

SMALL BUSINESS PAPERWORK REDUCTION ACT
AMENDMENTS OF 1999

FEBRUARY 5, 1999.—Ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 391]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 391) to amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
I. Purpose	2
II. Need for Legislation	4
III. Committee Action	8
IV. Section-by-Section Analysis	8
V. Oversight Findings	10
VI. Budget Analysis and Projections	10
VII. Congressional Budget Office Estimate	10
VIII. Constitutional Authority Statement	13
IX. Changes in Existing Law Made by the Bill, as reported	13
X. Committee Recommendations	16
XI. Congressional Accountability Act; Public Law 104-1	17
XII. Unfunded Mandates Reform Act; Public Law 104-4, Section 425	17
XIII. Federal Advisory Committee Act (5 U.S.C. App) Sec. 5B	17
Minority Views	19

I. PURPOSE

The purpose of the “Small Business Paperwork Reduction Act Amendments of 1999” is to reduce the burden of Federal paperwork on small businesses by requiring the publication of a list of all the Federal paperwork requirements on small businesses; requiring each Federal agency to establish one point of contact for small businesses on paperwork issues; requiring the agencies to allow small businesses to correct first-time paperwork violations before civil fines are assessed, except when doing so would harm or threaten public health and safety, impede criminal detection, or involve an internal revenue law; requiring the agencies to further reduce paperwork for small businesses with fewer than 25 employees; and forming a task force of agency representatives to study the feasibility of streamlining Federal reporting requirements on small businesses. The bill amends Chapter 35, Title 44, otherwise known as the “Paperwork Reduction Act of 1995” (PRA).

SUMMARY

In brief, the Small Business Paperwork Reduction Act Amendments of 1999 are intended to do the following:

A. Require the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) to publish a list annually on the Internet and in the Federal Register of all the Federal paperwork requirements for small business.

Section 2 (a) requires the Director of OMB to authorize the Administrator of OIRA to publish this list. The definition for “small business,” in this section and throughout the bill, is the one used in the Small Business Act (15 U.S.C. 631 et seq). Small business is defined as an enterprise which is “independently owned and operated and which is not dominant in its field of operation.” It is further defined by the Small Business Size Regulations (13 CFR 121), which set the size standards businesses must meet to qualify as a small business. “Collection of information” is the term used throughout the PRA to define paperwork. It includes requirements for reporting to the government and disclosure to third parties, as well as record-keeping.

B. Require each agency to establish one point of contact to act as a liaison with small businesses.

Section 2(b) requires each agency to establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork.

C. Suspend civil fines on small businesses for first-time paperwork violations so that the small businesses may correct the violations.

Section 2 (b) provides that civil fines may be suspended for six months unless the agency head determines that the violation has caused actual serious harm; that waiving the fine would impede the detection of criminal activity; that the violation is a violation of the internal revenue laws or any law concerning the assessment or collection of a tax, debt, revenue or receipt; or that the violation presents an imminent and sub-

stantial danger to the public health and safety. If the agency head determines that the violation presents an imminent and substantial danger to the public health and safety, the agency head may impose a fine or suspend the fine for 24 hours to allow the small business to correct the violation. In making this determination, the agency head shall take into account all the facts and circumstances of the violation, including the following factors: (1) the nature and seriousness of the violation, including whether it is willful or criminal; (2) whether the small business has made a good faith effort to comply and correct the violation; (3) the previous compliance history of the small business, including any past enforcement actions against its owners or principals; and (4) whether the small business has obtained a significant economic benefit from the violation. Only civil fines may be suspended, not criminal fines. Only fines assessed for violations of collection of information (paperwork) requirements may be suspended, not fines for violations of other regulatory requirements. The suspension of fines provisions of this section also apply to States that are administering Federal regulatory requirements.

D. Further reduce paperwork for businesses with fewer than 25 employees.

Section 2(c) requires each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees, in addition to meeting the current paperwork reduction requirements of the PRA.

E. Establish a task force, convened by OIRA, to study the feasibility of streamlining reporting requirements for small businesses.

Section 3 establishes a task force to study the feasibility of streamlining reporting requirements for small businesses. The Director of OMB will authorize the Administrator of OIRA to appoint the members of the task force. The members will include representatives from different agencies, including the Bureau of Labor Statistics (BLS) and the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DOL), the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and the Office of Advocacy in the Small Business Administration (SBA), in addition to other agencies that the Director determines could contribute to this effort. The task force will examine 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 on one date. After one year, the task force will report its findings to the House Government Reform and Small Business Committees and the Senate Governmental Affairs and Small Business Committees. If the task force finds that consolidating reporting requirements so that small businesses can make annual submissions to each agency on one form or a single electronic reporting system will not work or reduce the burden in a meaningful way, the task force will make recommendations

to the Committees on what will work to streamline and reduce the burden of reporting requirements for small businesses.

II. NEED FOR LEGISLATION

The burden of federal regulations on the American public continues to grow. Total regulatory costs in 1998 were approximately \$700 billion. When these costs are passed on to the consumer, the typical family of four pays approximately \$6,875 per year in hidden regulatory costs. Families spend more on regulation than on medical expenses, food, transportation, recreation, clothing, and savings. In fact, U.S. regulatory costs in 1997 (\$688 billion) were estimated to exceed 1996 personal income taxes (\$631 billion) and 1995 corporate profits (\$601 billion).¹

Small businesses are particularly hurt by the regulatory burden. The SBA reports that the smallest firms carry the heaviest regulatory burdens—small businesses bear 63 percent of the total regulatory burden. Firms with 20–49 employees spend, on average, 19 cents out of every revenue dollar on regulatory costs. The total regulatory burden on small businesses is \$247 billion and on large businesses is \$148 billion.²

Not only are regulatory costs higher for small businesses but also they are harder to absorb. Small businesses cannot afford to comply with regulations in the same way that large businesses can. The high cost of regulations often makes it impossible for small businesses to expand, threatens their ability to stay afloat, or prevents them from opening in the first place. At the National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee's May 16, 1996 hearing, "The Impact of Regulations on Employment," a small business owner from Sumner, Washington testified that the cost of regulations stopped her from opening a new business. When Judi Moody and her husband tried to open a small bookstore and cafe, they ran into so much regulation and paperwork that they could not proceed. She recalled at least 25 forms they would have to complete, and those were from DOL alone. They would have needed to hire a lawyer before they even opened the door. Mrs. Moody and her husband just wanted to hire a couple of employees to sell books and coffee. But because of government paperwork, they were not able to realize their dream and create more jobs.

