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on “Evaluating the Paperwork Reduction Act: Are  
Burdens Being Reduced”

Good morning, Chairman Chabot, Ranking Member Velazquez and Members of the Committee. Thank you for inviting me to testify today on “Evaluating the Paperwork Reduction Act: Are Burdens Being Reduced?” As you know, I served as the Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) from 1993-1998 and was therefore very involved in the discussions that led to the 1995 Reauthorization of the Act. I also was responsible for implementing the Act (before and after the 1995 revisions) during my tenure as Administrator and as the Deputy Director of Management of OMB from 2000 to January 2001.

This Committee has played an important role in protecting and promoting the interests of America’s small businesses, which are one of the important drivers of our nation’s economy. For decades now, the small business community has listed the burden of federal regulations, including specifically paperwork, as one of its most pressing concerns. This concern is deeply felt (as you are hearing again today) and understandable, if for no other reason than small businesses have fewer (sometimes appreciably fewer) resources and institutional capacity than larger companies to acquire, understand, complete and process the paperwork required by the Federal government (as well as that required by State and local governments).

The disparate impact of paperwork requirements on small businesses was foremost in our minds during the 1995 reauthorization of the Paperwork Reduction Act (PRA), 44 U.S.C 3501, *et seq.*; indeed, the first subject identified in the purposes of the Act was to “minimize the paperwork burden for . . . small businesses . . .”. (PRA § 3501(1)). The work we did then was later reinforced by amendments to the PRA, advanced by this Committee, which were enacted into law as the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3520, *et seq.*

It is therefore most appropriate to ask, as you do in this hearing’s title: “Are burdens being reduced?” Regrettably, the answer to this straightforward question is not as simple as it may seem and the reasons for that are more complicated than they might initially appear.

When you look at the gross numbers, there is, in fact, a huge paperwork burden, which has continued to increase, rather than decrease, over the years. The amount of time (and other resources) spent filling out forms or responding to information collection requests (ICRs) by the federal government is now roughly 9.8 billion hours annually. (See Office of Management and Budget, *Information Collection Budget for 2016*, available at

[http://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/icb/icb\\_2016.pdf](http://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/icb/icb_2016.pdf))

But over 70% of the total is attributable to one agency – the Internal Revenue Service. That figure is a function both of the large number of people who file a Form 1040 (or the streamlined version 1040EZ), as they should, and also the complexity of the Internal Revenue Code; that complexity, in turn, is a product of decisions by the Congress – not the agency – that there should be a myriad of deductions, allowances, exceptions, credits, etc. Taxpayers could, I suppose, just put down the amount by which they wish to reduce their own taxes, but some calculations, documentation, or other basis for the claims is generally thought to be appropriate to justify the offsets. Most businesses that choose to take advantage of the provisions for accelerated depreciation, oil and gas depletion allowances, foreign tax credits, or real estate losses, to name a few examples, would not do so unless the tax benefits they derive from filling out those forms and supplying the required documentation were greater (often appreciably greater) than the cost of making such claims.

More importantly, references to total burden hours (and their increases (or decreases were that to occur)) obscure the fact that there are different types of “paperwork” with very different effects and consequences for small businesses. Filling out a tax return means having to pay taxes (or getting a refund). But another type of paperwork is the so-called “third-party disclosures,” such as signs that say “Hard Hat Required” or “Caution: Dangerous/Toxic Substances Present,” or labels on foods providing nutritional information or those on medicines providing content, dosage, and counter-indicator information. While a small business is often unable to hire the army of accountants and lawyers retained by a larger corporation to prepare its taxes, it is not self evident that it should be exempt from complying with straight-forward requirements for posting, or otherwise providing, health or safety warnings for their employees or customers.

