did not lead to reduced paperwork burden in GAO's 12 case studies, IRS and the Environmental Protection Agency (EPA) have set up alternative processes specifically focused on reducing burden. These agencies, whose missions involve numerous information collections, have devoted significant resources to targeted burden reduction efforts that involve extensive outreach to stakeholders. According to the two agencies, these efforts have led to significant reductions in paperwork burden on the public. In light of these promising results, the weaknesses in the current CIO review process, and the persistent increases in burden, a new approach to burden reduction appears warranted. GAO suggested that Congress should consider mandating pilot projects to target some collections for rigorous analysis along the lines of the IRS and EPA approaches.

Madam Chairman and Members of the Subcommittee:

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

As you requested, I will begin by discussing the estimates of government paperwork burden provided in the annual PRA report (known as the Information Collection Budget) that OMB recently released, which presents federal agencies' estimates of federal paperwork burden as of the end of fiscal year 2005. I will also discuss results from a May 2005 report[2] that we issued on PRA processes and compliance, concentrating on our findings regarding agencies' processes to certify that information collections meet PRA standards and on alternative processes that two agencies have used to minimize the paperwork burden.

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

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

In preparing this testimony, we reviewed prior work and analyzed OMB and other documents. For our discussion of the Information Collection Budget, we examined the current OMB report as well as our reviews of previous annual PRA reports.[3] For our discussion of the certification process, we drew on our May 2005 report, for which we performed detailed reviews of paperwork clearance processes and collections at four agencies: the Departments of Veterans Affairs (VA), Housing and Urban Development (HUD), and Labor and the Internal Revenue Service (IRS). Together, these four agencies represent a broad range of paperwork burden, and in 2004, they accounted for about 82 percent of the almost 8 billion hours of estimated paperwork burden for all federal agencies. Of this total, IRS alone accounted for about 80 percent.[4] We also selected 12 approved collections as case studies (three at each of the four agencies) to determine how effective agency processes were. In addition, we analyzed a random sample (343) of all OMB-approved collections governmentwide as of May 2004 (8,211 collections at 68 agencies) to determine compliance with the act's requirements regarding agency certification of the 10 standards and consultation with the public. We designed the random sample so that we could determine compliance levels at the four agencies and governmentwide. Finally, although the Environmental Protection Agency (EPA) was not one of the agencies whose processes we reviewed, we analyzed documents and interviewed officials concerning the agency's efforts to reduce the paperwork burden of its information collections. Further details on our scope and methodology are provided in the report. All work on which this testimony is based was performed in accordance with generally accepted government auditing standards.

[3]For our most recent testimony on this subject, see GAO, *Paperwork Reduction Act: New Approaches Can Strengthen Information Collection and Reduce Burden*, GAO-06-477T (Washington, D.C.: Mar. 8, 2006).

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

Results in Brief

After 2 years of slight declines, the total paperwork burden imposed by federal information collections increased in fiscal year 2005 and is projected to increase again in fiscal year 2006, according to estimates provided in OMB's July 2006 annual PRA report to Congress. The estimated total burden for fiscal year 2005 was 8.4 billion hours, which is an increase of 5.5 percent (441 million burden hours) from the previous year's total of 8.0 billion hours. Nearly all this increase is the result of the implementation of new statutes. For example, there was an increase of about 224 million hours from the implementation of voluntary prescription drug coverage under Medicare. In addition, adjustments to the estimates (from such factors as changes in estimation methods and the population of respondents) accounted for a net increase in the burden of about 19 million hours, and agency discretionary program changes led to a net increase of 180,000 hours. With regard to PRA violations (information collections that did not have OMB approval or for which that approval had expired), OMB reports that fewer occurred in fiscal year 2005 than previously, for a total of 97 violations. OMB also stated in this year's report that IRS began using a new statistical model in fiscal year 2006 that will improve the accuracy and transparency of future taxpayer burden estimates. Using this new model is expected to result in an increase of 250 million hours in the burden estimate that IRS will report for next year. However, according to OMB, this expected rise does not reflect any real change in the burden on taxpayers, but only in how IRS estimates the paperwork burden.

The PRA requires that CIOs review information collections and certify that they meet standards to minimize burden and maximize utility; however, these reviews were not always rigorous. As we reported in 2005, agency CIOs generally reviewed information collections before they were submitted to OMB and certified that the required standards in the act were met. However, our review of 12 case studies showed that CIOs provided these certifications despite missing or inadequate support from the program offices sponsoring the collections. Further, although the law requires CIOs to provide support for certifications, agency files contained little

evidence that CIO reviewers had made efforts to improve the support offered by program offices. Numerous factors have contributed to these problems, including a lack of management support and weaknesses in OMB guidance. Because these reviews were not rigorous, OMB, the agency, and the public have reduced assurance that the standards in the act—such as avoiding duplication and minimizing burden—were consistently met.

In contrast, our May 2005 report discussed how IRS and EPA have used additional evaluative processes that focus specifically on reducing burden. These processes are targeted, resource-intensive efforts that involve extensive outreach to stakeholders. According to these agencies, their processes led to significant reductions in burden on the public while maximizing the utility of the information collections. For example, in this year's PRA report, OMB cites a decrease of about 19 million hours from streamlining IRS's Form 1041 to make it easier and faster to understand and file.

In our report, we recommended that OMB and agencies take steps to improve review processes and compliance with the act. We also suggested that Congress should consider mandating pilot projects to target some collections for rigorous analysis along the lines of the approaches used by IRS and EPA. OMB and the agencies agreed with most of the recommendations. Since our study was issued, the four agencies have reported taking steps to strengthen their support for CIO certifications, such as providing additional resources and guidance for the process, and OMB has updated parts of its guidance to agencies. However, the updated guidance is not aimed at all information collections, but rather at conducting surveys that are used for general-purpose statistics or as part of program evaluations or research studies.[5] In addition, it does not provide clear guidance on one of the topics mentioned in our recommendation: determining whether small entities are affected by a collection and reducing reporting burden on these entities.

[5] The updated guidance is focused on surveys and statistical information collections, but it includes some general PRA requirements applicable to any information collection, namely, general information on submissions to OMB and the scope of the definition of *information collection* (explaining, for example, that focus groups are included).

Background

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

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

Under PRA, federal agencies may not conduct or sponsor the collection of information unless approved by OMB; information collections for which OMB approval is expired or missing are considered violations of the PRA. Before approving collections, OMB is required to determine that the agency's collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.[6] Consistent with the act's requirements, OMB has established a process to review all proposals by executive branch agencies (including independent regulatory agencies) to collect information from 10 or more persons, whether the collections are voluntary or mandatory.

In addition, the act as amended in 1995 requires every agency to establish a process under the official responsible for the act's

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

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

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

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

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

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

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

In addition, the original PRA of 1980 (section 3514(a)) requires OMB to keep Congress "fully and currently informed" of the major activities under the act and to submit a report to Congress at least annually on those activities. Under the 1995 amendments, this report must include, among other things, a list of any increases in burden. To satisfy this requirement, OMB prepares the annual PRA report, which reports on agency actions during the previous fiscal year, including changes in agencies' burden-hour estimates as well as violations of the PRA.

The 1995 PRA amendments also required OMB to set specific goals for reducing burden from the level it had reached in 1995: at least a 10 percent reduction in the governmentwide burden-hour estimate for each of fiscal years 1996 and 1997, a 5 percent governmentwide burden reduction goal in each of the next 4 fiscal years, and annual agency goals that reduce burden to the "maximum practicable opportunity." At the end of fiscal year 1995, federal agencies estimated that their information collections imposed about 7 billion burden hours on the public. Thus, for these reduction goals to be

met, the burden-hour estimate would have had to decrease by about 35 percent, to about 4.6 billion hours, by September 30, 2001. In fact, on that date, the federal paperwork estimate had increased by about 9 percent, to 7.6 billion burden hours.

Over the years, we have reported on the implementation of PRA many times.[9] In a succession of reports and testimonies, we noted that federal paperwork burden estimates generally continued to increase, rather than decrease as envisioned by the burden reduction goals in PRA. Further, we reported that some burden reduction claims were overstated. For example, although some reported paperwork reductions reflected substantive program changes, others were revisions to agencies' previous burden estimates and, therefore, would have no effect on the paperwork burden felt by the public. In our previous work, we also repeatedly pointed out ways that OMB and agencies could do more to ensure compliance with PRA. In particular, we have often recommended that OMB and agencies take actions to improve the paperwork clearance process.

Estimated Paperwork Burden Increased in 2005

After 2 years of slight declines, OMB reports that burden hours increased in fiscal year 2005 and are expected to increase again in fiscal year 2006. According to OMB's most recent PRA report to Congress, the estimated total burden hours imposed by government information collections in fiscal year 2005 was 8.4 billion hours; this is an increase of 441 million burden hours (5.5 percent) from the previous year's total of 8.0 billion hours. It is also almost a billion and a half hours larger than it was in 1995 and 3.8 billion larger than the PRA target for the end of fiscal year 2001 (4.6 billion burden hours). OMB's report also states that burden will increase in fiscal year 2006 by an estimated 303 million hours to about 8.7 billion hours; however, according to OMB, most of this projected increase (250 million hours or 83 percent) is attributable to a new method of estimating burden that is being implemented by IRS, rather than to

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

any increase in the actual burden. Finally, according to OMB, fewer violations of the act were reported than in previous years.