Small businesses need a break on regulations and regulatory paperwork, not only because they bear more of the costs but also because they are a crucial part of the American economy. There are 22 million small businesses in the United States. Small businesses with fewer than 500 employees make up the vast majority of all employer firms—99.7 percent. And small businesses generate approximately 50 percent of U.S. jobs and sales. One of small businesses' biggest contributions to the economy is that they hire a greater proportion of individuals, who might otherwise be unemployed, than large businesses. Very small firms (fewer than 10 employees) hire part-time workers at a rate almost twice that of very

¹ Clyde Wayne Crews, Jr., "Ten Thousand Commandments: A Policymaker's Snapshot of the Federal Regulatory State", 1998 Edition.

² Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business", 1995.

large firms (1000 or more employees). Small firms employ a higher proportion of workers under age 25 and age 65 and over. Small firms have a higher ratio of employees with lower educational levels—a high school degree or less—than large firms. Small firms employ more individuals on public assistance than large firms.³

The single most costly type of regulation is paperwork compliance. Regulatory paperwork costs are higher than any other regulatory costs, particularly for small businesses. For firms with fewer than 20 employees, paperwork regulations cost \$2,017 per employee per year. For firms with 20 to 499 employees, paperwork regulations cost \$1,931 per employee per year. For firms with 500 or more employees, paperwork regulations cost \$1,086 per employee per year.⁴

One of the main areas of concern voiced by representatives at President Clinton's 1995 White House Conference on Small Business was paperwork burden. The sheer scope of government-mandated paperwork explains why it is such a problem—the estimated total paperwork burden for 1998 was 7 billion hours.⁵ Unfortunately, past efforts to fix the problem are not working. The PRA's legal requirement for 1996—a 10 percent reduction in paperwork—was not achieved. Paperwork was only reduced 2.6 percent in 1996. Instead of another 10 percent reduction in 1997, paperwork was increased 2.3 percent. Instead of a five percent reduction in 1998, paperwork was increased an additional 1.0 percent.⁶ According to the General Accounting Office, the agencies were unlikely to meet OMB's goal of a 25 percent reduction in the cumulative paperwork burden by the end of fiscal year 1998. EPA officials confirmed that their agency would not meet the goal.⁷ The total cost of the paperwork burden in 1998 is estimated to be \$229 billion.⁸ Paperwork (categorized as process regulation) accounts for one third of total regulatory compliance spending—a dramatic increase from one fifth in 1977.⁹ Paperwork in 1992 accounted for some 40 percent of total business regulatory costs and the burden is increasing.¹⁰

Another area of concern to small businesses is the enforcement of regulations and the levying of fines for violations. The Federal agencies were required by the Small Business Regulatory Enforcement Fairness Act (SBREFA), passed in 1996, to make appropriate allowances for small businesses in the enforcement of regulations. In particular, SBREFA required the agencies which enforce regulations for small businesses to develop plans for waiving and/or reducing fines as appropriate. They were required to submit these plans to Congress by March 31, 1998. But many of the agencies still have not submitted their plans to Congress. These include: the

³Small Business Administration, "Characteristics of Small Business Owners and Employees", 1997.

⁴Thomas D. Hopkins, "Regulatory Costs in Profile", 1996.

⁵Office of Management and Budget, Information Collection Budget of the United States Government, 1998.

⁶Office of Management and Budget, "Information Collection Budget of the United States Government", 1998.

⁷General Accounting Office 1997 Testimony, "Paperwork Reduction: Government Goals Unlikely to be Met."

⁸Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business", 1995.

⁹Thomas D. Hopkins, "Regulatory Costs in Profile", 1996.

¹⁰Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business", 1995.

Department of Justice (DOJ), which is the sixth biggest non-tax agency assessing penalties; five other cabinet departments; the Architectural and Transportation Barriers Control Board; and several other independent agencies. In fact, only 22 agencies have submitted plans out of the 77 agencies that assess penalties. Furthermore, OMB ignored SBREFA completely in its June 1998 "Federal Financial Management Status Report and Five-Year Plan," which reports to Congress under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, on the Federal agencies' annual assessment of civil monetary penalties.

Many of the plans the agencies *did* submit to Congress do not include sufficient data to evaluate performance under SBREFA. For example, the Internal Revenue Service (IRS) and the Health Care Financing Administration (HCFA) did not include any information on the penalty reductions and waivers they granted to small businesses, if any, and the biggest penalty assessors — IRS, the Department of Health and Human Services, DOL, EPA, the Federal Reserve, DOJ, and the rest of the Department of Treasury, did not include the proportion of dollars waived of those assessed on small businesses. Many of the agencies that have submitted penalty waiver and reduction plans have not made significant waivers or reductions as a result of implementing these plans. In fact, the penalty policies that have been adopted by the agencies under SBREFA are, for the most part, settlement policies. When civil penalties are assessed for violations, a small business is forced to enter into negotiations with the agency to reduce or eliminate the penalties. The negotiation process can be a legal nightmare for these small companies.