Another type of paperwork that should be considered on its own merits, rather than being swept up in the gross numbers, is paperwork designed to establish eligibility for, or compliance with statutory provisions establishing, various benefit programs. Consider, for example, applications for small business loans, student loans, veterans’ benefits, social security or disability payments, farm subsidies, or permits for designated uses of our national parks. Obviously these forms should be as streamlined and simplified as possible, so that the burden on the applicant (including a small business) is reduced to a minimum. At the same time, however, there is a legitimate interest in ensuring that the program authorized by Congress (and using Federal funds) is run consistently with the underlying statutory requirements. The shorthand for this is “accountability,” which both sides of the aisle agree is essential for good government. Paperwork in this context serves to help ensure that only those eligible for a loan, grant,

payment, or permit are approved and that the agencies have sufficient information to competently evaluate whether or not their programs are achieving their objectives.

That leads to yet another distinct category of paperwork – namely, requests for information that enables the government to make informed and rational decisions in the first place. Data based decision-making is clearly preferable to conjecture or speculation, and in many instances the requisite data are dispersed among individuals, businesses, and/or state and local governments. Regulatory agencies should be making decisions based on the best scientific, technical or economic information available; otherwise the rules they impose on regulated entities (including small businesses) may be less efficient or effective ways of achieving their regulatory goals. Another set of information collections that guide Federal government decision-making involves the various statistical agencies, such as the Census Bureau at the Department of Commerce, the Bureau of Labor Statistics at the Department of Labor, the Bureau of Economic Analysis at the Department of Commerce, the Energy Information Administration at the Department of Energy, the Bureau of Transportation Statistics at the Department of Transportation, and the National Agriculture Statistical Service at the Department of Agriculture, to name some of the more well known statistical agencies. Much of the data they collect is not only used and useful for government decision-making, but is also (once stripped of personal identifiers) often disseminated to the public, where it is used by those in the business community (including small businesses) or in the academy in considering or analyzing such subjects as marketing strategies or investment decisions.

One other thought that is relevant when considering paperwork burden reduction is that, in some circumstances, providing information may actually be less burdensome than the alternative. This is classic First Amendment theory of the “least restrictive alternative,” which is, I believe, an appropriate framework in this context as well. Consider, for example, the warning labels on cigarette packages. Is it not better (in terms of burden and intrusiveness) to require information than to restrict the sale or ban the product altogether? Another example is that EPA has found that the reporting of emissions of certain toxic chemicals has the effect of reducing the commercial use of those products; when the reports are released, some (not all) companies choose to reduce their use of the covered products, either because they want to be responsible corporate citizens or because of pressure from neighbors affected by the releases. Whatever the reasons, the effect has been a substantial decrease in the use of some of these products, even though they were not subject to traditional regulation.

I have gone into detail about some of the origins and objectives of different types of paperwork because, understandably, the small business community often does not make these distinctions. The Final Report of the Small Business Paperwork Relief Task Force, called for in the 2002 amendments to the PRA, recognized, albeit briefly, the force and effect of some of these distinctions. SMALL BUS. ADMIN. FINAL REPORT OF THE SMALL BUSINESS PAPERWORK RELIEF TASKFORCE (2003) (hereinafter “SBPRTF REPORT”). For example, the Report notes “several barriers to burden reduction”:

- Information Needs. “Federal agencies have specific statutory and programmatic responsibilities and require information to fulfill those responsibilities. Paperwork can only be reduced in ways that will not negatively impact the effectiveness of the laws and regulations for which the agency is accountable”
- Expanded Responsibilities. The need for information increases as new Federal programs are created, existing programs are expanded, additional health, safety or environmental protection laws are enacted, and the tax law becomes more complex.” SBPRTF REPORT, at 17.

This statement not only reflects an appreciation for the various components of the total paperwork burden, but it also explicitly recognizes the role that Congress (as a whole) plays in adding to the burden and the limited ability of agencies (or of the PRA) to simply cut their paperwork requirements.

That said, there are ways to try to minimize the burden of paperwork on small businesses. The Report provides several recommendations, some of which have been undertaken or are in process that would be salutary. It is interesting that the Task Force does not unequivocally endorse (though it certainly does not dismiss) one of the ways agencies have tried over the last decade to reduce their paperwork burden – namely, by converting paperwork (as in pencil and paper) to electronic reporting. This effort is consistent not only with the PRA, but is also pursuant to the Government Paperwork Elimination Act of 1998. 44 U.S.C.A. § 3504, *et seq.* It is worth noting, therefore, the portion of the SBPRTF Report that explains, in part, the reluctance of small businesses to move into the electronic environment, noting that

“the expenses associated with automation are often beyond their reach. Small businesses often do not have the training to quickly grasp new software applications, nor the staff to assign to the task.” SBPRTF REPORT, at 32.

