

# REGULATORY IMPEDIMENTS TO JOB CREATION IN THE NORTHEAST—PART II

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON REGULATORY AFFAIRS,  
STIMULUS OVERSIGHT AND GOVERNMENT  
SPENDING

OF THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES

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## CONTENTS

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	Page
Hearing held on April 20, 2011 .....	1
Statement of:	
Glazier, Travis .....	62
Gostin, Jud, president and chief executive officer, Sensis Corp.; and Robert Simpson, president, Centerstate CEO .....	6
Gostin, Jud .....	6
Simpson, Robert .....	13
MacMurray, Orrin .....	56
Reeves, Andrew, owner, Reeves Farms; Nancy Hourigan, owner, Hourigan's Dairy Farm; and Tom DeMarree, owner, DeMarree Orchards .....	22
DeMarree, Tom .....	45
Hourigan, Nancy .....	37
Reeves, Andrew .....	22
Squires, Thomas .....	66
Letters, statements, etc., submitted for the record by:	
Buerkle, Hon. Ann Marie, a Representative in Congress from the State of New York, prepared statement of .....	4
Cummings, Hon. Elijah E., a Representative in Congress from the State of Maryland, prepared statement of .....	75
DeMarree, Tom, owner, DeMarree Orchards, prepared statement of .....	47
Glazier, Travis, prepared statement of .....	64
Gostin, Jud, president and chief executive officer, Sensis Corp., prepared statement of .....	8
Hourigan, Nancy, owner, Hourigan's Dairy Farm, prepared statement of .....	40
MacMurray, Orrin, prepared statement of .....	59
Reeves, Andrew, owner, Reeves Farms, prepared statement of .....	27
Simpson, Robert, president, Centerstate CEO, prepared statement of .....	15
Squires, Thomas, prepared statement of .....	68



## REGULATORY IMPEDIMENTS TO JOB CREATION IN THE NORTHEAST—PART II

WEDNESDAY, APRIL 20, 2011

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS  
OVERSIGHT AND GOVERNMENT SPENDING,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Syracuse, NY.*

The subcommittee met, pursuant to notice, at 3 p.m., at 2610 South Salina Street, South Side Innovation Center, Syracuse, NY, Hon. Anne Marie Buerkle presiding.

Present: Representatives Buerkle and Kelly.

Staff present: Joseph A. Brazauskas, counsel; Sharon Casey, senior assistant clerk; Gwen D'Luzansky, assistant clerk; Adam P. Fromm, director of Member services and committee operations; and Cecelia Thomas, minority counsel.

Ms. BUERKLE. The committee hearing will come to order.

Good afternoon everyone and welcome to the hearing and we represent the Oversight and Government Reform Committee.

Today's hearing is going to be on the Regulatory Impediments to Job Creation in the Northeast. So I welcome all of you here today and thank you to our panel of witnesses.

We will have three panels throughout the course of the hearing, so this is, I think, a very exciting opportunity for my colleague, Mr. Kelly, and myself to hear the concerns and hear the regulations and hear what businesses in agriculture and even government municipalities are going through in order to comply with the sometimes onerous and sometimes very unrealistic government regulations.

Before we begin today, I know that many of you saw the Post Standard this morning. I would just ask all of you to join me in a moment of silence. As you saw the three soldiers from Fort Drum were killed in action in Afghanistan. They were fathers and husbands and sons, and we sit here today and we enjoy the freedom to come together to discuss the American way and American dream and how to preserve it. And it is because of the duty and the service and sacrifice that our military provides for this Nation. So if we could just remember them in a moment of silence.

And to all the veterans in the room today, on behalf of my colleague, Mr. Kelly, and myself, thank you for your service to this Nation. We are a great Nation and it is because of the service and the sacrifices of our military.

[Moment of silence.]

Ms. BUERKLE. Thank you.

At this time I would like to introduce sitting here on the panel with me another Member of Congress, my good friend and colleague, also a freshman this year in Congress, Mike Kelly from Pennsylvania.

Mike's district is about seven counties and it stretches from Erie, in the far northwestern corner, to just north of Pittsburgh. So I'm delighted that he is here with me today to hear your testimony. Mike sits also on the Oversight and Government Reform Committee with me.

So it's a pleasure to have you with me here today. Thank you very much.

Mr. KELLY. Thank you.

Ms. BUERKLE. When we have our full committee hearings in Washington, DC, our chairman, Darrell Issa, begins every meeting with the reading of the mission statement of the Oversight and Government Reform, and I'd like to read that to you all today. I'd like you to understand what this committee is about and how—what our goals are and what our mission statement is.

Oversight Committee Mission Statement: We exist to secure two fundamental principles.

First, Americans have a right to know that the money Washington takes from them is well spent.

And second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to the taxpayers because taxpayers have a right to know what they get from their government.

We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and to bring genuine reform to the Federal bureaucracy.

This is the mission of the Oversight and Government Reform Committee.

Thank you all for coming here today. I think that this is an exciting day for us in upstate New York. Today we will continue an effort that my subcommittee and the Oversight and Government Reform Committee have been examining since the beginning of this year.