On March 5, 1998, the Subcommittee held a hearing on the bill when it was introduced in the 105th Congress (as H.R. 3310). At the hearing small business owners stressed the need for this legislation. They testified that the paperwork burden is so large and costly that, in many cases, their companies' growth is stunted and they are unable to create more jobs. They also emphasized that most small business owners fear unknown regulations and paperwork more than known regulations and paperwork. Jere Glover, Chief Counsel of the SBA's Office of Advocacy, also testified in support of the bill. He stated that paperwork and reporting requirements remain a major cost problem for small businesses. He also stated that the legislation addresses almost all the concerns reported by the 1995 White House Conference on Small Business.

The bill addresses many of the concerns which the small business owners voiced at the hearing. The bill's requirement that OIRA publish an annual list of all paperwork requirements on small business would help eliminate the fear of the unknown. For the first time, small business owners would be able to go to one source to discover all the paperwork they must complete. At the suggestion of William Saas, one of the witnesses at the hearing, Chairman McIntosh and Representative Kucinich amended the bill in the last Congress to require OIRA to make the list available on the Internet so that small businesses can access it easily. This comprehensive list will be particularly helpful to an entrepreneur who wants to start a small business. By referring to this list, any entrepreneur will be able to easily discover all the paperwork require-

ments he or she will have to meet. This list would also bring to light all the duplicative paperwork requirements placed on small business, providing Congress with the information it needs to eliminate these unnecessary burdens in the future.

The bill's provision to suspend civil fines for first-time paperwork violations, except in cases of actual serious harm or an imminent threat to public health and safety, would relieve small business owners of the fear that they will be fined for an innocent mistake or oversight. Chairman McIntosh wrote the bill with these concerns in mind. After hearing from small business owners at 18 field hearings, he particularly wanted to relieve them of fines for innocent violations of paperwork requirements. The witnesses testified that they would benefit from this provision in cases of omission due to ignorance of the requirements. They emphasized that it is practically impossible to be aware of and keep up with all the Federal paperwork requirements, particularly because new requirements are issued by the various Federal agencies every year.

Gary Roberts, the owner of a small company which installs pipelines in Sulphur Springs, Indiana, testified that he was fined \$750 by OSHA in May 1997 for not having a Hazardous Communication Program at a particular job site. The inspector was told that the program was in the main office, and that all the workers had been trained to follow it. One of the workers retrieved the program from the main office during the inspection. But, OSHA would not waive the fine. The consensus among the witnesses was that small business owners genuinely want to comply with regulations, but they are overwhelmed by the accompanying paperwork.

Since then, the Committee has learned of other small business people who have been given hefty fines for first-time paperwork violations. Mr. Van Dyke, a muck crop farmer from Michigan, was fined in January 1999 for not having the proper employment disclosure paperwork. This omission was his first violation, and he settled for \$17,000. Mr. Howes, who operates a small potato, pickle and strawberry farm, settled for \$20,000 because he did not have similar paperwork filed. This fine was for his first violation too. Struggling farmers and other small business owners cannot afford to pay high fines for innocent mistakes. Their biggest concern is not the paperwork requirements they know, but those they do not know.

The bill would also make it easier for small business owners to receive answers to their paperwork questions because it requires each Federal agency to establish one point of contact to act as a liaison between the agency and small businesses on paperwork collection and control.

Finally, the bill takes an important step toward streamlining and consolidating paperwork requirements for small businesses by establishing a task force of officials from several of the major regulatory agencies as well as SBA and OIRA. The task force would study the feasibility of streamlining and reducing the burden of reporting requirements so that small businesses could report to one point of contact at each agency, once a year, on one form. It would report its recommendations to the Congress after one year.

On March 17, 1998, the Subcommittee held a second hearing to provide the Federal agencies with an opportunity to comment on

the bill. Representatives from DOT, DOJ, the Securities and Exchange Commission (SEC), and DOL's OSHA testified at the hearing. All of the agency witnesses were concerned about the provision of the bill which would suspend fines for first-time paperwork violations. It was clear from the testimony that the agencies ignored the bill's carefully-crafted exceptions for violations which would result in actual harm or threaten public health and safety. All of the witnesses testified that the agencies should retain the authority to issue fines for first-time paperwork violations in every instance with absolutely no restrictions.

III. COMMITTEE ACTION

The "Small Business Paperwork Reduction Act Amendments of 1999" (H.R. 391) was introduced on January 19, 1999, by National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee Chairman David McIntosh.

After introduction, the bill was referred to the Committee on Government Reform, and in addition, to the Committee on Small Business. On February 3, 1999, the Government Reform Committee held a mark up of the bill. By voice vote, the Committee approved reporting H.R. 391, as introduced, to the full House.

Chairman Jim Talent, on behalf of the Small Business Committee, waived jurisdiction over H.R. 391, after reviewing the legislation and the legislative history.

IV. SECTION-BY-SECTION ANALYSIS

Section 1: Title

Section 2: Facilitation of compliance with federal paperwork requirements

Annual publication of federal paperwork requirements

Section 2(a) amends Section 3504(c) of the PRA to require the Director of the Office of Management and Budget (OMB) to authorize the Administrator of the Office of Information and Regulatory Affairs (OIRA) to publish a list annually in the Federal Register and on the Internet of all the Federal paperwork requirements for small business. The list will be organized or indexed into useful categories by industry type to help small businesses identify which paperwork requirements apply to them. This includes categorization according to the North American Industrial Classification System and other ways that will be helpful and readily described. The first publication of the list will be not later than one year after the date of enactment of the Act. "Collection of information" is the PRA's term for paperwork. It is defined as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes." "Small business concern" is the term for a small business

as it is used in the Small Business Act. It is defined as an enterprise which is “independently owned and operated and which is not dominant in its field of operation.” It is further defined by the Small Business Size Regulations (13 CFR 121), which set the size standards businesses must meet to qualify as a small business.

