

Testimony before the United States Congress on behalf of the



Testimony of

Andrew M. Langer
Manager, Regulatory Policy

before a joint hearing of

The House Government Reform Committee
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
and
The House Small Business Committee
Subcommittee on Regulatory Reform and Oversight

on the date of

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on the subject of

THE IMPLEMENTATION OF SMALL BUSINESS PAPERWORK RELIEF
BY THE OFFICE OF MANAGEMENT AND BUDGET

Chairman Ose, Chairman Schrock and Members of the Committees:

It is my pleasure to appear before you today to offer the National Federation of Independent Business' assessment of the Office of Management and Budget's (OMB) implementation of the Small Business Paperwork Relief Act (SBPRA, P.L. 107-198). I am here representing the National Federation of Independent Business, the nation's largest organization of small business owners. NFIB has 600,000 members, and is represented in each of the fifty states. NFIB represents small employers who typically have about five employees and report gross sales of around \$350,000 per year. Our average member nets \$40,000 to \$50,000 annually.

I believe it is important to distinguish the type and size of businesses NFIB represents. Too often, federal policy makers view the business community as a monolithic enterprise that is capable of passing taxes and regulatory costs onto consumers, without suffering negative consequences. For small business, this is not the case. NFIB members are not publicly traded corporations; they are independently owned and operated. They do not have payroll departments, tax departments or attorneys on staff.

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

Growing businesses lead to job creation, which is one of the major roles small business plays in our national economy. Small business is the leader in job creation. Small firms with fewer than 500 employees employ 52 percent of the non-farm private sector work force as of 1998, and are responsible for 51 percent of the private sector business share of the nation's gross domestic product.

From 1994 to 1998, about 11.1 million new jobs were added to the economy. Small businesses with 1-4 employees generated 60.2 percent of the net new jobs over this period and firms with 5-19 employees created another 18.3 percent. It is because small businesses have such deep impact on employment and the national economy that it is so critical that the policies you shape account for the impact the law will have on small business.

As you hopefully know, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs

as one of the most important issues that NFIB ought to work to change. The Office of Advocacy, whose Chief Counsel has been such a good friend to small businesses, estimates that the regulatory compliance costs for firms with fewer than 20 employees is nearly \$7,000 per employee, per year.¹

This means that for one of NFIB's average members, with five employees, those costs total approximately \$35,000. For a business operating on a shoestring, such costs can be devastating.

The Paperwork Task Force Report—Disappointing

NFIB had high hopes for the implementation of the SBPRA, but unfortunately our expectations have not been met. The OMB created a Paperwork Reduction Task Force, and after studying the issue, that Task Force released a draft report (hereafter referred to as the "Draft Report"). Though the Draft Report noted concerns that our members have expressed regarding the burdens they face, they apparently didn't feel that those concerns were serious enough to warrant immediate attention.

For instance, in both oral and written testimony submitted to the Small Business Administration's Office of Advocacy, NFIB has discussed the importance of a single point of contact within federal agencies regarding paperwork issues. The SBPRA made this issue established law, requiring each department and agency of the federal government to establish such a single point of contact by June 28, 2003. The Draft Report itself reiterates this requirement and states that it is "feasible and desirable."²

But the Draft Report then weakens this requirement, instead saying, "agencies *should* identify a person or *group of persons* to serve as the single point of contact."³ We believe that the SBPRA requires the agencies to identify a person. Furthermore, allowing the possibility that the agency can dedicate a "group of persons," undermines the entire purpose of having a mandated single point of contact: after all, the reason for this requirement is to reduce the "wild goose chase" that so often accompanies a quest to have a question answered by a federal regulator or to lodge a concern or complaint with one.

Another area of concern to us is that of a catalog (or "catalogue," as termed in the Draft Report) of paperwork requirements. While NFIB once again appreciates OMB's recognition of this as an important issue, We are troubled by the Draft Report's effort to gloss over possible solutions. The Draft Report spends a great deal of time underscoring the difficulty OMB would have in tailoring its existing systems to such a purpose. One

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

² Draft Report at 17.

³ Id. at 19.

possible solution offered, the Business Compliance One-Stop system (BCOS), an effort in which we have actively participated and support, is unfortunately still years away from being an effective tool.