To be sure, this finding was made in 2003, and we have all come a long way since then; even many of my generation who did not immediately embrace the advances in technology when they first came on the scene are now proficient users of electronic devices. For this reason, I believe that continued emphasis on electronic reporting is important in trying to constrain, if not reduce, paperwork burdens for small businesses.

Another portion of the Report worth noting is its analysis of the potential for reducing burden through synchronizing or consolidating reporting requirements across agencies and even across federal, state, and local governments. Here too, the possibilities, which I have often championed, are tempered by other factors, including the following:

[S]ynchronizing reporting frequency . . . seems to have the least potential for burden reduction because not all information that businesses are required to report is submitted to the Federal government on a regular basis . . . [but rather] only at

the time of an event, such as admission of a patient to a nursing home, or a chemical spill.

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

Further, for many reporting requirements, the reporting frequency [content and timing] is mandated in statute . . . [and thus] would require legislative . . . action. SBPRTF REPORT, at 18.

The Report is also on point in recognizing another potential problem with consolidating information from private individuals or firms in a single database or even isolated instances of sharing of information among agencies. *See, e.g.*, SBPRTF REPORT, at 19. If this were proposed, it is almost certain that the relief from submitting information repetitively would be replaced by concerns about confidentiality and/or privacy. These are highly charged issues that we have made little progress in resolving; fears of hacking and identity theft are even more pronounced now in some quarters than the fear of “Big Brother.”

One final point from the Report that I think is critically important is the extent to which burden reduction requires sustained funding. *See, e.g.*, SBPRTF REPORT, at 26. That was true in 2003 and is even more critical now, after many years of straight lined or decreased funding for many of the agencies in the Executive Branch. An agency simply cannot wish away paperwork burden; it takes staff time and resources, both of which are in very short supply in most agencies, which have been told for a number of years now to do more for less. If we are serious about doing something about the paperwork burden, the agencies must be provided adequate resources to accomplish the task.

Lastly, although I may be biased because of my previous position at OIRA, I firmly believe that even if the paperwork burden is not being reduced, we should recognize that the PRA (and OIRA’s implementation of the PRA) have been an important tool in restraining the Federal government’s appetite for data. While there has been no empirical study of the effect of the PRA – there being no counterfactual baseline to compare it with – I submit that it has had a salutary effect. By its terms, the PRA requires agencies to provide notice to the public and an opportunity for them to comment on the ICR when it is in draft form. (PRA, § 3206(c)(2)) Those being asked for information or those expecting to use the information can and should suggest ways of simplifying, streamlining, or otherwise reducing the burden of the proposed form. The agency is required to consider the comments submitted (PRA, § 3206(d)(2)(A)), and only after the agency has either accepted or rejected the comments (in the case of rejection, the agency has to explain why (PRA, § 3206(d)(2)(B))), is the ICR sent to OIRA, which

again provides public notice (PRA, § 3206(b)) and undertakes its own independent (and dispassionate) review of the ICR.

I am aware of anecdotal information from my tenure at OIRA (that has continued to this day) to the effect that some program offices in various agencies do not propose new ICRs, unless they are statutorily mandated, because those who favor gathering the information believe that the process is so time consuming and labor intensive, and the difficulty of negotiating with OIRA is so exhausting, that it is not worth their effort. For these reasons, I am confident that the PRA is working to lessen the paperwork burden on all segments of the American public – individuals, small businesses, state, and local governmental offices, non-government organizations, etc.

I recognize that paperwork is burdensome and that the burden poses a greater challenge to smaller firms than to large and even mid-sized companies. There are steps that can be taken to make a difference at the margin, but there is no magic bullet that would dramatically change the numbers. For this reason, I believe it is important and valuable to emphasize burden reduction, but I would urge you to do so in a thoughtful way that takes account of the many complications and complexities that exists.

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