Establishment of agency point of contact for small business

Section 2(b) amends Section 3506 of the PRA to require each agency to establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork.

Suspension of fines for first-time paperwork violations

Section 2(b) further provides that agencies shall suspend civil fines on small businesses for first-time paperwork violations so that the small businesses may correct the violations. If a small business does not correct the violation within the prescribed time period, the fine may be imposed. The fine shall be suspended for six months unless the agency head determines: (1) that the violation has caused actual serious harm to the public; (2) that failure to impose the fine would impede or interfere with the detection of criminal activity; (3) that the violation is a violation of an internal revenue law or any law concerning the assessment or collection of any tax, debt, revenue or receipt; or (4) that the violation presents an imminent and substantial danger to the public health or safety.

If the violation presents an imminent and substantial danger to the public health and safety, the agency head may either impose the fine or suspend it for 24 hours so that the small business may correct the violation. In determining whether to give the small business 24 hours to correct the violation, the agency shall take into account all of the facts and circumstances of the violation, including: (1) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct; (2) whether the small business has made a good-faith effort to comply and remedy the violation in the shortest practicable time; (3) the previous compliance history of the small business, including whether its owners or principal officers have been subject to past enforcement actions; and (4) whether the small business has obtained significant economic benefit from the violation. If the agency head opts to impose the fine in this case, he or she must notify Congress of the decision within two months. Only civil fines may be suspended, not criminal fines. Only fines assessed for violations of collection of information (paperwork) requirements may be suspended, not fines for violations of other, related regulatory requirements. The suspension of fines provisions of this section also apply to States that are administering Federal regulatory requirements.

Paperwork reduction for businesses with fewer than 25 employees

Section 2(c) amends Section 3506(c) of the PRA to require each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees, in addition to meeting the paperwork reduction requirements of the Act.

Section 3: Establishment of a task force on the feasibility of streamlining reporting requirements

Section 3 adds a new Section to the PRA, § 3521, to establish a task force to study the feasibility of streamlining reporting requirements for small businesses. The Director of OMB shall authorize the Administrator of OIRA to appoint the members of the task force. The members will include representatives from different agencies that could contribute to this effort, including DOL's BLS and OSHA, DOT, EPA, and SBA's Office of Advocacy. The task force will examine 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 on one date. After one year, the task force will report its findings to the House Government Reform and Small Business Committees and the Senate Governmental Affairs and Small Business Committees. If the task force finds that consolidating reporting requirements so that small businesses may make annual submissions to each agency on one form or a single electronic reporting system will not work or reduce the burden in a meaningful way, the task force will make recommendations to the Committees on what will work to streamline and reduce the burden of reporting requirements for small businesses.

V. OVERSIGHT FINDINGS

Pursuant to Rule XIII, clauses 3(c)(1), of the Rules of the House of Representatives, the results and findings for these oversight activities are incorporated in the recommendations found in the bill and in this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

H.R. 391 provides for no new authorization, budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are not applicable.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 5, 1999.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 391, the Small Business Paperwork Reduction Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter (for federal costs) and Susan Sieg (for the state and local impact).

Sincerely,

(For Dan L. Crippen, Director).

Enclosure.

H.R. 391—Small Business Paperwork Reduction Act Amendments of 1999

Summary: H.R. 391 generally would seek to provide relief to small businesses by: (1) waiving civil fines and penalties for first-time violations of paperwork requirements, (2) directing the Office of Management and Budget to publish annually a list of applicable paperwork requirements, (3) requiring that agencies provide a single point of contact, and (4) establishing a multi-agency task force to study the feasibility of streamlining requirements for collecting and reporting information to the federal government.

CBO estimates that enacting H.R. 391 would result in a net loss of government receipts of about \$4 million a year, beginning in fiscal year 2000. That amount includes an estimated annual loss of civil monetary penalties (CMPs) of about \$5 million, net of increased income and payroll taxes. (We estimate that any loss of receipts in fiscal year 1999 would total less than \$500,000.) Because the bill would affect receipts, pay-as-you-go procedures would apply. Agencies would also incur additional annual costs to publish a list of paperwork requirements and to participate in the multi-agency task force, but CBO expects that such costs would not be significant.

H.R. 391 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that complying with the provisions of the bill could cause states that are administering certain federal enforcement programs to forego revenues of less than \$2 million a year.

Estimated cost to the Federal Government: By waiving civil fines and penalties for first-time violations of paperwork requirements by small businesses, H.R. 391 would affect the collection of CMPs by federal regulatory agencies. CBO estimates that federal receipts would decline by about \$4 million a year beginning in 2000.

The bill would prohibit federal agencies from assessing CMPs for first-time paperwork violations, except for cases where the agency determines that the violation has caused serious harm or presents an imminent and substantial danger to the public health or safety, or where the violation is not corrected within six months of notification. The one-time relief also would not apply to violations involving the collection of any tax, debt, revenue, or receipt. In addition, the bill would allow an agency to forgo assessing a firm for violations that it considers to present an imminent and substantial danger to the public health or safety. If the agency elects not to waive the fine or penalty, the bill would require that it notify the Congress of the decision within 60 days.

Agencies annually collect approximately \$300 million in non-tax CMPs—excluding those collected by the Internal Revenue Service. Such fines are recorded as governmental receipts. The vast majority of such collections, however, are for non-paperwork violations. Paperwork violations generally involve the failure to record and report information required by federal regulatory agencies to assist in enforcing health, safety, and environmental laws. Additionally, several federal statutes, including the Small Business Regulatory Enforcement Fairness Act of 1996, and Administration policy already require that agencies provide relief to small businesses from first-time fines for paperwork violations. Among other things, agen-

cies are required to consider a firm's size, its compliance history, whether it benefited economically from the violation, and its efforts to correct the violation in determining the amount of any fine or penalty.