Our committee has focused on the regulatory impediments to job creation. We've heard from job creators across the country about how the Federal Government stifles job creation. And today we'll focus on the issues which affect job creation in upstate New York.

The strength of the economy and unemployment are on the minds of most Americans. The nationwide unemployment rate hovers at about 9 percent. That unemployment figure doesn't even reflect the millions who have given up looking for work. The rate is approximately the same in the State of New York; 8,000 of our neighbors received unemployment extension benefits during the month of March. This is unacceptable and we must create more jobs and turn this economy around for all New Yorkers.

It is only appropriate that we are holding this hearing at the South Side Innovation Center, which is an incubator for small business job creation. Here Bob Herz and his staff help entrepreneurial

businesses to get business off the ground and help people help themselves.

I want to thank Bob and all his staff here for hosting this event and for all of their efforts that they have done—thank you Bob—to make this afternoons’s hearing happen.

This afternoon we will hear from local job creators in business and agriculture that conduct business right here in upstate New York. Our witnesses are construction workers, dairy, apple, berry farmers, defense contractors and others that employ many of the local community and provide the necessary goods and services to our region.

As we attempt to recover our economy and put people of the region back to work, we must begin to understand that the regulations these industries face on a daily basis threaten their attempt to survive. Industry faces an enormous amount of regulations from many Federal agencies. This committee has heard from job creators about regulations from the Environmental Protection Agency, the Department of Labor, Occupational Safety and Health Administration and the Food and Drug Administration.

The cumulative impacts of regulations from all of these agencies is particularly harmful because of the difficulty of the implementation and the tremendous cost of compliance it places on a business or a farm. These costs negatively impact important job growth. These regulations are a hidden tax on businesses.

Worse yet, last week the EPA testified before a different house subcommittee and admitted that the EPA ignores the affects on jobs of the regulations they issue.

Local governments and municipalities are struggling to deal with the state of the economy in continuing to provide essential services to constituents while dealing with the Federal bureaucracy. The practice of the Federal Government pushing unfunded mandates down to the States leaves local municipalities under intense pressure to make budgets work. These local governments already have major budgetary constraints and struggle to provide basic services for their constituents.

Moreover, regulations that range from health care to street sign replacement pile on even more cost to local governments together with those unfunded mandates. This hearing will allow businesses, farmers and local governments from New York to provide Congress with an opportunity to hear how Federal agencies affect their ability to create jobs and provide for their communities.

It’s important that you’re here today; it’s important that we’re here today so we can listen to you, listen to your concerns as the business as business and as agriculture and as municipalities. We have said over and over again that the government cannot create jobs. It is the private sector. The private sector is the backbone of our economy. They are the job creators, and the role of the government should be to create an environment so businesses can succeed.

So we are delighted to be here today and we’re honored to have all of you here today. We are looking forward to hearing the testimony and to get started with our hearing. Thank you so much.

[The prepared statement of Hon. Ann Marie Buerkle follows:]

Opening Statement: Vice-Chairwoman Buerkle  
Regulatory Impediments to Job Creation in the Northeast – Part II  
April 20, 2011

Today we continue an effort that my subcommittee and the Oversight and Government Reform Committee have been examining since the beginning of the year. Our committee has focused on the regulatory impediments to job creation. We've heard from job creators across the country about how the federal government stifles job creation, and today we'll focus on the issues which affect job creation in central New York.

The strength of the economy and unemployment are on the minds of all Americans. The nationwide unemployment rate still hovers around nine percent. The rate is the same in the state of New York. 8,000 of our neighbors received unemployment extension benefits during the month of March. This is unacceptable – we must create more jobs and turn this economy around for all New Yorkers.

Today, we will hear from local job creators in business and agriculture that conduct business right here in central New York. Our witnesses are construction workers; dairy, apple, and berry farmers; defense contractors; and others that employ many members of the local community and provide necessary goods and services to this region. As we attempt to recover our economy and put the people of this region back to work, we must begin to understand the regulations that these industries face on a daily basis as they attempt to survive.

Industry faces an enormous amount of regulations from many federal agencies. This Committee has heard from job creators about regulations from the Environmental, Protection Agency, the Department of Labor, Occupational Safety and Health Administration, and the Food and Drug Administration. The cumulative impact of regulations from all of these agencies is particularly harmful because of the difficulty of implementation and the tremendous costs of compliance. These costs negatively impact important job growth.

Local governments and municipalities are struggling to deal with the state of the economy and continuing to provide essential services to constituents while dealing with the federal bureaucracy. The practice of the federal government pushing unfunded mandates down to the states leaves local municipalities under intense pressure to make budgets work. These local governments already have major budgetary constraints and struggle to provide basic services for their communities. Moreover, regulations that range from healthcare to street sign replacement pile on even more costs to local governments together with the unfunded mandates.

This hearing will allow businesses, farmers, and local governments from New York to provide Congress with an opportunity to hear about how federal agencies affect their ability to create jobs and provide for their communities. We are listening and want to hear what you have to say.

Ms. BUERKLE. I would now yield time to Mr. Kelly for his opening statement.

Mr. KELLY. Thanks, Ms. Buerkle. It is a pleasure to be here.