Changes in Paperwork Burden Estimates Can Be Attributed to Various Causes

Changes in paperwork burden estimates result from several causes, which OMB assigns to two main categories. OMB classifies all changes—either increases or decreases—in agencies' burden-hour estimates as either *program changes* or *adjustments*.

- *Program changes* are the result of deliberate federal government action (e.g., the addition or deletion of questions on a form); these can occur as a result of
  - new statutes,
  - agency-initiated actions, or
  - the expiration or reinstatement of OMB-approved collections.[10]
- *Adjustments* do not result from federal activities but from external factors. For example:
  - an agency may reestimate the burden associated with a collection of information, or
  - the population responding to a requirement may change—such as if the economy declines and more people complete applications for food stamps; the resulting increase in the Department of Agriculture's paperwork estimate is considered an adjustment because it is not the result of deliberate federal action.

As shown above, within the category of program changes, OMB distinguishes between changes due to new statutes and changes due to agency action, which it also refers to as agency discretionary actions. However, this term should not imply that agencies have no discretion in how they implement new statutes. A major goal of the PRA is to ensure that agencies consider how to make the burden of

[10] When an agency allows OMB approval of a collection to lapse but continues to collect the information, this is a violation of the PRA. However, the expired collection is accounted for as a decrease in burden. When the approval is reinstated, the reinstatement is accounted for as an increase in burden in OMB's accounting system. The lapse and reinstatement thus generally cancel each other out, unless the reinstatement involves changed burden estimates based on new analysis.

information collections, whether old or newly established, as small as possible. In the second part of my statement, I will address one of the ways set forth in the PRA to help achieve this goal.

Table 2 shows the changes in reported burden totals from fiscal year 2004 to fiscal year 2005.

Table 2: Changes in Governmentwide Reported Burden Totals by Category

In millions

	Change from fiscal year 2004 PRA report		
Category of change		**Hours**	**Percent**
Baseline: fiscal year 2004 total		7971.18	
Fiscal year 2005 program changes:		0	
Changes due to agency action	0.18	0	0.00
Changes due to new statutes	418.89	0	+5.26
Changes due to lapses in OMB approval	2.80	0	+0.04
Total program changes		422.00	+5.29
Fiscal year 2005 adjustments		19.14	+0.24
Fiscal year 2005 total		**8412.27**	**+5.53**

Source: OMB annual PRA report.

Note: Numbers do not add exactly because of rounding.

As the table shows, the change due to new statutes was by far the largest factor in the increase for fiscal year 2005. OMB reports that the statute having the largest impact on burden was the statute establishing voluntary prescription drug coverage under Medicare;[11] implementing the program mandated by this statute required the collection of significant amounts of information, leading to an increase in burden of 224 million hours.[12] An additional significant increase—about 116 million hours—resulted from the implementation by the Federal Communications Commission (FCC) of the CAN-SPAM Act, which requires disclosure of certain information contained in unsolicited commercial e-mails.

[11] The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173).

[12] The prescription drug program, which began on January 1, 2006, is also projected to result in an increase of about 5 million hours in fiscal year 2006.

In contrast to changes due to new statutes, changes due to agency action did not contribute significantly to the overall change in burden this year, adding 180,000 hours out of the total rise of 441 million. Although the overall result was a slight increase, agencies did take many actions that decreased burden; without these actions, the governmentwide increase would have been greater. The annual report does not list all these actions, but it does highlight actions that led to significant paperwork reductions and increases. (These include increases and decreases in burden from statutory requirements and miscellaneous agency actions, as well as burden reductions from changing regulations, cutting redundancy, changing forms, and using information technology.) From both an individual agency perspective and a governmentwide perspective, the relatively small increase due to agency action is the result of large increases and decreases that mostly offset each other:

- From an individual agency perspective, the net change in an agency's burden estimate is generally the result of disparate actions, some of which reduce burden and some of which increase it. An example is the IRS, which as an agency was responsible for a net decrease of about 3 million hours. Among the burden reductions that the annual report highlights are two IRS actions to change forms, both of which reduced burden by simplification and streamlining, for a reduction of about 19 million hours.[13] The ICB also reports that in January 2006 IRS completed an initiative to simplify the process of applying for an extension to file an income tax return, which is associated with a burden reduction of 8 million hours. Elsewhere, on the other hand, five IRS actions are highlighted that together resulted in an increase of about 24 million hours.[14] Examples of reasons IRS took these actions included increasing accuracy and improving the agency's ability to monitor compliance with the law.

[13] The two forms are Form 1041, U.S. Income Tax Return for Estates and Trusts and Form 8879, IRS e-file Signature Authorization.

[14] These actions were associated with Form 1120, U.S. Corporation Income Tax Return; Form 1023, Application for Recognition of Exemption; Form 4070, Employee's Report of Tips to Employer; Form 941, Employer's Quarterly Federal Tax Return; and Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.

- Similarly, from a governmentwide perspective, the overall change is the result of some agencies whose actions produced a net decrease and others whose produced a net decrease. In fiscal year 2005, agencies with net decreases produced a reduction of about 14.02 million hours. This reduction was offset, however, by agencies with net increases, which totaled about 14.20 million hours.

Compared to program changes as a whole, adjustments to the estimates were a relatively small factor (as table 2 also shows), accounting for a net increase in the burden of about 19 million hours. In previous years, adjustments have had a much greater impact and have tended to decrease overall burden estimates, thus masking the effect of increases from program changes. In fiscal years 2003 and 2004, the impact of adjustments was large enough to lead to overall burden estimates that were lower than for the year before. In fiscal year 2004, OMB reported a decrease of about 156 million hours in adjustments versus an increase of about 29 million hours in program changes; the result was a lower overall burden estimate than for the previous year. Similarly, overall burden in fiscal year 2003 was slightly less than in fiscal year 2002, also as a result of a decrease in adjustments (about 182 million hours) that more than offset an increase in program changes (about 72 million hours).

Besides these large decreases due to adjustments, another reason for the slight decrease in total burden in fiscal years 2004 and 2003 was that increases due to program changes were relatively small, as shown in table 3. This year, both program changes and adjustments went up, so adjustments did not have the effect of masking increases in program changes. As the table also shows, fiscal year 2005 saw the largest net increase from program changes since 1998.

Table 3: Increases in Burden Hours Due to Program Changes between Fiscal Years 1998 and 2005

In millions

Fiscal year	Total governmentwide burden-hour estimate	Net increase in burden hours due to program changes
2005	8,412.3	422.0
2004	7,971.2	28.5
2003	8,105.4	72.1
2002	8,223.2	294.1
2001	7,651.4	158.7
2000	7,361.0	188.0
1999	7,183.9	189.0
1998	6,951.1	41.1

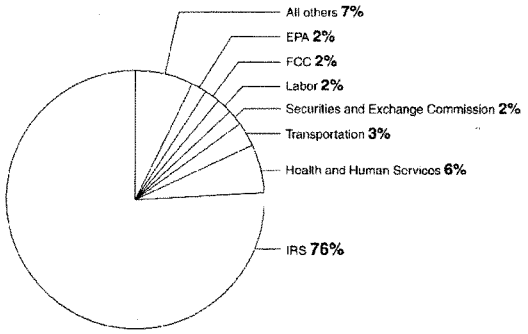
Source: OMB.

IRS Continues to Account for Largest Portion of Estimated Governmentwide Burden

In fiscal year 2005, IRS accounted for about 76 percent of the governmentwide paperwork burden: about 6.4 billion hours. As shown in figure 1, no other agency's estimate approaches this level. Six agencies had burden-hour estimates of 100 million hours or more (the Departments of Health and Human Services, Labor, and Transportation; EPA; FCC; and the Securities and Exchange Commission). Thus, as we have previously reported, changes in paperwork burden experienced by the federal government have been largely attributable to changes associated with IRS.[15]

[15]GAO, *Paperwork Reduction Act: Agencies' Paperwork Burden Estimates Due to Federal Actions Continue to Increase,* GAO-04-76T (Washington, D.C.: Apr. 20, 2004).

Figure 1: Distribution of Paperwork Burden among Agencies, Fiscal Year 2005



Source: Annual PRA report, OMB.

OMB reports that starting in fiscal year 2006, IRS began using a new methodology based on a statistical model—the Individual Taxpayer Burden Model—to estimate the reporting burden imposed on individual taxpayers. Among other things, this new model, which was developed to improve the accuracy and transparency of taxpayer burden estimates, reflects the major changes over the past two decades in the way that taxpayers prepare and file their returns, including the use of electronic preparation methods. According to OMB, rather than estimating burden on a form-by-form basis, the new methodology takes into account broader and more comprehensive taxpayer characteristics and activities, considering how the taxpayer prepares the return (e.g., with or without software or a paid preparer) as well as the taxpayer's activities, such as gathering tax materials, completing forms, recordkeeping, and tax planning. In contrast, the previous methodology primarily focused on the length and complexity of each tax form. OMB states that this new model will make it possible to estimate the burden implications of new legislative and administrative tax proposals.

OMB projects that these changes will create a one-time increase of about 250 million hours in the estimate of IRS burden levels in fiscal

year 2006. This increase represents most (83 percent) of the total projected governmentwide increase for fiscal year 2006 of 303 million hours. However, according to OMB, this increase does not reflect any change in the actual burden experienced by taxpayers, but rather a change in the way the burden is measured.

In the past, we reported that IRS's previous estimation model ignored important components of burden and had limited capabilities for analyzing the determinants of burden.[16] The new model is the result of work that IRS has performed over the past several years to improve its model and address these and other limitations. At this time, we have not analyzed IRS's new model to determine the extent to which it improves the accuracy of burden estimates, and we have not assessed the accuracy of the new model's estimates. However, IRS's efforts to increase the accuracy of its model appear to be an important step towards addressing the previous model's shortcomings.