H.R. 391 would broaden this relief so as to prevent agencies from imposing any fine for the vast majority of first-time offenses. Unfortunately, information from the agencies we contacted, including the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Departments of Justice and Transportation, indicates that agencies do not track the assessment or collection of CMPs by whether a penalized firm is a small business, a first-time offender, or in most cases, even whether the fine is for a paperwork violation. Consequently, the amount of collections that would be forgone under H.R. 391 is very uncertain.

Based on limited information provided by OSHA, including the amount of fines assessed and collected for certain paperwork violations in 1997, the most recent year for which data are available, CBO estimates that annual collections by that agency would decrease by between \$1.5 million and \$2 million. OSHA and EPA each account for close to one-quarter of all non-tax CMPs. Thus, we estimate that EPA would forgo a similar amount in collections of CMPs. For other agencies, which account for roughly one-half of the remaining non-tax CMPs, but which appear to affect small businesses to a lesser degree, we estimate the government would forgo another \$1 million to \$2 million annually. Thus, in total, CBO estimates that enacting H.R. 391 would result in an annual loss of governmental receipts from CMPs of around \$5 million. After adjusting for the income and payroll tax offset, CBO estimates a reduction in net governmental receipts of \$4 million, beginning in fiscal year 2000. Assuming the bill is enacted by this summer, we estimate that the net loss in governmental receipts for fiscal year 1999 would be less than \$500,000.

The bill also would increase annual discretionary costs for agencies to publish a list of paperwork requirements and to participate in the multi-agency task force, but CBO does not expect such increases to be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

[By fiscal year, in million of dollars]

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Changes in receipts	0	-4	-4	-4	-4	-4	-4	-4	-5	-5	-5

¹ Not applicable.

Estimated impact on state, local, and tribal governments: H.R. 391 contains no intergovernmental mandates as defined in UMRA. However, states that have taken over the enforcement of federal programs, such as occupational safety and health, and safe drink-

ing water, would be limited in their ability to enforce first-time paperwork violations. Because states have a choice whether to administer these programs and are not compelled to do so, changes in law governing the imposition of fines for paperwork violations would not constitute a mandate. States that are enforcing federal regulations under state programs could be expected to forgo penalties of less than \$2 million.

Estimated impact on the private sector: H.R. 391 would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: John R. Righter, Impact on State, Local, and Tribal Governments: Susan Sieg.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VIII. CONSTITUTIONAL AUTHORITY STATEMENT

Clauses 1, 14 and 18 of Article I, Section 8 of the Constitution grants the Congress the power to enact this law.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAPTER 35 OF TITLE 44, UNITED STATES CODE
CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

Sec.

3501. Purposes.

* * * * *

3521. *Establishment of task force on feasibility of streamlining information collection requirements.*

§ 3504. Authority and functions of Director

(a) * * *

* * * * *

(c) With respect to the collection of information and the control of paperwork, the Director shall—

(1) * * *

* * * * *

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; **[and]**

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information**[.]**;

(6) *publish in the Federal Register on an annual basis a list of the requirements applicable to small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)) with respect to collection of information by agencies, organized by North American Industrial Classifica-*

tion System code and industrial/sector description (as published by the Office of Management and Budget), with the first such publication occurring not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1999; and

(7) make available on the Internet, not later than one year after the date of the enactment of such Act, the list of requirements described in paragraph (6).

* * * * *

§ 3506. Federal agency responsibilities

(a) * * *

* * * * *

(c) With respect to the collection of information and the control of paperwork, each agency shall—

(1) * * *

(2)(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

(i) * * *

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); **[and]**

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

(A) * * *

* * * * *

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public~~].~~; and

(4) in addition to the requirements of this Act regarding the reduction of paperwork for small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)), make efforts to further reduce the paperwork burden for small-business concerns with fewer than 25 employees.

* * * * *

(i)(1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork—

(A) establish one point of contact in the agency to act as a liaison between the agency and small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)); and

(B) in any case of a first-time violation by a small-business concern of a requirement regarding collection of information by

the agency, provide that no civil fine shall be imposed on the small-business concern unless, based on the particular facts and circumstances regarding the violation—

(i) the head of the agency determines that the violation has caused actual serious harm to the public;

(ii) the head of the agency determines that failure to impose a civil fine would impede or interfere with the detection of criminal activity;

(iii) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

(iv) the violation is not corrected on or before the date that is six months after the date of receipt by the small-business concern of notification of the violation in writing from the agency; or

(v) except as provided in paragraph (2), the head of the agency determines that the violation presents an imminent and substantial danger to the public health or safety.

(2)(A) In any case in which the head of an agency determines that a first-time violation by a small-business concern of a requirement regarding the collection of information presents an imminent and substantial danger to the public health or safety, the head of the agency may, notwithstanding paragraph (1)(B)(v), determine that a civil fine should not be imposed on the small-business concern if the violation is corrected within 24 hours of receipt of notice in writing by the small-business concern of the violation.

(B) In determining whether to provide a small-business concern with 24 hours to correct a violation under subparagraph (A), the head of the agency shall take into account all of the facts and circumstances regarding the violation, including—

(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

(ii) whether the small-business concern has made a good faith effort to comply with applicable laws, and to remedy the violation within the shortest practicable period of time;

(iii) the previous compliance history of the small-business concern, including whether the small-business concern, its owner or owners, or its principal officers have been subject to past enforcement actions; and

(iv) whether the small-business concern has obtained a significant economic benefit from the violation.

(3) In any case in which the head of the agency imposes a civil fine on a small-business concern for a first-time violation of a requirement regarding collection of information which the agency head has determined presents an imminent and substantial danger to the public health or safety, and does not provide the small-business concern with 24 hours to correct the violation, the head of the agency shall notify Congress regarding such determination not later than 60 days after the date that the civil fine is imposed by the agency.