First of all, it's really a privilege for me to be able to travel. I'm here from northwest Pennsylvania to be here with Ms. Buerkle. We've been in Congress now almost 100 days, and it's good to be here.

I'm especially happy to be here at South Side Innovations Center. It's an incubator. And when Margaret Belte was showing me through, I got to tell you, this is the place where businesses start. And when we talk about America, we talk about businesses that were started in a garage or in somebody's basement, more important, somebody's head, and they were able to move it forward. There's no other place in the world you can do it except for here.

One thing that we're starting to realize, and I think that as we go through these exercises, there was a movie out years ago called Ground Hog Day and what it was, it was the continuing frustration of figuring out how this all works. I got to tell you, from a guy who comes from the private sector—I'm an automobile dealer in my real life. I don't know how in the world we've gotten to where we are. And more importantly, if we don't change it—and this is not about Republicans or Democrats—this is about Americans. If we can't get this settled and get it backed off and make sure that the No. 1—the competitive nature that we have isn't some external factor, but actually our own government that makes it impossible for us to succeed, then we have failed mightily.

So I'm glad to be here. We do want to listen to you; we have to hear what you have to say; and we have to take the message back to Washington and we have to be able to articulate it the same way you do with passion and intensity to get it fixed.

So again, I applaud you for being here.

Ms. Buerkle, thanks so much. It's always a pleasure to be here with you.

And we're interested in what you have to say. Thanks so much.

Ms. BUERKLE. At this time, for the record, other Members have 7 days to submit testimony for the record and any other extraneous material that they would like to submit.

We will now welcome our first panel of witnesses this morning.

First we have Mr. Jud Gostin, who is the chairman and CEO of Sensis. Good afternoon and welcome.

Mr. Robert Simpson is the president for CenterState Corp. for Economic Opportunity.

Thank you very much for being here.

It is the—pursuant to committee rules, all witnesses must be sworn in. So if I could ask you to stand and raise your right hands.

Panel I consisting of members Jud Gostin and Robert Simpson.

[Witnesses sworn.]

Ms. BUERKLE. Let the record reflect that all witnesses have answered in the affirmative.

Thank you.

When we have our big hearings in Washington, DC, we generally ask our panelists to limit their testimony to 5 minutes, however, we have a little bit more leeway here today.

So at this time I'd ask Mr. Gostin to begin with his opening statement.

**STATEMENTS OF JUD GOSTIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SENSIS CORP.; AND ROBERT SIMPSON, PRESIDENT, CENTERSTATE CEO**

**STATEMENT OF JUD GOSTIN**

Mr. GOSTIN. Thank you Vice Chairwoman Buerkle, Representative Kelly. Thank you for the opportunity to speak today. I'm Jud Gostin, CEO of Sensis Corp., an aerospace and defense firm located in East Syracuse, New York.

We started with five employees in 1985 and now employ 600 people, including about 450 engineers and computer scientists. Although we sell globally, approximately three-quarters of our revenues are from contracts with the U.S. Government, notably the FAA and Department of Defense.

Air Traffic Systems is the larger of our two divisions and has a laudable track record of deploying innovative systems and design concepts to the FAA and NASA. We are a leading supplier of surveillance and automation products and improve the safety, efficiency and capacity of air travel.

Two of our large FAA programs ASDE-X and Runway Status Lights, have been cited by the NTSB for their effectiveness and improving runway safety. Our Aerobahn product provides the FAA airlines and airport authorities with a collaborative decisionmaking tool which, by a conservative estimate, saves each airline user \$5 million per year per airport in just reduced taxi time and carbon footprint.

Defense and Security Systems, our other division, is executing two state-of-the-art expeditionary ground-based radar development programs for the Air Force and Marine Corps, both with a potential to transition into significant production contracts.

We are also leveraging Federal contracts along with our own R&D funding to develop a family of very small sensors and information-processing products to enhance the safety of our war fighters and the security of our borders.

In that most jobs in our country are created by small and medium-sized companies, from a job-creation perspective the most onerous regulations are those that slow down the activities of the such companies.

Under Secretary of Defense, Ashton Carter, included the following guidance to defense acquisition professionals in a recent memo: Increase dynamics in the small business role in defense marketplace competition.

Small businesses have repeatedly demonstrated their contribution to leading the Nation in innovation and driving the economy by their example of hiring 65 percent of all new jobs and holding more patents than all of the Nation's universities and large corporations combined.

The reality is that the government's de facto acquisition practices favor large and small companies to the disadvantage of medium-sized companies like Sensis. These are companies with annual revenues between \$100 million and \$1 billion.

Large companies receive many new contracts as non-competed follow-ons to existing ones. While small companies receive significant contract loading via SBIR, Small Business Innovation Research Grants, and have a variety of other practices that are designated in statute to promote small business.

Medium-sized companies typically do not have enough of a contract base to attract a sustaining level of follow-on awards and are too big to be eligible for SBIR awards. And yet, these companies are not only a primary source of job creation, they're also an exceedingly viable, all be it underutilized contributor to the effectiveness of government procurements.

A number of medium-sized companies possess a combination of attributes rarely exhibited by large companies. Not only exceptional development production and life cycle support competence, but also a high degree of innovation, responsiveness and agility.

