

Testimony of Sally Katzen  
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before the House Committee on Small Business

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on “Improving the Paperwork Reduction Act for Small Businesses”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And:

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

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

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

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