Frankly, small business owners do not understand why it is so difficult for the federal government to keep track and “catalogue” in one place their own paperwork requirements. OMB must address this issue, offer more concrete recommendations, and see that they are undertaken expeditiously. Given that NFIB’s members consider the regulatory regimes overseen by OSHA and HHS to be the most confusing and burdensome⁴, perhaps consideration ought to be given to these two agencies as a good start.

We regret that OMB does not consider “synchronized reporting” to be a feasible, practicable, or even desirable option to reduce paperwork burden.⁵ We continue to hope that individual task force members would look within their own departments and see if their sub-agencies are requiring duplicative paperwork that could be submitted all at one time. Clearly, even paperwork reduction that results in small gains for some businesses is still helpful in moving towards the overall goal.

A Faulty Assumption: Three Examples of The Problem

Of particular concern and frustration is an assumption made by the Task Force in the introduction to their draft report: “the Task Force assumed that Federal agencies collect the minimum information necessary to fulfill statutory or programmatic responsibilities.”⁶ A statement such as that underscores the fundamental problem with the federal bureaucracies and their attitudes towards paperwork burden reduction—it makes it clear that they simply don’t get it!

At the very least, this is an issue that the Task Force should have endeavored to answer as a part of its inquiry, as many of us who deal with paperwork requirements can point to a number of examples within the entire universe of regulatory paperwork where more information is asked of a small business than is actually required. We further believe that the assumptions made by agencies (and OMB) as to the time required to complete paperwork are grossly underestimated.

We offer three examples. The first example recapitulates testimony given by NFIB member Frank Fillmore before the Committee on Government Reform’s Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs on April 11, 2003 regarding the 2002 Economic Census documents. The second example discusses what WE see as

⁴ Source: Informal survey of NFIB members, March 2003.

⁵ Draft Report. at 17.

⁶ Id at 12.

intrusive requirements arising out of Superfund liability documentation. My final example discusses the continuing problem of EPA's reluctance to address burden reductions for reporting lead usage under the Toxics Release Inventory.

The 2002 Economic Census

In January and February of this year, many small businesses received a questionnaire from the Commerce Department's Bureau of the Census, a 2002 Economic Census form, asking a wide range of questions regarding their businesses, including duplicative information that these businesses would normally be required to submit to other agencies (such as the IRS). These forms ranged between twelve and fifteen pages, and were estimated to take roughly an hour to complete⁷.

NFIB quickly began receiving questions and complaints from members throughout the country—members who were taking sometimes eight and *fourteen* hours to complete these forms. Clearly, there is a world of difference between a single hour and fourteen hours, especially given the detail and accuracy these forms required (there are penalties for not only failing to submit such paperwork, but also for providing inaccurate [i.e., estimated] information on these forms).

In the case of NFIB member Frank Fillmore, the forms were estimated by him to take somewhat less time—but nevertheless presented a tremendous burden. As he testified in April, 2003, “This particular census form would probably take between four and eight hours to accurately complete. Four hours may not seem like much, but multiplied dozens of times with requirements from federal, state, and local governmental agencies, the drain on the finite number of hours I have to sell my “inventory” becomes enormous.”⁸

But time burdens weren't the only concern that this member had. It was also the intrusiveness of the information requested:

Often government forms require the disclosure of information that I consider proprietary and sensitive in nature. In particular, the census form requires financial data on sales and revenue. The Fillmore Group is privately held, and we do not publish financial statements. The only two entities that receive that information today are the IRS and my banker. The form further requires that I split that revenue, either via dollar amounts or on a percentage basis, into 52 different categories and subcategories. While that might seem reasonable to a methodical analyst at the Department of Commerce, that's a far greater level of detail than we have ever used to manage the business.⁹

⁷ Based upon conversations with Census officials.

⁸ Testimony of Frank C. Fillmore, Jr. before the House Government Reform Committee, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, April 11, 2003 at 3

⁹ Id.

Other members echoed Mr. Fillmore's concerns. All were seriously frustrated that in addition to the myriad paperwork requirements they faced, that the Census Bureau would add in such a sudden and heavy-handed fashion.

Superfund Ability to Pay Claims

This is an issue that was recently brought to my attention by one of NFIB's members. Faced with the possibility of being a "potentially responsible party" under the nation's Superfund cleanup laws, this member was sent an "Individual Ability to Pay Claim" form. The form itself is comprised of eight pages, and asks for detailed financial information, on par with what one might have to fill out if one were applying for a mortgage.