Medium-sized companies are less limited by preconceptions of what can't be done and are not encumbered by excess overhead structure, bureaucracy and dated infrastructure. They are also fully capable of leading major acquisitions. Sensis' standout record as a prime contractor on major FAA and DoD programs is a case in point. By virtue of these attributes, medium-sized companies can provide the government with significant cost and schedule savings and it is hard to remember a time when these savings were needed more.

Here are some recommendations for regulatory changes that would promote job creation in medium-sized companies.

Require substantial programs to begin with a competitive prototyping phase and encourage the inclusion of medium-sized businesses as prime-contracted candidates.

Enforce regulations that reduce the acquisition redirections and delays that have a disproportionate impact on medium-sized businesses.

Develop fast-track versions of government oversight agencies, like DCAA, DCMA and the Earned Value Management Center that are not well matched to the pace and scale of medium-sized companies.

Enforce small and medium-sized business set-aside goals.

Institute a Medium-Sized Business Innovation Development, MBID, program analogous to the SBIR program to provide timely, ample funding for high-payoff development efforts.

Review and modify source selection criteria to eliminate biases against medium-sized firms.

Recognizing that medium-sized companies competing for large contracts may not have an abundance of relevant past performance data, modify proposal evaluation criteria to penalize poor past performance more than a lack of data.

Thank you for the opportunity to testify today on these very important issues. I would enjoy discussing any of my suggestions in more detail with you.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Mr. Gostin follows:]

**Committee on Oversight and Government Reform, Subcommittee on  
Regulatory Affairs, Stimulus Oversight and Government Spending**

**“Regulatory Impediments to Job Creation in the Northeast”**

**Testimony of Jud Gostin, CEO, Sensis Corporation  
April 20, 2011**

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Chairman Jordan, Vice Chairman Buerkle, and distinguished members of the subcommittee; thank you for the opportunity to speak today and for organizing this important hearing. My name is Jud Gostin, and I am the CEO of the Sensis Corporation, an Aerospace & Defense firm, located in East Syracuse, New York. We started with 5 employees in 1985 and now employ 600 people, including about 450 engineers and computer scientists, many of whom have advanced degrees. Although we sell our products globally, approximately three-quarters of our revenues comes from contracts with the U.S. Government, primarily the FAA and Department of Defense.

Sensis is comprised of two operating divisions. The larger of the two, Air Traffic Systems (ATS), has established a consistent track record of successfully deploying innovative systems and design concepts to the FAA and NASA. We are a leading supplier of surveillance and automation products and turnkey systems that improve the safety, efficiency and capacity of air travel. When you fly through any one of the 35 largest US airports in America, Sensis technology is assisting air traffic controllers in preventing collisions on the runway. Moreover, the advanced concepts and procedures we are delivering to FAA and NASA is enabling the transformation of the national aviation system to NextGen. Two of our major FAA programs, ASDE-X and Runway Status Lights, have been cited by the U.S. National Transportation Safety Board for their effectiveness in contributing to improved runway safety. The Aerobahn decision support tool provides

Page 2 of 5

the FAA, airlines, and airport authorities with a platform that enables collaborative decision making and, in conservative estimates, saves each airline user \$5 million per airport per year in just reduced taxi time and fuel burn. These factors translate into much reduced carbon footprint and higher expectation of on-time arrival and departure.

Our Defense & Security Systems division (D&SS), the other established operating division, is currently executing two major, state-of-the-art, expeditionary ground based radar development programs for the Air Force and Marine Corps. Both programs have the potential to transition into significant production programs. Also, by leveraging federal research assistance with our own R&D funding, we are developing a family of very small sensors and information processing products that will enhance the safety of our war fighters and the security of our borders.

My perspective of the regulatory impediments to job creation in the northeast (and other regions of the country as well) is informed by the experience I have gained by growing Sensis from a start-up with 5 employees, to a small business, and eventually to medium-sized enterprise as viewed in the eyes of government designation. It is this categorization which has caused some impediments to continued growth.

The fact is that most jobs in the country are created by small and medium-sized companies. Thus, from a job creation perspective, the most onerous regulations are those that slow down the activities and opportunities of such companies. Ashton Carter, Undersecretary of Defense for Acquisition, Technology, and Logistics, included the following guidance to Defense acquisition professionals in a memo he wrote a few months ago: "Increase dynamic small business role in defense marketplace competition. Small businesses have repeatedly demonstrated their contribution to leading the nation

in innovation and driving the economy by their example of hiring 65 percent of all new jobs and holding more patents than all the nation's universities and large corporations combined."

The reality is that the Federal Government's de facto acquisition practices favor large and small companies to the disadvantage of medium-sized companies – those with annual revenues between \$100 million and \$1 billion. Large companies receive a significant amount of their new contracts as non-competed follow-ons to existing ones, while small companies receive a significant amount of their contracts via Small Business Innovative Research (SBIR) grants and a variety of other contracting practices that are designated in statute to include and promote small businesses.

