

Congress of the United States

Washington, DC 20515

July 11, 2003

**MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND
REGULATORY AFFAIRS AND THE SMALL BUSINESS SUBCOMMITTEE ON
REGULATORY REFORM AND OVERSIGHT**

FROM: Doug Ose and Ed Schrock



SUBJECT: Briefing Memorandum for July 18, 2003 Hearing, "What is OMB's Record in Small Business Paperwork Relief?"

On Friday, July 18, 2003, at 10:00 a.m., in Room 2154 Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a joint hearing with the Small Business Subcommittee on Regulatory Reform and Oversight on paperwork reduction for small businesses. The hearing is entitled, "What is OMB's Record in Small Business Paperwork Relief?"

Congressional Action on Paperwork Reduction

In 1942, to reduce paperwork imposed on the public, Congress established a centralized review function for proposed paperwork. The Federal Reports Act (FRA) required the Bureau of the Budget (which became the Office of Management and Budget (OMB)) to review and approve each agency paperwork proposal. In 1980, the Paperwork Reduction Act (PRA) replaced the FRA and established an Office of Information and Regulatory Affairs (OIRA) in OMB, whose principal responsibility is paperwork reduction.

In 1995, Congress reauthorized the PRA and set government-wide paperwork burden reduction goals for Fiscal Years (FYs) 1996 to 2001. In 1998, after annual increases in paperwork, instead of decreases, Congress, in a provision in the 1999 Treasury-Postal Appropriations Act, required OMB to issue a report identifying specific expected paperwork reduction accomplishments in FYs 1999 and 2000. In 2000, Congress, in a provision in the 2001 Treasury-Postal Appropriations Act, required OMB to issue a report evaluating paperwork imposed by agency regulations ("regulatory paperwork"), including each major rule imposing over 10 million hours of burden, and identifying specific expected reductions in regulatory paperwork in FYs 2001 and 2002. The Internal Revenue Service (IRS) accounts for over 80 percent of all paperwork burden imposed on the public. In July 2002, after six years of increases in paperwork burden, the Appropriations Committee included a directive to OMB in House Report 107-575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

OMB Attention to Small Business Paperwork Reduction

In its February 2003 draft annual regulatory accounting report, OMB did not present an impacts analysis on small business, as required by law. At the Government Reform Subcommittee's annual regulatory accounting hearing on March 11th, OMB pointed out that its final 2002 annual regulatory accounting report included an impacts analysis on small business; in fact, this "analysis" was less than 1-page (pp. 43-4). In post-hearing questions after the Government Reform Subcommittee's annual paperwork reduction hearing on April 11th, OMB confirmed that it continues to devote less than 1 full-time equivalent (FTE) to IRS paperwork burden reduction. In addition, OMB only identified e-government initiatives to reduce burden on small businesses, i.e., instead of any paperwork reduction initiatives to reduce frequency of small business reporting, introduce thresholds below which reporting is not required, use sampling versus universe reporting, create short forms for small businesses, etc.

When the PRA became effective, OMB included various information items in its database for each approved information collection, which could be useful in efforts to reduce paperwork burden on small businesses. For example, OMB's database included 3-digit Budget function code (e.g., air transportation, pollution control and abatement), which OMB uses to produce tables in the fiscal Budget of the United States, such as Budget Authority by Function, and Outlays by Function. And, OMB's database included the precursor to the North American Industry Classification System (NAICS) code system: Standard Industrial Classification (SIC) codes. In a prior Administration, OMB reduced its 2-page form for agencies to request OMB PRA approval to 1-page and eliminated these key information items in its database. In addition, when the PRA became effective, OMB had an on-line query capability for its database so that multiple key variables could be sorted simultaneously to identify opportunities for paperwork reduction. Now, OMB plans to redesign its database to re-create this query capability.

Congressional Action on Small Business Paperwork Reduction

In June 2002, the President signed the "Small Business Paperwork Relief Act of 2002" (P.L. 107-198). This Congressional initiative required OMB to do the following by June 28, 2003: (a) publish the first annual list in the Federal Register and on OMB's website of all compliance assistance resources available to small businesses; (b) have each agency establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork; and, (c) report to Congress on the findings of an interagency task force, chaired by OMB.

The task force was charged with: (a) identifying ways to integrate the collection of information across Federal agencies and programs; (b) examining the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and with synchronized reporting; and, (c) examining the feasibility and benefits of publishing a list of paperwork applicable to small business. This list would be organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in

another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply.”

The law also requires three more OMB reports to Congress by December 2003, June 2004, and December 2004. The two December reports relate to enforcement actions in which civil penalties were assessed for violations of paperwork requirements.

OMB's Implementation of P.L. 107-198

On May 9, 2003, OMB published its draft task force report. On May 21st, four Chairmen – House Government Reform Subcommittee Chairman Doug Ose, Senate Governmental Affairs Subcommittee Chairman George Voinovich, House Small Business Committee Chairman Donald Manzullo, and House Small Business Subcommittee Chairman Edward Schrock - submitted a joint comment letter to OMB (attached). On June 27th, OMB published two documents in the Federal Register. The first was a listing of compliance assistance resources and contact information for agency single points of contact. The document included only some of the Federal agencies that impose paperwork on small businesses; for example, the General Services Administration (GSA) was not included. And, the document included no single points of contact for some agencies, or multiple offices to contact for other agencies, like for the Federal Trade Commission (FTC). In addition, information posted the same day on the Small Business Administration's (SBA's) website was not identical. For example, the OMB and SBA listings included different information for the Department of Housing and Urban Development (HUD).

