"*H.R. 5242 – The Small Business Paperwork Amnesty Act*"

Opening Statement of Chairman Candice S. Miller

Committee on Government Reform
Subcommittee on Regulatory Affairs

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2203 Rayburn House Office Building

The Subcommittee on Regulatory Affairs will come to order. Welcome to today's hearing. I especially want to welcome our witnesses, including my friends and colleagues—Representative Randy Neugebauer and Senator David Vitter.

Today, we will be hearing from witnesses regarding H.R. 5242, the *Small Business Paperwork Amnesty Act*. Representative Neugebauer introduced this bill in April of this year. At the same time, Senator Vitter introduced a companion bill, S. 2656. Thank you both for being here today and we look forward to your testimony on how this legislation will help reduce the regulatory burden and costs faced by this nation's small businesses.

The *Small Business Paperwork Amnesty Act* would give small businesses the ability to correct a first-time paperwork violation within 6 months as long as the violation does not harm the public interest, affect internal revenue laws, or threaten public health or safety. Importantly, a small business would not be exempt from a monetary penalty if the head of an agency determines that the violation has the potential of causing harm or impairs the ability to detect criminal activity.

According to the U.S. Small Business Administration, there are about 25 million businesses with less than 20 employees. These firms account for over 97 percent of all U.S. businesses and roughly 30 percent of all employment. Nearly six out of every 10 workers are employed at a business with less than 500 employees. Their payroll contributions and tax base constitute the economic heart and the backbone of our competitiveness in the global marketplace. Federal policies should help them succeed and foster their advancement; but oftentimes, this is not the case. Sadly, agency bureaucrats are more concerned with meeting monetary quotas for

enforcement than ensuring compliance with the regulations. This attitude is well-engrained within agencies and unfairly punishes small businesses.

The regulatory burden on small businesses is much greater than the burden imposed on larger firms. Firms with more than 500 employees pay roughly $5,300 per employee to comply with Federal regulations, but businesses with less than 20 employees pay more than $7,600 per employee, or 45 percent more, on regulatory compliance. This burden has not been forced upon them by foreign governments engaged in unfair trade practices: It has been forced upon them by our Federal government.

I am not proposing that we abolish regulations. The integrity of regulations that keep our water and air clean and protect our children and society from harm is a reflection of the ideals we work to uphold. I am suggesting that the government provide small businesses some form of monetary relief from insignificant paperwork violations to ease the disproportionate burden they face. This would help business owners without sacrificing regulatory safeguards. The legislation introduced by Representative Neugebauer and Senator Vitter attempts to do exactly this: If a small business has a paperwork violation that essentially does not present a danger to public health or safety, or violate internal revenue laws, then the Federal agency citing the business is required to waive the civil fine for the first-time only.

This is not a new idea. Senator Russell Feingold introduced legislation in the 104th Congress that included a provision very similar to H.R. 5242. In both the 105th and 106th Congresses, the House passed regulatory reform initiatives that included the language we are discussing today. Both bills passed with bipartisan support: Fifty-four Democrats voted for the measure in 1998, and 64 voted for it in 1999.

In March of 1998, the predecessor of this Subcommittee held hearings on the legislation, which was introduced by then-Subcommittee Chair David McIntosh of Indiana and Ranking Member Dennis Kucinich of Ohio. At the time, my colleague, Mr. Kucinich, offered a good reason why Members of the Subcommittee should be supportive of the provision that provides penalty relief for a first-time paperwork violation. He stated: “I would like to stress, and this is

a very important point for every member of the committee and the public to be aware of, that this penalty relates only to civil fines, not of a criminal nature. We have made sure to include language that seeks to protect the health and safety of the public." Even if a business corrects a violation within 24 hours to avoid a fine, Mr. Kucinich continued: "[T]he agency has the discretion to impose the fine if the violation is serious."

Congress is not the only branch of government trying to compel agencies to provide penalty relief to small businesses. In April 1995, President Clinton issued a memorandum directing the heads of 27 departments and agencies to waive penalties to the extent permitted by law for small businesses. The standards dictating when an agency should waive a fine are essentially the same as those included in the legislation we are examining today.

Unfortunately, Federal agencies did not—and have not—taken seriously the directive to reduce or waive fines for small businesses committing an insignificant first-time paperwork violation. In fact, many argue that things are getting worse. Congress passed the *Small Business Regulatory Enforcement Fairness Act* a year after President Clinton directed agencies to provide penalty relief to small businesses. Among other things, the law required agencies to establish policies to provide penalty relief to small business. It has been a decade since that law took effect, and we are still concerned with the "gotcha" approach to regulatory enforcement. Maybe it is time for Congress to take back some of the discretion it has given to agencies. Agencies seem unwilling to implement fair penalty relief to small businesses on their own, despite the wishes of Congress and Presidents. Maybe it is time for Congress to mandate true penalty relief to the small businesses that are the engine of our economy.

I want to thank each of our witnesses for being here today. We look forward to your testimony. With that, I recognize the distinguished Ranking Member of the Subcommittee, Mr. Lynch.