Medium-sized companies typically don't have enough of a contract base to attract a sustaining level of follow-on awards and they are too big to be eligible for SBIR awards or contract preferences. And yet, these companies are not only a primary source of job creation, they are also an exceedingly valuable, albeit underutilized, contributor to the effectiveness of government procurement activities and ultimately to the mission of a number of federal agencies. Many medium-sized companies possess a combination of attributes rarely exhibited by large companies – not only exceptional design, development, production and life-cycle support competencies, but also a high level of innovation, responsiveness, agility, flexibility, enthusiasm and entrepreneurship. Medium-sized companies are less limited by preconceptions of what can't be done, and are not encumbered by excess overhead structure, last generation infrastructure and stifling bureaucracy. Also, medium-sized companies are far more capable of leading major acquisitions than is usually recognized. Sensis' standout record as a prime contractor on major FAA and DoD programs is a case in point. By virtue of this combination of attributes, medium-sized companies are capable of providing the

Federal Government with significant cost and schedule savings – and it's hard to remember a time when federal agencies and all taxpayers needed these savings more.

Here are some recommendations for regulatory changes that will promote job creation in medium-sized companies:

- Require more substantial acquisitions to begin with a competitive prototyping phase, and encourage the inclusion of medium-sized businesses as prime contractor candidates.
- Enforce regulations that reduce the program acquisition redirections and delays that have a disproportionate impact on medium-sized businesses.
- As currently structured, Government oversight agencies, for example DCAA, DCMA and the Earned Value Management Center, are not well matched to the pace and scale of medium-sized businesses – develop lightweight, fast track versions of these agencies.
- Enforce small business set-aside goals which now seem to be routinely ignored.
- Institute a Medium-sized Business Innovative Development (MBID) program, analogous to the Small Business Innovation Research (SBIR) program for very small businesses to provide quick reaction and ample funding for substantial development efforts if and when justified by the payoff.
- Review and modify source selection criteria and scoring processes to eliminate the inherent biases against medium-sized firms.
- Recognizing that medium-sized companies competing for large prime contracts may not have an abundance of relevant past performance data, modify the past performance criteria applied to proposal evaluation so that it penalizes poor past performance more than a lack of past performance data.

Page 5 of 5

Thank you for the opportunity to testify today on these very important issues. As I've explained, these issues hit directly at the ability of companies like Sensis to continue their job and revenue growth.

I would enjoy discussing any of my suggestions in more detail with you and your staffs.

Thank you again for your time.

Ms. BUERKLE. Mr. Simpson.

**STATEMENT OF ROBERT SIMPSON**

Mr. SIMPSON. Thank you very much, Congresswoman and Congressman Kelly for the opportunity to be here today.

I am Rob Simpson, president of CenterState CEO.

We are the region's leading business and economic development organization representing over 2,000 members, ranging from sole proprietors and consulting companies, to service-sector retail companies, to our region's largest and finest employers like Mr. Gostin sitting next to me.

We, in our efforts to understand how best we can serve our members, regularly poll those members of the business community and try to gauge from them some common themes that stand out in their ability to do business with the Federal Government. There are three issues that seem to be coming to mind more and more frequently over the course of the last several months. I'd like to speak briefly to each of them.

The first is immigration; second being issues as they relate to international trade, and third and final, relate to procurement something that Jud was talking about a moment ago.

Let's start with immigration, and I'll share a couple examples. While many border States face different immigration issues, here in New York State, immigration issues for our business community have really been some of the stringent immigration rules in the United States have been a hindrance to our ability to grow and compete as a region.

We have the third-largest concentration of higher education students in the country. We have over 140,000 students here in this region. A number of those students, many of those students, especially at schools like Syracuse University and Cornell, are international students who come with F-1 Visas, who have the ability to stay and work in the United States for 1 year's time before we send them home to compete with U.S. companies working for international businesses in their home country.

We'd love to find a way to hold onto more of those students. Frankly, many of those students want to be here in the United States. They bring with them unique skills and expertise that can help New York companies and U.S. companies be competitive. And we really believe there's fertile ground here to loosen those regulations and allow the United States to be the destination of choice for the smartest and brightest and most talented people all over the world. That's something that the business community would benefit from a great deal.

Second, we have many institutions, health care institutions here, in our region that are critically important employers. We have, unfortunately, a situation in the United States where J-1 graduate medical Visas are allocated across the country on a very rigid basis. Every State in the Nation, whether it's North Dakota or New York, gets 30 of these J-1 Visas. That obviously doesn't play to the favor of many of our larger industrial States like Pennsylvania and New York here in the northeast. We'd love to find a new methodology that would allow our health care institutions to find and train the best doctors, to provide the highest-quality health care to our indi-

viduals, and also use that as a way of a jumping-off point to continue to grow our health care sector, which increasingly provides opportunities for international health care delivery in a place where we can grow our regional economy.

Finally, we have, on the immigration front, we have a number of local companies who really have been impacted by their ability to bring in workers from other countries from their other plants around the world who have many multi-national corporations here with headquarters. One company, INFICON, who has done a significant amount of work with a subsidiary in South Korea who's wanted to bring some of those partners over to the United States in order to help them deliver on a project for a major company, Samsung, a client of theirs, Samsung down in Texas, they've run into significant obstacles bringing those folks from South Korea to the United States and, were therefore unable to fulfill their current obligations to their customer which put that business in jeopardy here in the United States. This is another area where we could use some support from the Federal Government.