These changes in IRS's estimation methodology highlight the importance, when trying to interpret the annual burden estimates, of bearing in mind their limitations. For more than 50 years, the "burden hour" has been the principal unit of paperwork burden and has been accepted by agencies and the public because it is a clear, easy-to-understand concept. But as IRS's efforts show, burden-hour estimates are not a simple matter. The degree to which agency burden-hour estimates reflect real burden is unclear. It is challenging to estimate the amount of time it will take for a respondent to collect and provide information or to estimate how many individuals an information collection will affect.[17] In addition, like all estimates, paperwork burden estimates are not precise; changes from year to year, particularly small ones, may not be meaningful. However, as long as the limitations are clearly

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

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

understood, these estimates can be useful as the best indicators of paperwork burden available.

Fewer Violations Reported in Fiscal Year 2005

OMB reports reductions in PRA violations for fiscal year 2005 compared to previous years. The PRA prohibits an agency from conducting or sponsoring the collection of information unless (1) the agency has submitted the proposed collection to OMB, (2) OMB has approved the proposed collection, and (3) the agency displays an OMB control number on the collection. According to OMB's annual report, agencies have made great progress in recent years in reducing the number of violations of these conditions and in resolving them more promptly. OMB attributed this reduction to several initiatives it had taken, including meeting with agency officials to discuss ways to reduce violations and adding reporting requirements.

According to OMB, during fiscal year 2005, agencies reported a total of 97 violations: 60 information collections that expired during the year, and another 37 that had expired before October 1, 2004, and were not reinstated until fiscal year 2005. Of the 27 agencies included in the annual report, the three agencies with the greatest number of violations were the Departments of the Treasury and Homeland Security and the Small Business Administration. In addition, OMB reported no unresolved violations at the end of fiscal year 2005 and only 6 violations during the first 8 months of fiscal year 2006. The 97 violations reported in fiscal year 2005 is much less than the 164 violations in fiscal year 2004 and the 223 violations in fiscal year 2003.

Although the reduction in violations is a positive trend, we should note that the violations reported may not be comprehensive; they include only those that agencies identified and reported to OMB. As a result, the statistics would omit violations of which agencies were unaware. In our May 2005 review, we examined forms posted on Web sites for four agencies (VA, HUD, Labor, and IRS). We found examples of violations among these forms of which the agencies

were generally unaware.[18] Based on our examination, we projected that the four agencies overall had an estimated 69 violations: 61 collections in use without OMB approval and 8 expired collections. For example, we estimated 16 violations at VA; at that time, OMB's report reflected VA's belief that it had no violations. Based on these results, we recommended that the four agencies periodically review their Web sites to ensure that all forms comply with PRA requirements; we also recommended that OMB alter its guidance so that all federal agencies would be required to periodically review Web sites in this way. Since then, VA has reported to us that it removed forms from its Web site that were in violation of PRA. However, OMB has not yet issued governmentwide guidance directing these types of reviews, so it is possible that some PRA violations remain undetected.

Agency Processes for Reviewing Information Collections Were Not Effective

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

The four agencies that we reviewed for our May 2005 report all had written directives that implemented the review requirements in the act, including the requirement for CIOs to certify that the 10 standards in the act were met. However, in the 12 case studies that

[18]We examined all the forms that we could locate on the VA and Labor Web sites and examined a stratified random probability sample of forms on the IRS and HUD Web sites. We randomly selected 119 forms from the 492 on the IRS Web site and selected a stratified random sample of 253 forms from the 423 on the HUD Web site. With these probability samples, each form in the population had a known and nonzero probability of being selected. Each sampled form was subsequently weighted in the analysis to account statistically for all the members of the population, including those that were not selected.

we reviewed, this CIO certification occurred despite a lack of rigorous support that all standards were met. Specifically, the support for certification was missing or partial on 65 percent (66 of 101) of the certifications.[19] Table 4 shows the result of our analysis of the case studies.

Table 4: Support Provided by Agencies for Paperwork Reduction Act Standards in 12 Case Studies

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

Sources: Paperwork Reduction Act, GAO.

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

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

Under one of the standards mandated by the act, CIOs are required to certify that each information collection is not unnecessarily duplicative. According to OMB instructions, agencies are to (1) describe efforts to identify duplication and (2) show specifically why any similar information already available cannot be used or

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

modified for the purpose described. In 2 of 11 cases, agencies provided the description requested, and in an additional 2 cases, partial support was provided.[20] In 7 cases, support for these certifications was missing. An example of missing support is the following statement, used on all three IRS collections:

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

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

A second standard mandated by the act is that each information collection should reduce burden on the public, including small entities,[21] to the extent practicable and appropriate. OMB guidance emphasizes that agencies are to demonstrate that they have taken every reasonable step to ensure that a given collection of information is the least burdensome necessary for the proper performance of agency functions. In addition, OMB instructions and guidance direct agencies to provide specific information and justifications: (1) estimates of the hour and cost burden of the collections and (2) justifications for any collection that requires respondents to report more often than quarterly, respond in fewer than 30 days, or provide more than an original and two copies of documentation.

With regard to small entities, OMB guidance states that the standard emphasizes such entities because these often have limited resources

[20] The following is an example of support that we judged to be partial: for one collection, the agency described how it attempted to identify duplicative sources, but it did not discuss why information from other sources could not be used, at least in part, to satisfy the needs of the collection.

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

to comply with information collections.[22] The act and OMB guidance give various techniques for reducing burden on these small entities.[23]

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

In addition, four of our case studies did not provide complete information that would support certification that the collection specifically addressed reducing burden for small entities.[24] Specifically, 7 of the 12 case studies involved collections that were reported to impact businesses or other for-profit entities, but the files for 4 of these 7 did not explain either

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

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

[23]Techniques give in the act include (a) establishing different compliance or reporting requirements or timetables for respondents with fewer available resources; (b) clarifying, consolidating, or simplifying compliance and reporting requirements; and (c) exempting certain respondents from coverage of all or part of the collection. OMB guidance gives techniques that might be used to simplify requirements for small entities, such as asking fewer questions, taking smaller samples than for larger entities, and requiring small entities to provide information less frequently.

[24]In our governmentwide sample, some agencies did cite activities that are consistent with this standard, such as exempting certain small businesses and providing assistance to small businesses and other small entities.

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

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

The lack of support for the 10 certifications required by the act appeared to be influenced by a variety of factors. In some cases, as described above, OMB guidance and instructions were not comprehensive or entirely accurate. In the case of the duplication standard specifically, IRS officials said that the agency did not need to further justify that its collections are not duplicative because (1) tax data are not collected by other agencies, so there is no need for the agency to contact them about proposed collections, and (2) IRS has an effective internal process for coordinating proposed forms among the agency's various organizations that may have similar information. Nonetheless, the law and instructions require support for these assertions, which was not provided.

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

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

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

IRS and EPA have supplemented the standard PRA review process with additional processes aimed at reducing the burden while maximizing the public benefit and utility of the information collected. These agencies' missions require them both to deal extensively with information collections, and their management has made reduction of burden a priority.[25]

In January 2002, the IRS Commissioner established an Office of Taxpayer Burden Reduction, which includes both permanently assigned staff and staff temporarily detailed from program offices that are responsible for particular information collections. This office chooses a few forms each year that are judged to have the greatest potential for burden reduction (these forms have already been reviewed and approved through the CIO process). The office evaluates and prioritizes burden reduction initiatives by

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

Once the forms are chosen, the office performs highly detailed, in-depth analyses, including extensive outreach to the public affected,

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

users of the information within and outside the agency, and other stakeholders. This analysis includes an examination of the need for each data element requested. In addition, the office thoroughly reviews form design.[26]

The office's director[27] heads a Taxpayer Burden Reduction Council, which serves as a forum for achieving taxpayer burden reduction throughout IRS. IRS reports that as many as 100 staff across IRS and other agencies can be involved in burden reduction initiatives, including other federal agencies, state agencies, tax practitioner groups, taxpayer advocacy panels, and groups representing the small business community.

The council directs its efforts in five major areas:

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

According to IRS, this targeted, resource-intensive process has achieved significant reductions in burden. For example, it reported that about 95 million hours of taxpayer burden were reduced through increases in the income reporting threshold on various IRS schedules.[28] Another example, mentioned earlier, was given in OMB's latest annual PRA report: in January 2006 IRS completed an

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

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

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

initiative to simplify the process of applying for an extension to file an income tax return, which is associated with a burden reduction of 8 million hours.[29] Another example from the annual PRA report is a reduction of about 19 million hours from a redesign of IRS form 1041 to streamline the requirements and make it easier to read and file.

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

According to these officials, the CIO staff are not generally closely involved in burden reduction initiatives, because they do not have sufficient technical program expertise and cannot devote the extensive time required.[30] Instead, these officials said that the CIO staff's focus is on fostering high awareness within the agency of the requirements associated with information collections, educating and training the program office staff on the need to minimize burden and the impact on respondents, providing an agencywide perspective on information collections to help avoid duplication, managing the clearance process for agency information collections, and acting as liaison between program offices and OMB during the clearance process. To help program offices consider PRA requirements such as burden reduction and avoiding duplication as they are developing new information collections or working on reauthorizing existing

[29]We did not verify the accuracy of IRS's reported burden-hour savings. As discussed earlier, IRS's revision to the methodology that it uses to compute burden is expected to result in different estimates of burden hours and burden-hour savings.