A copy of the form is attached as Appendix A, but to highlight some of the more intrusive requests, the form asks for the following:

- All utility costs, including costs for wood for fireplaces;
- Food costs per week, month, quarter or year;
- Amounts spent on clothing;
- Tuition expenses;
- The market value of family automobiles;
- Description of the primary residence and its value;
- A listing of all family property with a value greater than \$500.

The form, at its start, requests information as to which members of the family within a household are employed, and then asks for their salary information. One presumes that because the EPA is asking about the salary of an in-the-household child, the EPA sees that child's salary as something that it might be entitled to. I personally find it particularly galling that the EPA sees itself as entitled to the salary of some teenager who has spent his or her summer vacation learning about having a good work ethic and contributing to the economy.

There is something fundamentally wrong with that, and with a form that asks for such information.

Lead TRI

Finally, of continued concern is the burdensome requirements imposed by EPA for reporting usage of lead under the Toxics Release Inventory (TRI). TRI is, above all else, a paperwork law—one that hits small business particularly hard, given that their size makes it unlikely that they have the experts on staff who can easily complete the required forms. Two years ago, EPA changed the threshold for reporting, ratcheting it down from 10,000 lbs of lead used in a year to 100 lbs, a mere 1% of what it was before.

Regardless of the scientific justification for such a change, which is currently a subject of intense scrutiny by EPA's own Scientific Advisory Board, it was a radical change, one that all agreed would produce an additional burden on those smaller entities who would now have to file reports. But those pressing for it at EPA and elsewhere apparently hoped it would produce a better idea of how and where lead was being used and released into the general population.

NFIB and others said at the outset that this burden would be a tremendous one, and strangely enough it was EPA's own estimates that made real these beliefs. EPA stated that it would take first-time filers sixty hours to complete the paperwork, in addition to forty hours required to determine if filing the paperwork would be necessary. Incidentally, we believe that EPA's estimates of the amount of time needed to complete this paperwork to be wildly off. We have heard from some small businesses that have had to take an additional thirty or fifty hours to do what EPA has asked on lead TRI.

To put it in perspective, using only EPA's own numbers, this would mean that, in addition to filling out *ALL* of the other paperwork associated with their business (tax paperwork, OSHA paperwork, Wage and Hour paperwork for the Department of Labor, a 2002 Economic Census form, etc), that a small business owner would be spending one and a half to two and a half *WEEKS* of his or her time devoted entirely to lead TRI. Time and time again this issue was raised with EPA, and time and time again their efforts to reduce this burden have been minimal.

The question, of course, is one of justification. The purpose of TRI is to track releases of substances into the environment from one entity to the next, and EPA presumably had a reason from lowering the threshold for reporting from 10,000 lbs. down to 100 lbs., a scant 1% of the amount required formerly. EPA apparently believed that such a dramatic reduction would "capture" a tremendous amount of new releases, and thus justify their move. So was EPA justified?

The answer, in a nutshell, is no. Several weeks ago EPA released their report on filings under lead TRI. Of the new reporters, 41%, or 2275, reported no releases of lead whatsoever.

Using EPA's own estimated paperwork time for first time filers, we come to the following conclusions.

At 100 hours for first time filers to both figure out **AND** complete the required paperwork, we are looking at 227,500 man hours spent. Assuming 2000 hours for an average "man work year", and you come to roughly 113 man **years... for no releases of lead reported!**

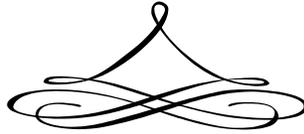
These three examples represent just a few of the egregious paperwork burdens faced by our members. But they plainly illustrate that the Task Force was just plain wrong in its assumption that the Federal Government requires the minimum that is necessary to get the job done.

Conclusion

Overall, NFIB is disappointed with the Task Force's recently concluded efforts. Because paperwork represents such a tremendous burden for our members, and for small businesses in general, we had hoped and expected that OMB would have done more to alleviate this burden. It is my hope, Chairman Ose and Chairman Schrock, that you and the members of your committees will hold OMB and the Paperwork Reduction Task Force to the standards Congress enunciated last year. American small businesses deserve nothing less.

NFIB appreciates the opportunity to share its concerns with Congress. With the cost of regulation being such a high priority for our 600,000 members, we are happy to share their concerns with you.

Thank you once again, and I look forward to any questions you might have.



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