I guess the second, main issue, as it relates to trade, we realize—I think there's an increasing awareness in this region that 87 percent of the global growth over the next 5 years will come from international markets. Ninety-five percent of the world's consumers are outside of the United States.

Things like the South Korea Free Trade Agreement provide a real and robust economic opportunity for our regional businesses, particularly here in New York and in places like Pennsylvania where agriculture is a really important component of our region's economy.

And finally, procurement. You know, the U.S. Government spends over \$425 billion a year on procuring goods and services. They are the largest procurement agency in the entire United States. It is extremely difficult for small businesses to get listed with the GSA as preferred providers for procurement. Anything that can be done to ease that would be greatly appreciated by our small business members.

Ms. BUERKLE. Thank you very much.

Mr. SIMPSON. Thank you Congresswoman.

[The prepared statement of Mr. Simpson follows:]

**U. S. House of Representatives  
Committee on Oversight and Government Reform**

**Subcommittee on  
Regulatory Affairs, Stimulus Oversight  
and Government Spending**

**Hearing on**

**“Regulatory Impediments to Jobs Creation in the Northeast”**

**Wednesday, April 20, 2011**

**Testimony of**

**Robert M. Simpson  
President and CEO**

Good afternoon Congresswoman Buerkle and Congressman Kelly.

I am Rob Simpson, President and CEO of the CenterState Corporation for Economic Opportunity. We are the business and economic development membership organization for the 12-county CenterState Region, with 2000 members. Our mission is to increase regional growth and prosperity through partnerships, planning and problem-solving.

On behalf of our members and CEO, thank you for the opportunity to speak today regarding immigration, a Korean free trade agreement and federal procurement for small businesses.

While our membership is very diverse, there is one topic that cuts across many sectors that is inhibiting job growth in some most important sectors. This issue is immigration, with several aspects of current visa law and regulations I wish to discuss with you.

- The CenterState region contains the third largest concentration of higher education students in the country. More than 135,000 students attend our colleges and universities each year, and, many of those students come here from outside the U. S. with F-1 student visas. Some of these students are graduating with expertise in areas of critical national shortage – such as engineering and science. While here, these students are contributing to important research and development and are connecting to regional employers through internship and mentoring programs. These graduates can stay for only one year and are required to return to their homes -- and to compete with U S companies.

We suggest the path be expanded for international students with critical areas of study, who have connected with U S firms who want to hire these graduates, to allow them to stay here, to continue to contributing to our economy, contribute to our diversity, and help grow our population base. Recent census data shows that our local population has grown over the past ten years as a result of increased immigration.

- We have major medical universities in our region, such as SUNY Upstate Medical University and Cornell. The limiting of J-1 graduate medical education visas to 30 per state is inhibiting our potential to train more sorely needed doctors and specialists. Increasing J1s means more students at our universities, contributing to our local economies and more doctors for counties who have documented Statements of Need. Why not view this as an opportunity to increase the export of medical training?
- US based global companies contribute to the national economy and our regional economy, especially when they are headquartered here. INFICON, a successful and growing local high tech firm, has both partner suppliers and customers in several countries. They are currently dealing with a problem -- in being able to have employees from their South Korean subsidiary come here on short notice to

help meet the demands of their largest customer – Samsung, who is building a very large factory in Texas.

INFICON, and companies like them, would benefit in changes for L1B visas, in regards to establishing “specialized knowledge”. We urge you to influence policy changes to make it easier for companies, like INFICON, to complete the process successfully. It is unreasonable for a company of their size, who request less than 10 L1B’s a year, and are not abusing the system, to have such tight restrictions on bringing an individual with specialized knowledge to work in the US at a customer’s request.

The USCIS has revised policies so that an individual must have “Outstanding Knowledge” vs. “Specialized Knowledge”, must have a degree and have very specific training in order to be approved without having to complete a Request for Evidence and risk denial which could negatively affect their business. The intent of USCIS in adding restrictions was to inhibit abuse, but it is hurting companies like INFICON who have a legitimate, customer related need for an individual to come to the US for a short period of time.

- We would urge you to move ahead with a free trade agreement with Korea. Over the last ten years the US has dropped from being the top exporter to Korea with one-fifth of Korean imports, to now being in third place, with less than 10% market share. Several companies in our region already do business with Korea, namely J. R. Clancy, Kilian, Stickley and Nixon Gear. We want them to increase their market share and facilitate new businesses entering into trade with Korea. New York firms who are in the business of computers and electronic products, machinery manufacturers, transportation equipment, and agriculture will particularly benefit from a more open market in Korea.
- The federal government is the largest purchaser of goods and services, spending \$425 billion per year. And small businesses are the acknowledged net generators of job growth. So why would we make it so difficult for our small businesses to get in the game? Getting registered with GSA is “absolutely Byzantine”, according to one of our members. The process is so Sisyphean that an entire class of consultants has arisen to get small businesses through the process. One local firm (Allred) was quoted \$24,000 for the cost to get through the GSA registration process. We would strongly urge a review of the process and changes made to make GSA registration, and federal procurement in general, truly accessible for small businesses.