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

collections, the CIO staff also developed a handbook[31] to help program staff understand what they need to do to comply with PRA and gain OMB approval.

In addition, program offices at EPA have taken on burden reduction initiatives that are highly detailed and lengthy (sometimes lasting years) and that involve extensive consultation with stakeholders (including entities that supply the information, citizens groups, information users and technical experts in the agency and elsewhere, and state and local governments). For example, EPA reported that it amended its regulations to reduce the paperwork burden imposed under the Resource Conservation and Recovery Act. One burden reduction method EPA used was to establish higher thresholds for small businesses to report information required under the act. EPA estimated that the initiative will reduce burden by 350,000 hours and save $22 million annually. Another example is an ongoing EPA initiative reported in this year's PRA report, the Central Data Exchange; this is an e-government initiative that is designed to enable fast, efficient, and more accurate environmental data submissions and exchange from state and local governments, industry, and tribes through the use of electronic reporting procedures. The estimated reduction for this initiative, which is expected to be complete in 2008, is 166,000 hours.

Overall, EPA and IRS reported that they have produced significant reductions in paperwork burden by making a commitment to this goal and dedicating resources to it. In contrast, for the 12 information collections we examined, the CIO review process resulted in no reduction in burden. Further, the Department of Labor reported that its PRA reviews of 175 proposed collections over nearly 2 years did not reduce burden.[32] Similarly, both IRS and EPA addressed information collections that had undergone CIO

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

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

review and received OMB approval and nonetheless found significant opportunities to reduce the paperwork burden.

Agencies Could Strengthen PRA Review and Try Alternative Approaches to Reducing Burden

In our 2005 report, we concluded that the CIO review process was not working as Congress intended: It did not result in a rigorous examination of the burden imposed by information collections, and it did not lead to reductions in burden. In light of these findings, we suggested options that Congress might want to consider when it next reauthorizes the act, including mandating pilot projects to test and review alternative approaches to achieving PRA goals. Such pilot projects could build on the lessons learned at IRS and EPA, which have used a variety of approaches to reducing burden, sharing information (for example, by facilitating cross-agency information exchanges), standardizing data for multiple uses, and integrating data to avoid duplication; and re-engineering work flows. Pilot projects would be most appropriate for agencies for which information collections are a significant aspect of the mission.

In addition, we recommended (among other things) that agencies strengthen the support provided for CIO certifications and that OMB update its guidance to clarify and emphasize this requirement (including that agencies provide support showing that they have taken steps to reduce burden, determined whether small entities are affected and reduced reporting burden on them, and established a plan to manage and use the information to be collected, including the identification of necessary resources). OMB and the agencies agreed with most of the recommendations, although they disagreed with aspects of GAO's characterization of agencies' compliance with the act's requirements.[39]

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

[39]For example, OMB, the Treasury, and HUD disagreed with our finding that certain forms have been improperly treated as certifications and elections that are not subject to the PRA. Our view was and is that the forms in question did not properly fall into this category, because they entailed significant burden.

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

OMB has updated parts of its guidance and plans to incorporate other guidance into an automated system to be used by agencies submitting information collections for clearance. In January 2006, OMB revised its guidance to agencies on surveys and statistical information collections.[34] This guidance, among other things, is aimed at strengthening the support that agencies must provide for certifying collections, as we recommended. For example, the guidance requires agencies submitting requests for approval to include context and detail that will allow OMB to evaluate the practical utility of the information to be collected. However, this guidance does not apply to all information collections. Rather, it applies only to surveys that are used for general-purpose statistics or as part of program evaluations or research studies. In addition, it does not provide clear guidance on one of the topics mentioned in our recommendation: determining whether small entities are affected by the collection and reducing reporting burden on these entities.

[34] OMB, *Guidance to Agencies on Surveys and Statistical Information Collections*, (Washington, D.C.: Jan. 20, 2006).

OMB also reported that its guidance to agencies will be updated through a planned automated system that is to begin operating this month.[25] According to the former acting head of OMB's Office of Information and Regulatory Affairs, the new system will permit agencies to submit clearance requests electronically, and the instructions will provide clear guidance on the requirements for these submissions, including the support required. This official stated that OMB has worked with agency representatives with direct knowledge of the PRA clearance process in order to ensure that the system and its instructions clearly reflect the requirements of the process. If this system is implemented as described and OMB withholds clearance from submissions that lack adequate support, it could lead agencies to strengthen the support provided for their certifications.

In conclusion, Madam Chairman, the PRA puts in place mechanisms to focus agency attention on the need to minimize the burden that information collections impose—while maximizing the public benefit and utility of government information collections—but these mechanisms have not succeeded in achieving the ambitious reduction goals set forth in the 1995 amendments. Achieving real reductions in the paperwork burden is an elusive goal, as attested by years of OMB's annual PRA reports, including the latest. That report shows the largest rise in estimated burden for the last several years, mostly due to new statutory requirements and how they have been implemented. As we have seen, the tendency is for burden to rise unless agencies take active steps to reduce it. Agencies have taken such actions—by cutting redundancy, changing forms, and using information technology, among other things—but these have not been enough to make up for the increases.

Besides demonstrating once again how challenging it is for the government to achieve true burden reduction, this year's results

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

highlight the need to look for new ways to achieve this and the other goals of the PRA. Among the mechanisms already in place is the CIO review and certification process. However, as it was implemented at the time of our review, this process had limited effect on the quality of support provided for information collections, and it appeared to have no appreciable impact on burden.

The targeted approaches to burden reduction used by IRS and EPA appear promising, but the experience of these agencies suggests that success requires top-level executive commitment, extensive involvement of program office staff with appropriate expertise, and aggressive outreach to stakeholders. However, such an approach would probably also be more resource-intensive than the CIO certification process, and thus it may not be warranted at agencies where paperwork issues do not rise to the level of those at IRS and similar agencies. Consequently, it is critical that efforts to expand the use of the IRS and EPA models take these factors into consideration.

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

Contacts and Acknowledgments

For future information regarding this testimony, please contact Linda Koontz, Director, Information Management, at (202) 512-6420, or koontzl@gao.gov. Other individuals who made key contributions to this testimony were Barbara Collier, Nancy Glover, and Alan Stapleton.

Attachment 1. Related GAO Products

Paperwork Reduction Act: New Approaches Can Strengthen Information Collection and Reduce Burden. GAO-06-477T. Washington, D.C.: March 8, 2006.

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

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

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

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

Paperwork Reduction Act: Record Increase in Agencies' Burden Estimates. GAO-03-619T. Washington, D.C.: April 11, 2003.

Paperwork Reduction Act: Changes Needed to Annual Report. GAO-02-651R. Washington, D.C.: April 29, 2002.

Paperwork Reduction Act: Burden Increases and Violations Persist. GAO-02-598T. Washington, D.C.: April 11, 2002.

Information Resources Management: Comprehensive Strategic Plan Needed to Address Mounting Challenges. GAO-02-292. Washington, D.C.: February 22, 2002.

Paperwork Reduction Act: Burden Estimates Continue to Increase. GAO-01-648T. Washington, D.C.: April 24, 2001.

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

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

Paperwork Reduction Act: Burden Increases at IRS and Other Agencies. GAO/T-GGD-00-114. Washington, D.C.: April 12, 2000.

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

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

Paperwork Reduction Act: Burden Increases and Unauthorized Information Collections. GAO/T-GGD-99-78. Washington, D.C.: April 15, 1999.

Paperwork Reduction Act: Implementation at IRS. GAO/GGD-99-4. Washington, D.C.: November 16, 1998.

Regulatory Management: Implementation of Selected OMB Responsibilities Under the Paperwork Reduction Act. GAO/GGD-98-120. Washington, D.C.: July 9, 1998.

Paperwork Reduction: Information on OMB's and Agencies' Actions. GAO/GGD-97-143R. Washington, D.C.: June 25, 1997.

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

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

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

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

Mrs. MILLER. Thank you very much. I appreciate that. Our next witness is someone else that's no stranger to our committee here, and that is Andrew Langer. He is the manager of regulatory policy for the NFIB, National Federation of Independent Business, and his job is to protect the interests of small business in the face of ever-increasing burden from the Federal regulatory agencies. And we certainly appreciate your attendance here this afternoon, Mr. Langer, and the floor is yours, sir.

STATEMENT OF ANDREW LANGER

Mr. LANGER. Thank you. Thank you, Madam Chair and Ranking Member Lynch. It's a pleasure to be here once again. It's an honor, in fact, to be invited to testify before you once again on the subject of regulatory impacts on small business, specifically the burden that small businesses face from Federal paperwork.

I have to tell you, I've been in Washington for over a decade now, and like most people who have been in D.C. for a considerable amount of time, I have developed a certain blase attitude toward certain government reports. But every once in a while, something comes across my desk that is patently astonishing, something that simply takes my breath away. And so it was when I received the information collection budget several weeks ago from the White House. It, too, is fairly blase. And in fact, I think government reports have to be dispassioned no matter what information they have are conveying, but one cannot be blase about the basic facts being conveyed in this report.