(4) Notwithstanding any other provision of law, no State may impose a civil penalty on a small-business concern, in the case of a first-time violation by the small-business concern of a requirement

regarding collection of information under Federal law, in a manner inconsistent with the provisions of this subsection.

* * * * *

§3521. Establishment of task force on feasibility of streamlining information collection requirements

(a) There is hereby established a task force to study the feasibility of streamlining requirements with respect to small-business concerns regarding collection of information (in this section referred to as the "task force").

(b) The members of the task force shall be appointed by the Director, and shall include the following:

(1) At least two representatives of the Department of Labor, including one representative of the Bureau of Labor Statistics and one representative of the Occupational Safety and Health Administration.

(2) At least one representative of the Environmental Protection Agency.

(3) At least one representative of the Department of Transportation.

(4) At least one representative of the Office of Advocacy of the Small Business Administration.

(5) At least one representative of each of two agencies other than the Department of Labor, the Environmental Protection Agency, the Department of Transportation, and the Small Business Administration.

(c) The task force shall examine the feasibility of requiring each agency to consolidate requirements regarding collections of information with respect to small-business concerns, in order that each small-business concern may submit all information required by the agency—

(1) to one point of contact in the agency;

(2) in a single format, or using a single electronic reporting system, with respect to the agency; and

(3) on the same date.

(d) Not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1999, the task force shall submit a report of its findings under subsection (c) to the chairmen and ranking minority members of the Committee on Government Reform and Oversight and the Committee on Small Business of the House of Representatives, and the Committee on Governmental Affairs and the Committee on Small Business of the Senate.

(e) As used in this section, the term "small-business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 631 et seq.).

X. COMMITTEE RECOMMENDATIONS

On February 3, 1999, a quorum being present, the Committee on Government Reform ordered the bill favorably reported by voice vote.

COMMITTEE ON GOVERNMENT REFORM—106TH CONGRESS RECORD
VOTE

Date: February 3, 1999.

Amendment No. 1.

Offered by: Hon. Dennis J. Kucinich (OH).

Failed by Record Vote, 17 Ayes to 22 Nays.

Vote by Members: Mr. Burton—Nay; Mrs. Morella—Aye; Mr. Shays—Nay; Ms. Ros-Lehtinen—Nay; Mr. McHugh—Nay; Mr. Horn—Nay; Mr. Mica—Nay; Mr. Davis of Virginia—Nay; Mr. McIntosh—Nay; Mr. Souder—Nay; Mr. Scarborough—Nay; Mr. LaTourette—Nay; Mr. Sanford—Nay; Mr. Barr—Nay; Mr. Miller—Nay; Mr. Hutchinson—Nay; Mr. Terry—Nay; Mrs. Biggert—Nay; Mr. Walden—Nay; Mr. Ose—Nay; Mr. Doolittle—Nay; Mrs. Chenoweth—Nay; Mr. Waxman—Aye; Mr. Owens—Aye; Mr. Towns—Aye; Mr. Condit—Aye; Mrs. Mink—Aye; Mr. Sanders—Aye; Ms. Norton—Aye; Mr. Fattah—Aye; Mr. Cummings—Aye; Mr. Kucinich—Aye; Mr. Blagojevich—Aye; Mr. Davis of Illinois—Aye; Mr. Tierney—Aye; Mr. Turner—Aye; Mr. Allen—Aye; Mr. Ford—Aye.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(B)(3) of the Congressional Accountability Act (P.L. 104-1).

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4,
SECTION 425

The Committee finds that the legislation does not impose any Federal Mandates within the meaning of Section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION
5(B)

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, February 3, 1999.

Hon. DAN BURTON,
Chairman, Committee on Government Reform,
Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request that the Committee on Small Business waive its jurisdiction over H.R. 391, the Small Business Paperwork Reduction Act Amendments of 1999, as introduced on January 19, 1999. After reviewing this legislation and the detailed legislative history created by your Committee on these issues in the 105th Congress, I have agreed to waive the jurisdiction of the Committee on Small Business over this legislation.

H.R. 391 would provide small businesses with much-needed relief from government paperwork. Specifically, the bill would: (1) put on the Internet a list of all Federal paperwork requirements for small business, organized by industry; (2) offer small businesses compliance assistance instead of fines on first-time paperwork violations, except in cases of actual harm or an imminent threat to public health and safety; (3) establish a Paperwork Czar at each agency who is the contact point for small businesses on paperwork requirements; and (4) establish a task force, including representatives from the major regulatory agencies, to study how to streamline reporting requirements for small businesses. These are all common sense approaches to help small business and I applaud your Committee's prompt action on this important measure.

As you know, House Rule X, Organization of Committees, grants the Committee on Small Business with jurisdiction over "paperwork reduction." Our waiver of jurisdiction over H.R. 391 is not designed to limit our jurisdiction over any future consideration of paperwork reduction legislation.

I would like to thank you and your staff for your dedication and hard work on this issue. I look forward to working with you on this and other issues throughout the 106th Congress.

Sincerely,

JAMES M. TALENT,
Chairman.

MINORITY VIEWS

The business community often complains about the burden of government regulations and the resulting paperwork. In response to this concern, Congress has passed paperwork reduction legislation such as the Paperwork Reduction Act (PRA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). Moreover, the Administration has streamlined regulations by reinventing government and implementing many of the recommendations made by the White House Conference on Small Businesses. We fully support efforts to reduce unnecessary paperwork for small businesses.

There are a number of provisions in H.R. 391 that address streamlining paperwork requirements on small businesses. They require agencies to publish annually paperwork requirements on small businesses, to establish a small business liaison, to make efforts to reduce further the paperwork burden on small businesses with fewer than 25 employees, and to establish a task force to study the feasibility of streamlining paperwork requirements. However, we oppose the provisions in H.R. 391 that prohibit the assessment of civil penalties for most first-time violations of information collection requirements.