I hope my comments will give you some specific strategies to pursue to smooth the way for enhanced job growth for the CenterState region. I will be glad to answer questions and provide additional follow up to assist you in addressing any of the issues I have mentioned.

Thank you again for this important opportunity.

Ms. BUERKLE. Did we have a third panelist? He's not going to join us.

OK. Thank you.

Mr. Gostin, I'm going to yield myself 5 minutes and start to ask questions and then I'll ask my colleague to do so.

In your testimony you talk about the non-competed follow-ons to disadvantage the medium-sized companies. Can you expand upon that a little bit and help us to understand what that means?

Mr. GOSTIN. Often we will describe products and services to the government that appeals, you know, it's a good solution to a compelling problem. And they'd love to fund the developmental production of it. It's a good thing to do. And their response to us is, "Gosh, I wish we had a contract vehicle. If we only had a contract vehicle, we could add this work statement onto that."

Without having that, somehow we have to figure out another a way and often there is no other easy way.

And as a small business, medium-sized business, that's a fairly typical response for us. You know, I don't know of a contract vehicle you can use, but as a big business, with just a large number of contracts, that's not nearly so much a problem.

Now, these are not—I'm not suggesting for a minute that these follow-on contracts are not worthwhile, they're not cost effective. They often are all of those things. It's just that it is, in fact, a big disadvantage to a small company not to have that rapid capability to respond.

Ms. BUERKLE. And who are you dealing with? Would that be the Department of Defense when they say—

Mr. GOSTIN. I'm thinking mostly of the Department of Defense. It's also the FAA, but it's primarily the Department of Defense for us at this point in time.

Ms. BUERKLE. Mr. Simpson, can you just explain for me a little bit. You mentioned it, and I'm not really that familiar with it—is it the J-1 graduate medical education and how that works.

Mr. GOSTIN. Yeah. We've been spending quite a bit of time talking with the folks at SUNY Upstate Medical University over this issue recently.

Apparently what happens is there are 30 of these Visas that are made available to each State. Those Visas—each State then distributes those available Visas to a number of the medical institutions and health care institutions within the State that essentially allow them to bring in a medical professional—graduate medical professional or medical professional from overseas to train and to work in their hospital. Typically these are specialty providers and they typically tend to be specialties for which, frankly—that are medical institutions have a hard time filling here in the United States.

Unfortunately, when New York State and North Dakota receive the same level of Visa, it puts States like ours at a competitive disadvantage. I wouldn't advocate for taking a single J-1 Visa away the State of North Dakota, but I would think that it might be in the best interest of our country to expand the number of Visas that are made available or at a minimum provide the States with some additional flexibility when and where they have a critical shortage in a specialized profession that they would like to recruit inter-

nationally to give them the flexibility they need to do that recruitment.

Ms. BUERKLE. Do you know who administers the J-1 program.

Mr. SIMPSON. I believe it's Customs and Immigration, but I will find the answer for you, Congresswoman.

Ms. BUERKLE. And has this formula has been in place for—

Mr. SIMPSON. My understanding it's been in place for about a decade, that the rules prior to that were even more onerous I think on many of the medical institutions. I think what they're seeking at this point is just a continued refinement to the law to make it a little bit more workable.

Ms. BUERKLE. Thank you.

I'll yield to Mr. Kelly.

Mr. KELLY. Mr. Gostin, I think it's important—and one of the things we found by holding these hearings—we're able to expose some of the practices of the government and how difficult it is to get some of these contracts.

When you talk about the SBIR awards, if you could, and I know it's a lengthy process, but for the sake of the people that don't go through this every day—and I know you have to in order to survive—just kind of walk us through it as quickly as you can, the difficulty of trying to get those contracts.

Mr. GOSTIN. Well, SBIR contracts are—I think you need to have fewer than either 450 or 500 people in order to be eligible for SBIR contract, and they're multi-phased contracts.

First phase is probably nowadays—I date myself if I said 50,000. It's probably 100,000 right now—in which you get to do some concept development. There's a second phase which is substantially more than that where you actually get to do some real development. And there's a third phase where you could take it into the commercial—into the commercial world.

That's a very important part of the contract loading for small businesses. And it's a great thing, because it spurs innovation, spurs new ideas. The government puts out a document saying, "Here are some tough problems. Anybody got a creative solutions," and small businesses respond.

The problem with being above 450, 500, you're not eligible for that, which means that medium-sized companies, which not only have the innovation and responsiveness and agility and entrepreneurship of small companies, but they also have the critical mass to actually do substantial programs, much more so than small companies can do.

Can't get those good ideas—can't get contracts for those good ideas. So if there was an analogous program, what I would call, Medium-Sized Business Innovation Development as opposed to Small Business Innovation Research, the government could get access to good ideas for medium business that they really want.

And it would benefit the war fighters. It would benefit the people that fly. It would benefit all the users who are looking for quick responses and innovative responses, low cost, cost-effective responses to difficult problems.

Mr. KELLY. One of the things we find is that a lot of these standards, the bar's being set by people who've never actually done what

you do, they've never been involved in a business or creating a business.