OMB's second June 27th document was a notice of availability of its final task force report. This document was also flawed. For example, the final report did not address the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system. And, it recommended against a list organized (1) by NAICS codes, (2) by industrial sector description, or (3) “in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply.” Instead, it recommended a new electronic system with the burden on each individual small business “to self-identify applicable criteria that profile their business” and “to self-identify a comprehensive list of applicable requirements.”

Witnesses

The invited witnesses for the July 18, 2003 hearing are: Senator George V. Voinovich, Chairman, Senate Governmental Affairs Subcommittee on Oversight of Government Management, The Federal Workforce and The District of Columbia; Representative Donald A. Manzullo, Chairman, House Small Business Committee; Dr. John D. Graham, Administrator, OIRA, OMB; Karen Kerrigan, Chairman, Small Business Survival Committee; and, Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business.

Attachment

Congress of the United States

Washington, DC 20515

May 21, 2003

BY FACSIMILE

The Honorable Mitch Daniels
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Daniels:

This letter provides our comments on the "Draft Report of the Small Business Paperwork Relief Task Force," which was published on May 9, 2003, by the Office of Management and Budget (OMB) for less than 30 days of public comments. The Small Business Paperwork Relief Act of 2002 (Pub. L. 107-198) established an interagency task force, chaired by OMB, to study the feasibility of streamlining reporting requirements for small businesses and required OMB to submit reports on the task force's analysis to Congress by June 28, 2003 and June 28, 2004.

Besides the work of the task force, this law requires: (a) OMB to publish by June 28, 2003, its first annual list in the Federal Register and on its website of the compliance assistance resources available to small businesses; (b) each department and independent agency to establish by June 28, 2003, one point of contact for small businesses; (c) each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees; and (d) two reports (each with data for a one-year period) from each department and independent agency on enforcement actions in which a civil penalty was assessed and the penalty amounts reduced or waived for small businesses.

With respect to requirement (a), the Draft Report does not clearly state that the annual list is required to be published by OMB and on its website. Congress specifically designated OMB because the Paperwork Reduction Act requires OMB approval for all agency information collections. The Draft Report mischaracterizes requirement (b) above by stating, "agencies should identify a person or group of persons to serve as the single point of contact" (68 FR 25173). In fact, a group of persons would be inconsistent with both the law and Congressional intent. The Draft Report includes a simple mention of requirement (c) (68 FR 25166) but no mention whatsoever of requirement (d).

The introductory section of the Draft Report states, "the Task Force assumed that Federal agencies collect the minimum information necessary to fulfill statutory or programmatic responsibilities, consistent with the Paperwork Reduction Act. The recommendations concentrate on ways to minimize the burden associated with existing requirements, rather than eliminate requirements" (68 FR 25171). We believe that this initial assumption is faulty.

As a first task, the law requires the task force to examine integration and consolidation of paperwork requirements within and across agencies so that small businesses “may submit all information required by the agency – (A) to 1 point of contact in the agency; (B) in a single format, such as a single electronic reporting system, with respect to the agency; and (C) with synchronized reporting for submissions having the same frequency.” The Draft Report states, “Our review indicates that while each of these options outlined in the law may be desirable and feasible under the appropriate circumstances, there are several barriers that need to be addressed” (68 FR 25172). This statement and the following discussion are disappointing. Congressional intent is clear. As a consequence, we ask you to remove such barriers, as needed, and move ahead with the needed simplification for small businesses.

As a second task, the law requires the task force to examine the feasibility and benefits to small businesses of OMB’s publishing a list of small business paperwork “organized – (A) by North American Industry Classification System code; (B) by industrial sector description; or (C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply.” The Draft Report discusses a variety of technical issues and concludes by stating, “Neither approach – a listing by NAICS code or a listing using multiple categories [e.g., an industry sector identification] – would fully meet small business needs” (68 FR 25174). This statement and the accompanying discussion are also disappointing. Congressional intent is also clear here. As a consequence, we ask you to find an organization for OMB’s listing to assist small business compliance.

The Draft Report states that OMB’s electronic Reports Management System (RMS) “is not accessible by other agencies” (68 FR 25173). RMS, which was implemented in 1981 when the 1980 Paperwork Reduction Act became effective, was originally accessible by the agencies. It also included information for each information collection that is no longer in RMS, such as a 3-digit budget function code, 3-digit Standard Industrial Classification (SIC) codes, and a Catalog of Federal Domestic Assistance Program Number (if applicable). And, RMS originally had an on-line query capability, which allowed searches by multiple variables simultaneously. When and why did OMB remove this accessibility, additional information, and on-line search capability?

We have a few additional implementation questions about matters not specifically discussed in the Draft Report. In OMB’s upcoming annual list of the compliance assistance resources available to small businesses, will OMB include links to the text of each agency’s approved information collection requirements? What other content will be included in OMB’s annual list? And, will each of the 70 departments and independent agencies with one or more OMB-approved information collections have single points of contacts for small businesses? If not, which will not and why?

If you have any questions about this letter, please contact Barbara Kahlow at 226-3058. Thank you for your attention to this request.

Sincerely,



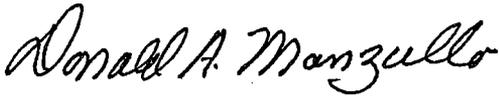
Doug Ose
Chairman

Subcommittee on Energy Policy,
Natural Resources and Regulatory
Affairs
House Committee on Government Reform



George V. Voinovich
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Senate Committee on Governmental Affairs



Donald A. Manzullo
Chairman
House Committee on Small Business



Edward K. Schrock
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House Committee on Small Business

cc: The Honorable Tom Davis
The Honorable Nydia M. Velazquez
The Honorable John Tierney
The Honorable Charles A. Gonzalez

The Honorable Susan M. Collins
The Honorable Richard J. Durbin