It starts off with a simple enough precept. America's paperwork burden rose an unremarkable 5½ percent last year. Unremarkable, that is, until one realizes just what that is 5½ percent of. It's 5.5 of 8 billion hours. That's right, 8 billion with a B. 5½ percent or 1/20 of that, just about 1/20, is an astonishing 441 million hours. When I see a number like that, especially on a Friday afternoon, it sits with me for some time. I give it a lot of thought. And in this particular instance I pulled out the calculator. You see, several years ago, NFIB's research foundation did a study on paperwork, and after surveying small businesses we came to the conclusion that paperwork costs Americans just around $49 an hour, about $48.72 I think is the exact number. Some paperwork costs far more, some costs far less. Obviously it depends on the length, the complexity, the technical skills involved. But the average is around $49 an hour. So just looking at the average cost, just looking at it from the standpoint of these average costs at a macro level, paperwork cost Americans $410 billion last year. The increase alone was $20 billion.

Now, in my view, dealing with abstract numbers just doesn't help. Without context, it's hard to gauge numbers meaning. We can talk about 200 million hours here, you know, 100 million hours there, but really, let's put them in context, and let's put the costs in context. It's when we compare them to other things that we spend money on, we can see just how huge these numbers are. I had somebody in my office pull some of the numbers out of the Federal budget, and the results are startling.

Let's start with the low end of the spectrum, medical research. AIDS, we recognize that AIDS is an important thing to be re-

searching, that it's a serious medical threat, serious health threat. So worthy that the NIH's Office of AIDS Research had a dedicated budget of $2.9 billion. Again, you know, $410 billion here, $2.9 billion there. What about cancer? The entire budget of the National Cancer Institute at the National Institutes of Health pales in comparison to what we spend on paperwork, a paltry 1.4 percent or only $4 billion. Certainly though, Americans are spending far more on our most pressing public policy issue, that being the war on terror. Sure they are, just not in comparison to what must be our great public policy issue, making sure we fill out forms for the Federal Government.

The Department of Homeland Security's spending in 2005 was $40 billion. Americans spend 10 times more on paperwork. It's defense in the end that costs more than paperwork but not by much. DOD spent $475 billion in fiscal year 2005. Sadly, this is only 15 percent more than Americans spent on paperwork.

A system that hemorrhages resources on paperwork in this manner is doomed to collapse. One cannot—it cannot perpetuate itself, and it will eventually run out of steam. And while I know that some of my colleagues attempt to minimize this problem, even if we were to agree that the problem is a quarter of what it is, a system that focuses $100 billion each year on paperwork is not doing much better.

All the tools I have discussed previously in previous testimony to this committee are important. Fully funding OIRA, making sure that the Office of Advocacy remains secure, putting greater emphasis on reviewing regulations and the paperwork burden they impose, setting regulations that aren't reviewed, all of these are essential tools in getting a hand on the problem.

But one of the things I haven't touched on in the past is the role that Congress plays. Legislation is driven by constituent demands and is crafted in a fashion which can exacerbate this problem. Every time Congress passes a law which is vague and overly complex, it hands Federal agencies the tools with which to do much mischief. Vagueness gives us regulations where a dry land is magically transformed into navigable waters of the United States. Vagueness changes the pickup truck used for local landscaping into an interesting Federal motor carrier. Vagueness turns recycling into toxic releases. If agencies are given laws with holes big enough, they will drive trucks through them, holes that they will backfill with enough paperwork Americans simply cannot undig themselves.

I'd ask that as you consider how to deal with the agency's propagation of paperwork that you would also take time to consider how best to address Congress' role.

I see my time is running out. I would like to reiterate that what I had said in the past regarding the business gateway, NFIB still firmly supports this issue, this program. It's one we agree with our colleagues on the left wholeheartedly about. We think that it's a great thing. I do want to caution, however, that technology is not a panacea. We cannot make technologies mandatory. We have to recognize that some businesses will not nor will they ever be tech savvy.

In fact, I recently learned that a number of NFIB's members are Amish, and we know that they are never going to be able to use computers. So thank you very much. I look forward to taking questions from the committee.

[The prepared statement of Mr. Langer follows:]

Testimony before the United States Congress on behalf of the

Testimony of

Andrew M. Langer
Manager, Regulatory Policy

Before the

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

Paperwork: The Half-A-Trillion-Dollar Elephant

on the date of

July 18, 2006

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

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

It was just four months ago that I offered testimony on general regulatory burdens faced by small business, and I appreciate your invitation to come before you to discuss paperwork in more detail, now that we have received from the Office of Management and Budget (OMB) their annual report on paperwork, the Information Collection Budget (ICB).[1] That report denotes an increase of the paperwork burden faced by all Americans of 441 ***million*** hours—which, sadly enough, represents an increase overall of only 5.5 percent.[2]

NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Ninety percent of NFIB members have fewer than 20 employees. While there is no standard definition of small business, the typical NFIB member employs five people and reports gross sales of between $350,000 and $500,000 per year. However, all NFIB members have one thing in common; their businesses are independently owned.

Being a small-business owner means, more times than not, you are responsible for everything (ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments). That is why government regulations, and the paperwork they generate, should be as simple as possible. The less time our members spend

[1] http://www.whitehouse.gov/omb/inforeg/infocoll.html

[2] ICB at i.

with "government overhead," the more they can spend growing their business, employing more people and growing America's economy.

Unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses.[3] Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change. In March, I discussed with you the most recent report commissioned by the Small Business Administration's Office of Advocacy, estimating the regulatory compliance costs for firms with fewer than 20 employees.

Five years ago, that cost averaged $6,975 per employee, per year, but now that figure has been updated. Not only updated, but updated now with a peer review process that lends even greater credence to the research. Unfortunately for small-business owners, however, the new data isn't good —the cost of regulation for small businesses has risen by nearly 10 percent, to $7,647 per employee, per year.[4] This is due in no small measure to the continued growth of the regulatory state: according to the Competitive Enterprise Institute's Wayne Crews, the last two years have brought an average of approximately 4,000 new rules each year.[5]

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

My testimony is going to cover a number of different things. First, I'd like for members of the committee to get an understanding of the regulatory burden in the form of paperwork, reiterate the results of a survey from 2004 by NFIB's Research Foundation regarding Paperwork and Recordkeeping (which I discussed in detail in March as well), and put those findings in the context of the recent ICB report. Then, I will focus on Congress' role in dealing with this

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[3] In NFIB's publication, *Problems and Priorities*, paperwork ranked 8th out of 75 major problems faced by small business.
[4] Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms, 2005, http://www.sba.gov/advo/research/rs264.pdf*
[5] 4,101 final rules in 2004, 3,943 final rules in 2005. Crews, Clyde Wayne, *Ten Thousand Commandments, 2006 edition.*

problem, both from a legislative and a behavioral standpoint. Finally, I will raise the issue of other tools available to deal with this problem.

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

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

The Half-Trillion Dollar Problem: Small Businesses, Paperwork, and the ICB

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly $50 per hour. In addition, the following conclusions were reached:[6]

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

2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because

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

they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher.

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

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

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

While the use of computers by small businesses and small-business owners has certainly helped reduce the burden of regulations, technology alone cannot solve the problem. More than filing forms and storing copies, paperwork requirements involve understanding what the government wants and how they want it, gathering the necessary information and organizing it properly, determining what to keep and for how long, etc. Then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. People must organize and input the necessary data, and people are expensive.

According to research by the NFIB Research Foundation, 92 percent of small businesses use computers in some aspect of their business. Eighty-two percent of small businesses have internet access, and of those, 57 percent have high-speed internet access. Half of the businesses that use the internet use it to find out regulatory information, and the smaller of small businesses are more likely to use the internet to educate themselves. They use it for specific searches, and to sift through information.[7]

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

But taken in the context of the ICB, the costs continue to be startling. If you only look at the average costs our polling found, then at the most macro of economic levels, the cost of the ***increase*** in paperwork alone amounts to nearly $21.5 ***billion*** annually![8] The total cost of paperwork therefore is nearly half a ***trillion*** dollars (roughly $409 billion).[9]

Some people might argue that the increase in paperwork from the ICB is only 5.5 percent overall. But that only serves to mask the real issue: 441 million hours is an enormous amount of time—time that drags on everyday Americans, and $21.5 billion is real money for real small businesses.

While some might quibble that this is only a marginal increase—one cannot deny that the baseline number is a huge one. A system that measures its paperwork burdens in the billions of hours is a system destined for collapse under all that weight. A system that hemorrhages money to the tune of a half-trillion dollars annually is going to eventually bleed itself dry.

Comparing These Costs

It is sometimes difficult to grasp the magnitude of a situation without a proper context within which to frame it. In this instance, public policy offers us a number of other programmatic costs that to which we can compare the total paperwork costs, especially for public policies that are important to Americans, having to do with public health issues and national security.

For many Americans, cancer represents a greatly-feared disease and one that significant public resources ought to be directed to curing. But while federal paperwork costs Americans nearly $409 billion last year, the federal government spent, in comparison, 1 percent on cancer research at the National Cancer Institute, $4.83 billion.[10] Of this, $560 million was spent on breast cancer research, $253 million on colorectal cancer, and $266 million on lung cancer research.

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[8] $48.72 X 441 million hours equals $21,485,520,000
[9] $48.72 X 8.2 billion hours equals $409,248,000,000
[10] http://www.cancer.gov

Likewise, there is a great deal of public support behinds finding a cure for AIDS, and the National Institutes of Health has created an Office of AIDS Research (OAR) dedicated to this cause. For FY2005, OAR spent $2.9 billion.[11]

At the other extreme, there is the issue of primary concern to the American people, defending the nation and protecting our national security. Looking at the budget for the Department of Homeland Security (DHS), we find that for FY2005 DHS actually spent just under $40 billion.[12] That's less than a tenth of what American's spent on paperwork last year, in the middle of our War on Terror. Examining the budget in greater detail, DHS spent just under $4 billion on preparedness, one one-hundredth of the cost of federal paperwork.