I. CONCERNS ABOUT THE CIVIL PENALTY PROVISIONS IN H.R. 391

The civil penalty provisions in section 2(b) of H.R. 391 prohibit agencies from assessing civil fines for most first-time information-related violations. These provisions remove agency discretion and create a safe haven for willful, substantial, and longstanding violations. They also preempt state law.

A. H.R. 391 HAS A BROAD SCOPE

Section 2(b) of H.R. 391 does not address merely technical violations of paperwork requirements. It applies to all federal reporting, recordkeeping, and disclosure requirements, including the failure to disclose important information to the public, such as warning consumers of the dangers of a product or prescription drug.

Moreover, although the bill purports to address violations by “small businesses,” the definition of a “small business concern” includes many large businesses, including oil refineries with 1,500 employees and pharmaceutical manufacturers with 750 employees.

B. H.R. 391 IMPEDES LAW ENFORCEMENT

H.R. 391 has been called “The Lawbreaker’s Immunity Act” because it prevents federal agencies from levying fines even in cases where a business deliberately violates federal law. According to the Department of Justice: “an automatic pass for first time offenders would give bad actors little reason to comply until caught. The bill

will reward bad actors and those who would knowingly or in bad faith violate federal information collection requirements.”¹

The range of adverse effects of H.R. 391 is extraordinarily broad. If enacted, it would undermine enforcement of nursing home standards, environmental and labor laws, and food safety regulations. It would also affect drug enforcement, illegal immigration, pension security, financial markets, highway safety, product safety, and more.

C. THE EXCEPTIONS IN H.R. 391 DO NOT PROTECT THE PUBLIC

The sponsors of H.R. 391 argue that it will not adversely affect public health because it contains exceptions in cases where violations “caused actual serious harm” or created “an imminent and substantial danger.” The point of many reporting requirements, however, is to *prevent* situations where the public is harmed or in imminent and substantial danger. It defeats the purpose of these requirements to require that the public be actually harmed or endangered before enforcement actions can be taken.

D. H.R. 391 PREEMPTS STATES

Many federal laws—such as environmental and labor laws—are enforced at the state level. In these situations, H.R. 391 preempts state officials from making their own determinations regarding whether it is appropriate to fine first-time violators.

Eliot Spitzer, Attorney General for the State of New York, wrote, “The most objectionable element of the legislation is the preemption of State enforcement efforts found in Section 2(b)(4). State and local regulators are the officials with the closest contact with the regulated community. Given their close intimate knowledge of the businesses they regulate, they are in a much better position than Congress to judge whether a particular small business is deserving of leniency of a first-time violation. * * * Their jobs are difficult enough without further interference from Washington.”²

II. KUCINICH AMENDMENT

Unfortunately, the Committee did not adopt the provisions in an amendment offered by Rep. Kucinich. This amendment would have provided appropriate relief for first-time violations. It specifically provided that agencies must establish policies to reduce or waive civil penalties for first-time violations in appropriate circumstances. These policies would have taken into account the nature and seriousness of the violation, good faith efforts to comply and remedy violations, previous compliance history, financial benefit from the violation, and other relevant factors. This amendment would have dovetailed the penalty relief policies required under SBREFA, yet would have gone a step farther by expressly providing relief for first-time violators.

¹ Letter from Dennis Burke, Acting Assistant Attorney General, U.S. Department of Justice, to Chairman Dan Burton (February 2, 1999).

² Letter from Eliot Spitzer, Attorney General for the State of New York, to Chairman Burton (February 2, 1999).

III. EXAMPLES OF PROBLEMS CREATED BY H.R. 391

A. H.R. 391 UNDERMINES ENVIRONMENTAL LAWS

Reporting of toxic emissions

Under EPA's Toxic Release Inventory (TRI), companies that meet reporting thresholds must report their emissions of toxic pollutants into a community's air or water. This requirement that businesses disclose their toxic emissions has prompted significant voluntary emission reductions. H.R. 391, however, would prevent agencies from assessing civil penalties against first-time violations, effectively waiving public reporting requirements until a business is caught. It would thus cripple an effective, voluntary, nonregulatory method of reducing pollution.

Drinking water protection

Self-monitoring and reporting are the foundations of the Clean Water Act and the Safe Drinking Water Act. These reporting requirements are designed to give environmental protection officials knowledge of environmental compliance before any harm occurs. Under H.R. 391, however, EPA could not assess a fine unless it inspected the public water system and was able to prove that the failure to report the pollutant posed a substantial and imminent threat. This is an impossible burden. EPA only has enough staff to inspect our 200,000 public water systems once every 40 years. Moreover, the contamination, not the failure to report the contamination, creates the threat.

B. H.R. 391 UNDERMINES CONSUMER PROTECTION LAWS

Food safety regulations

In 1996, the FDA implemented the Hazard Analysis Critical Control Point (HACCP) system of seafood inspection. This process replaces the century-old "poke and sniff" test as the primary method of preventing the sale of seafood contaminated with dangerous pathogens. HACCP requires seafood companies to identify local food safety hazards, such as toxins, parasites, and bacteria, and develop procedures to monitor on-site preventative control measures. Shellfish producers are also required to keep records of the origin of shellfish in case a recall is necessary. This entire system depends on processing plants to report their own compliance with food safety requirements. Under H.R. 391, however, FDA officials would be unable to enforce seafood safety laws, because initial violations of the recordkeeping requirements would be unenforceable. FDA's only alternative would be to take enforcement action *after* consumers become sick from eating poisoned seafood.