The most appropriate comparison, however, is to the greatest part of the federal budget—our overall defense spending though the Department of Defense (DOD). Here, we finally see spending that outpaces the cost of paperwork (but not by much). In FY2005, DOD actually spent just over $475 billion – about $66 billion more than it cost Americans to fill out their paperwork for the federal government.[13] While that might sound like a tremendous difference, in reality, it's only around 15 percent.

A system in which citizens' spending on paperwork is roughly equivalent to 85 percent of what Americans spend on defense each and every year is a system doomed to collapse. It requires careful examination—a recognition that a serious problem exists and then taking the appropriate steps to see that problem solved.

Congress – The Root of the Problem?

Congress has been very good at examining the way in which agencies themselves create much of this burden. But largely not discussed is the role that Congress itself plays in not just creating, but exacerbating the problem. Just as budgetary policies are largely slaves to longstanding entitlement programs, paperwork and regulatory burdens find their source in the mandates

[11] http://www.NIH.gov
[12] http://www.whitehouse.gov/omb/budget/fy2007/dhs.html
[13] http://whitehouse.gov/omb/budget/fy2007/defense.html

created by Congress: Congress passes more laws, and those burdens are going to greatly increase.

Just as we demand that executive branch agencies take a much harder and longer look at the regulatory and paperwork burdens that they impose, so should Congress carefully consider and examine new pieces of legislation and look ahead to the ultimate interpretation and implementation of those laws by the executive branch. The risk assessment guidelines now under consideration by the OMB are going to be one of the most important new tools that agencies will use to analyze and prioritize public policy problems—Congress must do a better job in prioritizing the pieces of legislation that it is considering. Furthermore, making policy in a crisis mode, as happens more and more frequently, often shortchanges the deliberative process. The end result is often bad public policy—public policy that is needlessly overreaching and has a tremendously impact.

This problem is further exacerbated by the linguistic gymnastics Congress goes through in crafting new legislation—an exercise which leaves us with laws that are at the same time both vague ***and*** complex. When Congress leaves vast doors open in the laws it creates, executive branch agencies ***will*** drive trucks through them. These agencies will take as much power as possible for themselves, will create regulations that are as wide-ranging as they can, and thus generate reams of additional paperwork burdens.

These agencies will take the vague and complicated legislation passed by Congress and complicate things even further—but where Congress has been vague, the agencies by law ***have*** to stake out a position. This is how we get a situation in which Congress passes a law saying that navigable waters of the United States can't be polluted, and the end result is that a small-business owner in Florida goes to jail for putting dry sand on an isolated patch of dry sand—and when someone challenges that interpretation, it takes nearly two full decades for his or her claim to be vindicated.[14]

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[14] *cf. Rapanos, et.al. v. United States (2006).* The plaintiff in that case, John Rapanos, was ultimately victorious in his claim that the wetlands at issue weren't subject to federal regulatory control. It took him eighteen years to have that decision made. http://www.supremecourtus.gov/opinions/05pdf/04-1034.pdf

Yes, the executive branch has the power to interpret the laws made by Congress. But Congress must take responsibility in crafting laws that have clear intentions, clear language, and leave little room for tortuous twisting.

Legislative Solutions Directed at Reducing the Burden

Regulatory Sunsetting: The Current Congressional Proposals

There are three primary areas in which we can work to fundamentally reduce the burden of federal regulatory paperwork: Congress' passing of legislation (discussed above), review of regulations coming down the pipeline (discussed further below) and taking steps to address that which is already on the books. In fact, while we recognize that working hard to address potential burdens of regulations that haven't been implemented is essential, if we do nothing to deal with the burden of regulations that are already with being wrestled with by the American public, then the problem isn't going to be solved.

Again, looking at the ICB, added paperwork burdens were 5.5 percent of the total burden, or 441 million hours. Assuming for a moment that we simply eliminated that burden, and didn't implement any new regulations that caused an increase to the paperwork burden, we'd still be left with 100 percent of the paperwork burden that currently exists, the entire 8.5 billion hours.

Clearly, something must be done to deal with the myriad of regulations currently on the books, and while Section 610 of the Regulatory Flexibility Act mandates that agencies review "economically significant" regulations within ten years of their implementation, the problem isn't limited to regulations of economic significance. No, the problem has always been more of the plethora of regulations a small business is subjected to—individually, they may not amount to much, but taken together they pose a tremendous burden. Unfortunately, agencies have little incentive and little guidance to do proper "610 reviews."

NFIB suggests that Congress consider the mandate that every federal regulation be reviewed for their impact and effectiveness within a certain period of time. Any regulation that is not so reviewed would automatically sunset, and for a regulation to remain in place, its existence would have to be justified.

My colleague, Tom Schatz from Citizens Against Government Waste, had this to say about sunsetting provisions:

> For those in Congress who are committed to cutting wasteful spending, a federal Sunset Law is a powerful tool. No longer will federal agencies, once created, assume immortality. Sunsetting shifts the burden of proof, forcing agencies to regularly justify their existence to American taxpayers who will have a real say in whether they deserve our precious tax dollars.[15]

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

Full-funding for OIRA

Leadership has to come from the top, and when it comes to federal regulatory policy, the Office of Information and Regulatory Affairs (OIRA) at the OMB provides that leadership. OIRA acts as a gatekeeper for all new regulations, and has been particularly instrumental in ensuring that the most burdensome regulations are re-thought by the agencies proposing them.

There has been some criticism by opponents of paperwork reduction and regulatory reform regarding this gatekeeping role. Opponents claim that this role was never mandated by Congress, and is a case of overreaching by the executive branch. But this criticism ignores the very history of OIRA itself, as admitted by OMBWatch in their review of the March hearings on regulatory reform: "James Miller, who was the first OIRA Administrator, and the first to link paperwork and regulatory reviews."[16]

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[15] Tom Schatz, President of Citizens Against Government Waste, statement in support of *The Federal Sunset Act, http://www.house.gov/brady/PressArchives/pr91498.htm*
[16] http://www.ombwatch.org/article/articleview/3346

Since its inception, in other words, OIRA has been involved in reviewing regulations. After all, OIRA is the Office of Information ***and Regulatory*** Affairs. For OIRA to ***not*** review regulations would turn its very name on its head!

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

Short-changing OIRA comes at a high price to the regulated public (e.g. NFIB members and small-business owners as a whole). For instance, in prior testimony to the House Government Reform Committee, there has been a great deal of discussion regarding "bootleg" regulatory forms. These are forms that individual agency offices create for the regulated community to use, but are not vetted through the required paperwork processes. An OIRA that is crippled by a lack of resources cannot adequately assess paperwork burdens, let alone ferret out which agencies might be surreptitiously adding to that paperwork burden through the use of bootlegs.

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

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

Strengthen Provisions on Unnecessary Duplication

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

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

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

Limit the Number of Information Collection Requests

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

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

As Congress explores how to lessen the impact of paperwork burdens on small business, it is worthwhile to encourage the regulatory agencies to examine more closely how to reduce the burdens imposed by ICRs. Some have suggested limiting agencies to a specific number of collection requests each year. Others have recommended that OIRA develop stricter criteria that ICRs must meet before being approved for use. Still, others have suggested that like the small businesses which will have to comply with the ICR, that agencies prioritize which ICRs are of the most significance or the highest priority. This suggestion is certainly reasonable and would be worthy of additional discussion as Congress moves forward with this process.

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

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

Guidelines for Paperwork Impact Analyses and Mandates for Reduction

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

But because of lopsided implementation of current mandates by federal agencies, government-wide guidelines must be created. These guidelines would mandate that agencies set out:

(a) the quantity of paperwork that might be generated from the regulation;
(b) the amount of time dedicated to paperwork associated with the regulatory compliance;

(c) the cost of compliance (financial) to meet the paperwork burden resulting from the regulation;
(d) An assessment if the paperwork burden will impose a significant/unique hardship for small business.

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

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

Application of Data Quality Act to SBREFA and PRA Requirements

The Small Business Regulatory Enforcement Fairness Act (SBREFA) created a series of tools that have proved invaluable in the effort to craft regulations that are fairer for small business. A number of these provisions are judicially reviewable.[17]

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

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

Technological Responses: E-Docketing and the Business Gateway

To its credit, the federal government has recognized that technology can provide a number of solutions to the federal regulatory and paperwork burdens. Two separate tracks, very different, and important in their own way, are being pursued: one dealing with increasing participation and

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

making the formulation of rules more streamlined (e-docketing); the other meshing technological tools with the problem of regulatory understanding, compliance, and paperwork burdens (the Business Gateway).

It is unfortunate that the federal government initially got their priorities backwards, focusing initially on e-docketing and e-democracy rather than putting more resources towards the Business Gateway. NFIB supports the federal government in attempting to open up the regulatory process to more perspectives--the promise of e-docketing is that it will make it easier for small businesses and individuals to offer their thoughts on proposed rules. By offering a "real world" perspective, career civil servants can make regulations that are smarter and more meaningful. What's more, electronic docketing is an excellent tool for those doing the regulatory decision-making, in that it makes it easier for regulators to break down and analyze comments.

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

This is why we believe that more resources should have been directed earlier on to the Business Gateway project (once called the "Business Compliance One-Stop" or BCOS). The Business Gateway is a good step in this direction, and a greater emphasis must be placed on the continued development and implementation of this system, and NFIB is heartened that the next generation of this project will be coming on-line in October (NFIB has been and will continue to be an active participant in the development and implementation of this program).

Everyone involved in regulation: the regulated community, activist stakeholders, members of Congress and their staffs, the federal agencies and their personnel, all must ask the same question—what is it that we want from the regulated community, in the end?

The answer, at least in our estimation, is simple: we want the regulated community (again, our members and the small-business community as a whole) to understand its responsibilities when it comes to regulatory compliance and comply with those regulations that apply to them. What's more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a government inspector to show up at their offices and fine them for some transgression.

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

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

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

Yes, this is am ambitious idea. But in an era in which huge databases can be accessed from thousands of miles away in a safe, secure, and fast manner, it is not an impossible task. The current iteration of the Business Gateway, Business.gov, is a solid step in the right direction. But it must do more, far more, in terms of offering a simple way for businesses to determine what their regulatory responsibilities are, and to make living up to those responsibilities as easy as possible. NFIB looks forward to seeing the next iteration of Business.gov in October, as well as each and every iteration of it, as it moves towards the full-measure of what it ought to be.

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

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

Not all businesses would do it (not all businesses have computers), so the option to find out about regulations in the traditional manner would still have to be in place. In fact, there are a number of small businesses that will never be on computers[18] (which is why NFIB continues to advocate for the position that when agencies desire to work with the public via computers, it is a voluntary and not mandatory program). But such a system would be far superior than that which is available to small-business owners today, and a tremendous leap in seeking greater regulatory compliance.

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

Conclusion

The ICB makes it clear that there is no debate to be had over the fact that there is a tremendous paperwork burden faced by Americans. The academic community might argue over the details, there might be some question as to the methodologies used, what ought to be counted, what role technology might play in alleviating the problem, but the problem still remains. OMB's estimate of 8.5 billion hours is a vast number (even a percentage-point increase in annual paperwork

[18] In fact, in recent conversations with NFIB field personnel, I learned that our organization has a number of members who are Amish small-business owners. Clearly, these are small businesses that will never be using computers in their daily work, and any move to make computer communications mandatory (or any other sort of mandatory electronic interaction) would be grossly unfair to them.

represents an addition burden of nearly ***a hundred million hours).***[19] The number is so huge, so vast, that even if it is being grossly overestimated by OMB, it would still be a tremendous burden.

The time has come to stop debating the existence of this problem and take steps to address it. Americans, especially American small businesses, cannot continue to shoulder this burden. Congress needs to examine its own practices, recognize that it, too, has a role to play in exacerbating this burden. It needs to assume greater oversight responsibilities, forcing the agencies to take the necessary steps to reduce their share of the burden.

Finally, Congress can show additional leadership on this issue—fully funding the programs that are and will be the most successful in reining in the problem of out-of-control paperwork, and passing legislation designed to give the agencies and the regulated community the tools they need to bring some sensibility to the regulatory state.

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

[19] 441 million hours divided by 5.5 is 80.1 million hours.

NFIB CORE VALUES

We believe deeply that:

Small business is essential to America.

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

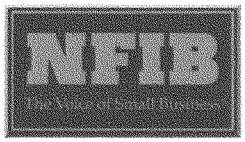
Small business is threatened by government intervention.

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

Members determine the public policy positions of the organization.

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

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



1201 F Street NW, Suite 200
Washington, DC 20004
202-554-9000

Mrs. MILLER. OK. Thank you very much. Our last witness today is Robert Hayes. He is the president and general counsel of Medicare Rights Center. Mr. Hayes led the National and New York Coalitions for the Homeless from 1979 to 1989 and has practiced law with firms in New York and Maine as well. He is a MacArthur Foundation fellow and has received honorary degrees from 10 colleges and universities.

Mr. Hayes, we welcome you to the subcommittee today. We appreciate your attendance and look forward to your testimony, sir.

STATEMENT OF ROBERT HAYES

Mr. HAYES. Thank you, Chairwoman Miller. Mr. Lynch, good afternoon. We at the Medicare Rights Center work each day with older and disabled Americans to assist and navigate the Nation's health care system. This year much of our work has focused on helping men and women, especially the frailest and poorest people of Medicare, navigate the complex Part D prescription drug program. We appreciate the opportunity to share with the subcommittee how the design of this needlessly complex Federal program causes far worse consequences than wasteful paperwork, although that it does.

Paperwork reduction in the form of streamlined and straightforward health assistance programs do a lot more than save money. They also can save lives. Those of you who were in Congress back in 2003 know from personal experience that the Medicare Modernization Act that created the Part D drug benefit rejected the consumer-friendly model of Medicare that has served older and disabled Americans so well for the past 40 years. Rather than creating a Medicare drug benefit, the Congress appropriated massive subsidies to launch a new cottage industry of for-profit insurance companies that sell what prove to be for many people incomprehensible benefit packages. The subsidies spawned a "wild West" marketplace. 1,400 different drug plans, most with varying deductibles, coinsurance, copayments, pharmacy networks and covered drugs went to work. 1,400 plans went to work, marketing their way to a largely unprepared consumer base of older and disabled men and women. I think this committee understands better than most, complex is bad, and very complex is very bad. I cannot identify a more complex public benefit program ever enacted by the U.S. Congress than the Part D prescription drug program.

This committee could spend weeks trying to understand the multiple layers of regulation, paperwork and bureaucratic hurdles that this Part D program has triggered. Millions of our parents and grandparents have been forced to spend those weeks trying to figure it out, and the estimated Office of Management and Budget that it takes 30 minutes to fill out a Part D application is unfortunately both laughable and irrelevant. Bottom line, even the savviest Medicare consumers have been confounded by the complexity of this marketplace and by the inaccurate and conflicting information available from both the administration and from the drug plans.

Since last fall people with Medicare have been inundated with marketing materials from drug plans that are at best incomplete and at worst deceptive. At the request of Members of Congress, the

Government Accountability Office evaluated the information hotlines operated by both the private drug plans as well as CMS. The private drug plans got about one out of three calls right. CMS did better. They only were wrong 33 out of 100 times.

Batting .334 would be good for a baseball player, but it's disgraceful when you are being paid by American taxpayers to provide a basic need to older Americans desperately trying to make the right decision because your heart pills or your chemotherapy or your diabetes medication depends on it.

The Extra Help Program, this is not a program administered by CMS but by the Social Security Administration, also needs to be looked at in terms of its undue complexity and paperwork. That's the program that is supposed to assist people with very low incomes, very few assets, be able to avoid some of the payments or escape the doughnut hole.

Madam Chairman, you mentioned that this program, Part D, should be a fantastic program for especially older Americans who are poor, but three out of four Americans who are eligible to sign up for this Extra Help Program, these are people in dire need of assistance to help pay for their medicine, have not signed up. Why? Take a look at the seven-page application Medicare's most vulnerable men and women have to complete. It's filled with intimidating questions about bank accounts, life insurance policies, any kind of support that's again, being pored over by your neighbors and various living arrangements. I'd ask any member of this committee, can you tell me what is the face value of your life insurance program? I can't. But to qualify for this Extra Help Program, my 94-year-old neighbor living in a nursing home has to answer that question and do so accurately under pain of fine and/or imprisonment.

Bureaucratic disentitlement, complex programs that keep people away from programs that Congress enacts and which folks desperately need, is not something new to the Medicare Part D program. Medicare Part D highlights this problem, bureaucratic disentitlement, but it is nothing new. The Medicare savings programs which help low-income individuals pay their Medicare cost sharing have been available for 20 years, but only about half of eligible very poor older Americans nationwide are enrolled. Medicaid, now 40 years old, boasts similarly low enrollment rates.

There are simple fixes to this, and it may not be the administration that can do them without the support of the Congress. Thank you.

Mrs. MILLER. Thank you very much. I appreciate those comments. I'm going to start with Ms. Koontz. You have been involved in this process for a very long time and probably longer than you would like to think about, I suppose. But I guess I'd just like to ask you for your honest assessment of the PRA status, where you think it is, and if you think that it adequately encourages agencies to really minimize paperwork reduction. What do you really think of where we are with this thing now?

Ms. KOONTZ. I think there's a couple factors with the PRA. One issue I would talk to are the burden reduction goals that were in the PRA that went through 2001, it was 10 percent for a couple of years and 5 percent for a few more years after that up until

2001. I think it's pretty clear that those kind of numbers, which seemed rather arbitrary, don't really work in terms of providing incentives for agencies, and I think what we were looking for is maybe some—looking at some alternative ways, as we reported to you in 2005, to reduce burdens, sort of along the lines of what IRS is doing and what EPA are doing, and we'd like to see agencies be setting concrete goals for data reduction and reporting those publicly and then being accountable for achieving them maybe in a variety of ways.

The current process relies a lot on the CIO review process within agencies and also on OMB review. And frankly those processes, they haven't been fully implemented in compliance with the law for one thing, and they just don't result in burden reductions.

So I think there's some opportunities to relook at some of the aspects of PRA and perhaps to improve them perhaps when it's reauthorized.

Mrs. MILLER. Yeah. I was going to ask you what you think the most important thing that this subcommittee can do as a result of this hearing today. I mean, I do like to have some sort of action plan at the end of these various hearings, not that we just forget about everything that we've heard, but some of the things that you just mentioned there, are there any others that you think, and would they require—I don't know, it's a question for you and my staff, I guess they would require legislation to enable the agencies to really assist them in how we can. What is important for this subcommittee to take away from your testimony today? How we can improve the PRA?