Lead-Poisoning regulations

The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires persons who sell or lease housing to give buyers and renters a pamphlet describing lead-based paint hazards. The entire purpose of the law is to prevent children from becoming lead-poisoned by requiring that information about the risks of lead be distributed before a family moves into a home. Under H.R. 391, however, this law becomes unenforceable. Even if a real estate

broker or landlord deliberately failed to distribute the pamphlet, EPA could not take enforcement action until after the health of a child has been injured or imminently endangered.

C. H.R. 391 UNDERMINES WORKER PROTECTION LAWS

Firefighter safety

Firefighters and emergency workers depend on having adequate information to respond safely and effectively to chemical or fire emergencies. If a business does not report its hazardous chemical inventories as required under the Emergency Planning and Community Right-to-Know Act, firefighters' lives would be endangered if they were called to respond to a fire at the facility. Under H.R. 391, however, the failure to report hazardous chemical inventories would not be enforceable until after a dangerous situation has already developed.

Accident notification

Federal labor laws require employers to report when an accident takes place in the workplace. These reporting requirements show the government where there might be a safety problem. The resulting inspections and enforcement actions have made work places safer. Injuries declined an average of 22% in workplaces where OSHA inspected and penalized employers for violations. If these reports are delayed or not filed, as is likely under H.R. 391, OSHA may not correct the problem in time to prevent another similar accident.

Employee education

H.R. 391 would immunize employers from liability for failing to abide by information collection requirements relating to (1) telling workers the health effects of chemicals they work with and how to prevent illness and (2) training workers regarding the correct maintenance and service of factory machinery. Under H.R. 391, if there was a workplace accident, it would be difficult, if not impossible, to prove that the lack of employee education, not other factors, caused the accident. Therefore, under H.R. 391, agencies would rarely be able enforce these requirements.

Pension security

The Employee Retirement Income Security Act (ERISA) currently establishes compliance incentives for pension administrators which are based on reporting requirements. Pension administrators must file an annual report with the government on the amount and type of plan assets, the income and expenses of the plan, and other vital information. H.R. 391 would prohibit civil fines for first-time violation of this annual requirement. If a pension plan administrator were mishandling pension funds, H.R. 391 would shield the administrator from sanctions by prohibiting civil fines for first-time violations.

D. H.R. 391 UNDERMINES LAWS THAT PROTECT SENIOR CITIZENS

Nursing homes

Millions of elderly and disabled Americans receive care in thousands of nursing homes across the country. The federal government, through the Medicare and Medicaid programs, paid these homes nearly \$28 billion in 1997. With millions of American lives at stake and billions of taxpayers dollars involved, the federal government has an important responsibility to ensure that the nursing homes are complying with federal law.

An integral and critical component in ensuring that nursing homes are compliant is the reporting of accurate and reliable information by nursing homes on the health status of, and care provided to, residents.

These reporting requirements are designed to give state and federal health officials knowledge of the residents' health and functional status, as well as to determine whether the quality of care they are receiving is adequate. The effectiveness of oversight is dependent on the receipt of accurate, reliable data that reflects the true state of residents' health and the nursing homes' provision of health care. If these reporting requirements are not met or if inaccurate data is provided, health officials will be unable to ensure that the health care provided to our most vulnerable citizens is of the highest standard.

Nursing homes are required to report on a number of elements that reveal the functional status of the resident and the quality of care. A few examples of quality indicators are the number of contracturers (joints which are immobilized), the amount of unplanned weight loss, and the use of restraints on senior citizens. The inaccurate reporting of these indicators could result in health care officials failing to identify problems that affect the safety and health of nursing home residents.

Under this legislation, a nursing home that deliberately under-reports these problems would not be subject to civil fines. None of these reporting failures would fall into the bill's exceptions. It would be difficult, if not impossible, to show that the failure to report weight loss or use of restraints caused actual serious harm or presented an imminent and substantial danger to the public health and safety.

E. H.R. 391 DETERS CRIMINAL ENFORCEMENT

Detecting drug trafficking and money laundering.

Under federal law, financial institutions must report cash transactions exceeding \$10,000. This requirement helps the federal government identify suspicious transactions that might indicate criminal activity. Under H.R. 391, however, there is little incentive for financial institutions to comply diligently with these requirements because, once caught, they cannot be fined. The bill provides that an agency may assess a penalty if "the failure to impose a civil fine would impede or interfere with the detection of criminal activity." However, Dennis Burke, Acting Assistant Attorney General at the Department of Justice, wrote that this exception is "an inappropriate standard. The failure to provide information * * * is what

interferes with the detection of criminal activity. * * * [I]t may be difficult for an agency to determine that the failure to impose penalties ‘would’ in a given case interfere with detection of criminal activity.”

Preventing illegal diversion of controlled substances.

The Drug Enforcement Agency (DEA) requires pharmaceutical companies to verify the legitimacy of controlled substance sales to ensure that drug inventories are not lost or improperly diverted. H.R. 391 would make it easier for a physician or pharmacy who is illegally trafficking highly abused controlled substances. This is because the DEA would not be able to assess civil fines when it discovers that someone did not file the documentation.

F. H.R. 391 UNDERMINES INVESTOR PROTECTIONS

Investor protections.

Many investors rely on investment advisors to provide professional help in managing or guiding their retirement and education savings. Advisors must disclose detailed information about their services and charges in SEC filings and in written form to investors. Under H.R. 391’s penalty waiver provisions, an advisor with a suspicious history could avoid properly disclosing fees, disciplinary history, investment strategies, or other vital information to investors and be confident that the SEC could not assess a civil fine when he or she is finally caught.

HENRY A. WAXMAN.
 ELIJAH CUMMINGS.
 MAJOR R. OWNES.
 EDOLPHUS TOWNS.
 ELEANOR H. NORTON.
 BERNARD SANDERS.
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 DANNY K. DAVIS.
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