Ms. KOONTZ. One of the things is that we did suggest in our 2005 report that Congress perhaps alter the PRA to establish some pilot projects to look at alternative ways of reducing burden in the agencies. So that's one thing that can be done through legislation and that involves some of the other things I talked about, setting agency targets and the like.

Some of the other things that have been—about a year ago or 18 months ago, we had a forum on the PRA, looking ahead to reauthorization and we brought together a number of experts from both the government and the private sector, and one of the things that was mentioned in that particular forum that we haven't—we haven't audited this, but there was a strong feeling too that perhaps there was a need for OMB to get out of the retail review process. Right now they're required to review every single collection that comes through. They had suggested well, you know, maybe we could have more impact if we were to concentrate on more significant collections or some kind of different threshold and that. So that's something I think we've said in the past that you could consider, but again we haven't really looked at all the ramifications of that, but it was I think a responsible suggestion.

Mrs. MILLER. Mm-hmm. Yes. I appreciate that, and it's interesting.

Mr. Langer, you mentioned that you didn't have enough time in your testimony to talk too much about the business gateway. I think you said hopefully it was going to be ready in October. Could you flush that out a little bit for the committee?

Mr. LANGER. The business gateway program has been in the works for some time. I came onboard at NFIB in 2002 and immediately was invited to a retreat that SBA and some others have put together that were working on the first iterations of it. In essence, the idea is down the road, a small business will be able to go online, type in a few pieces of identifying information, the industry it's in, number of employees, the location of the business because obviously regulations sometimes change depending on locale, and in theory the system spits out all the regulations that apply to the business, will hopefully give them very simple, plain English compliance guides, and will offer up the opportunity to fill out forms online or at least give them the forms that they need. The first iteration, it was originally called the business compliance one-stop, and it was hard to get the agencies, you know, onboard with that. The second iteration, the business gateway's a step in the right direction. They're now moving to the next iteration of the business gateway. I haven't seen it yet, but it sounds promising from the folks that I've talked to, and that's supposed to roll out in early October.

I mean, the idea is we have already taken the first step, which is to get that massive Code of Federal Regulations translated into little bits and bytes and put onto the computer, but it's an incredibly cumbersome tool to use, and no small business is going to use it. It's impossible for a small business to go online and figure out what it is they need to comply with by going online with a searchable CFR. Yes, ask a small business owner what a CFR is, they're not going to know what you are talking about. The real heavy lifting of it is for all of the agencies to get involved, review the regulations and create those simple compliance guides. It's been one of the problems that we've had continuously with regulatory agencies across the board, is getting them to do that.

One of the issues that I worked on, you know, in deference to the ranking minority member, the TRI program was a prime example where we worked very hard with EPA to get them to create simplified compliance guides, and there was a great deal of reluctance to get them to do it. You know, if I could have gotten a simple, you know, for specifically dealing with the lead TRI issue, getting a simple reference table of contents where if you had a question, it will tell you where to go, that was hard enough. The point is, it will take leadership on the part of Congress to get agencies onboard fully with this program. To incentivize the approach they are creating these simplified compliance guides. Once we get them online, then those businesses that aren't on computers, the resources are there already, they already will have been offered. The business gateway itself just makes it a much more easily searchable way for them to find those resources, but we wholeheartedly support it. It's one where, you know—unfortunately he's not here today, but Robert Schule from OMB, it's one of those areas where he and I agree wholeheartedly, it goes a long way because as we talked about with Medicare here today, it's not—while filling out the forms is time consuming, it's understanding the questions that are being asked and being able to sort of ferret out that information where the rubber hits the road, and we're—you know, to us, it's not necessarily yes, you know, Medicare's a huge, huge pro-

gram. But we're also interested in the myriad of other burdens small businesses face as well. You know, you might talk about something that might only represent 1 percent of a small business's burden, but that's 1 percent. It's certainly better off than we are now. So——

Mrs. MILLER. Absolutely. That is an interesting concept. You wonder how many small businesses are using technology to really—I mean, you are talking about sort of a one-stop shop or something that's really putting all the information together for them, as opposed to a guy that's going online, he doesn't even know what information to be asking for. Maybe he's just downloading forms. I mean, how is that helping him?

Mr. LANGER. That's one of the issues. EPA put out the next step in terms of their Small Business Paperwork Reduction Act requirements. And they have everything you need in one place. I got the link the other day, and it's a massive webpage, but it's all there, but it's really hard to search. You can do a—you know, if you know anything about Internet Explorer, you can find things that's on there. For instance, I went on looking for dry cleaners because dry cleaners are small businesses faced with some of the most cumbersome environmental regulations that are out there. And you can find it. It's not easily understandable, but it's all there. It's a good step in the right direction. As headache inducing as the page looks, it actually is very helpful.

Mrs. MILLER. Just one final question. What do you think is the—I mean, obviously for a small business, dealing with the IRS is the biggest part of their burden. That's not inherent to small business, to everybody. In addition to the IRS, what do you think small businesses would say is the biggest paperwork headache that they absolutely have?

Mr. LANGER. You can't say—it depends on the——

Mrs. MILLER. What do they say?

Mr. LANGER. It depends on the business. I mean, we get calls from members, you know, it can be the forms that are dealing with the H–2B visa applications 1 week. The last couple of weeks it's been the FTC's proposed regulations governing direct sales. Now, NFIB probably doesn't have a position on it, but I have been hearing from members, it will be a huge paperwork problem for them. If you want to sell, say, Mary Kay cosmetics, and you want to buy a kit, you're going to have to have a waiting period. It will take you longer to get the Mary Kay kit than it does a handgun in most States, with huge amounts of paperwork that you have to fill out and that whoever sells you the kit has to hold onto for years. This is going to be a huge burden for a lot of folks we hear from a lot of people out there. A lot of Department of Agriculture programs, especially for small, unsophisticated farmers, are difficult to deal with. We are hearing a lot about animal ID these days. But again, we don't have a position on that. We're just hearing from members on those things, but for every business, it really depends on the industry.

Obviously if you're dealing with anything that has to do with where you're dealing with chemicals on a daily basis or any sort of a chemical substance, you're going to be dealing with OSHA and EPA. Chances are if you're transporting anything, you are going to

deal with the Department of Transportation, and that's another issue, which is this duplication of regulation and duplication of paperwork where you have three different agencies that are asking for largely the same information but in vastly different forms. That's a problem, and we don't see a lot of cooperation between agencies. There's supposed to be a cooperation, and there isn't a lot of it. And I'm not sure where Congress' role is in that. But if there's a way for Congress to be leaders on that, we'd certainly appreciate it.

Mrs. MILLER. Thank you very much.

Mr. Lynch.

Mr. LYNCH. Mr. Hayes, you have been very patient there. Again, to all the panelists here, I appreciate your willingness to help the committee with this work. Mr. Hayes, I had asked earlier Mr. Aitken if he could go over the estimate regarding Medicare Part D and compliance, and it just seemed to me—first of all, we had to remember that we're going to spend $800 billion—almost $800 billion in the next 10 years. So apart from the paperwork burden, there's the $800 billion, and no one is suggesting that we don't spend money on a drug benefit, but did it have to be this one? Did it have to be so complicated? And Mr. Aitken, you know, begged off on the number itself, saying that it had been provided by HHS. But you know, I've spent way too much time on this one program trying to explain it to my constituents to think that number is valid. And I'd like to get a sense—you're the Executive Director of the Medicare Rights Center. What do you think about that estimate, about—I think they're saying a half-hour or something like that, that was the estimate, a half-hour a person to figure this thing out and to enroll?

Mr. HAYES. I mean, that has no basis in anything real, Mr. Lynch. I think Mr. Langer probably put his finger on the issue that, you know, maybe ultimately filling out an application form may take 30 minutes for somebody in theory, but it can take really weeks and weeks and weeks of study, going to meetings, reading through Web sites, if anyone is to have even a fair chance to understand which particular application they want to fill out. So that's really the issue from the consumer perspective, you really could have—to be honest—an infinite amount of time and still not be able to have a fair chance in this marketplace to make an informed choice, and I think that's what has been so unfair about a market system that the information is all in the hands of the sellers. The buyers are pretty much shooting in the dark, and you know, to the state now that the enrollment period's over for most people, most of our helping people is to try to explain, this is what you signed up for, sir. Nobody told me, called to tell us, that there was a doughnut hole in the plan they sold us. And guess what, now people are going to pharmacies and finding out that they have to pay retail prices, which often they can't afford, for the medicine their doctors prescribed.

Mr. LYNCH. All right. Do you have a better number—any way of, you know——

Mr. HAYES. No. I mean I have plenty of solutions of how to make this, you know, unfair, inequitable, wasteful system more efficient, and it's probably called Medicare; that is, go back to what has

worked pretty effectively. But I think—I mean, I know my organization and every other organization like mine has grown dramatically this year because there is such a massive need that's going largely unmet, but we keep trying to do more and more to help people, and I wish to God that I could go out of business, at least out of this business, and I wish to God that the Federal Government would spend more money getting medicine to people and less money with bus tours trying to explain this thing to people.

Mr. LYNCH. Right. OK. Thank you. I yield back.

Mrs. MILLER. OK. We certainly want to thank all the witnesses for your attendance here today, and we'll look to continuing to work with you to reduce the paperwork burden for every American citizen. And with that, I'll adjourn the meeting. Thank you very much.

[Whereupon, at 3:35 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

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