So my question is they come up with exclusionary criteria, do you ever have a chance to weigh in? Do they ever invite you to the table to sit down and say, "You know what? Help us get through this because obviously we're intent on you becoming successful, or to America being successful. What could we do to eliminate some of this?"

Because again, I go back to the American public, I don't think understands the biggest problem we have right now is not external competition. It's an internal problem and we limit ourselves to what could do.

So if you could, I mean, are you ever invited to participate in any type of a panel discussion about how that would be fixed?

Mr. GOSTIN. On occasion, yes, I am.

This particular idea, when I have described this, the senior members of the State Department, senior members of OSD, their response has been universally positive. But it's a matter of law in this case, because the SBIR program, it's a U.S. law.

There's no way that the Department of Defense could enact this by themselves. So it just becomes more difficult.

Here's a situation where to make this happen, Congress, the Department of Defense and contractors like myself, have to get together and agree that it's a really good idea and try to make something happen.

None of it is easy. We're not often asked to testify on how do we improve the system.

Mr. KELLY. Well, I know none it is easy. But you know what? All of us working together would get it fixed.

I don't like the fact that there's very little sharing of data; there's very little data analysis; there's very little group think on how to fix these things. So I find that discouraging. I know the Congresswoman and I, we've talked on the floor. I don't know how we got to where we are, but we better find a way to get out of it soon, because we're really hurting folks like you.

Mr. GOSTIN. It's not easy. If it were, I'd feel bad. I hear you.

Mr. KELLY. We'll get there. We'll get there. This is the only place in the world we can fix it, so we'll get that done.

Mr. Simpson, a little bit on the course agreement, and if you could, kind of expand a little bit on the opportunities that await American businesses if we're able to put together, not only free, but fair trade agreements. And the other side of that, if we're going to have rules, we've got to make sure that we are the people that enforce them. We don't let people game us.

Mr. SIMPSON. Sure. I think that's absolutely right. You know, part of the challenge, specifically when you are talking about the Koreas, a couple of major industry sectors where there's real market opportunity for U.S. businesses are in the automotive sector, high-technology sector and the agricultural sector. These are, frankly, three areas that play to our region's strengths here in upstate New York. I think they play to the strengths of the northeast United States.

We have watched our market share with Korean trade decline over the last of the decade. Unfortunately, what that does is it

costs U.S. business and it has cost us jobs. Growing our, sort of world view, and our ability to do business internationally has to be, from our perspective, one of the fundamental strategies that we pursue as a Nation if we want to be competitive globally in the long-term.

So we see, you know, there are opportunities for folks here, like our furniture manufacturers. We have a world renowned furniture manufacturer in Stickley Co. that's very interested in doing increased business in Korea, companies like Nixon Gear that do automotive work. Across the board a number of our dairy manufacturers and agricultural producers are also very interested in that market opportunity.

Mr. KELLY. Well, I was looking in your notes. It says, "Over the last 10 years the United States has dropped from being a top exporter to Korea with one-fifth of Korean imports now being in third place with less than 10 percent market share."

This is an observation on my own. I know there's a—Hyundai and Kia made substantial investments in West Point, Georgia and Montgomery, Alabama. And in fact, half the cars sold in this country are actually—Hyundai and Kia are actually produced locally.

And I think one of the challenges we have is marketing the idea. We no longer work within the confines of our country, the United States. We work in the entire globe. The market is huge. And when you said 95 percent, 95 percent, of the market is outside—

Mr. SIMPSON [continuing]. Of all the consumers in the world, they're outside the United States. Eighty percent of the growth that economists predict is going to happen over the next 5 years is outside U.S. borders.

That's where the markets are. And from a business standpoint, you know, we've been fortunate in this country to be able to sustain ourselves on domestic consumption for a very long time. I think, as we have seen over the course of the last 3½ years, those days, while they may not be forever behind us, those days are changing. And I think it behooves us as a country to adapt rapidly and to encourage, as you said, fair-trade agreements with companies with whom we should be doing increased business.

Mr. KELLY. And we do know the way out of this economic mess we're in right now, we can't do it internally. We have to do it using the whole world as our market. And we can compete. It's not a matter of our lack of will to compete or our lack of ability to compete or intellectually not being able to compete.

My observation from being at these meetings is we have absolutely put ourselves in such a bad place, we limit ourselves and our ability to compete in the world. So I'm with you on this, and we are trying to get the Korean Trade Agreement through. We also have more with Columbia and Panama. I know there's some concerns with Columbia and Panama, and I know there's also some concerns with the Korean agreement. But I think if we can get that message out and market it the right way so people understand the upside for the United States, where the true gains are, because we will get people back to work doing what they do best and that is taking care of their families and taking care of their communities.

So thank you very much.

Mr. SIMPSON. Thank you.

Mr. KELLY. And I yield back.

Ms. BUERKLE. I just want to comment, Mr. Gostin, if you could, you're talking a program that would be analogous to SBIR for medium-sized businesses. Have you thought about what that looks like or is that something you could provide us with information on.

Mr. GOSTIN. I'd be glad to do that, Congresswoman.

Ms. BUERKLE. Thank you on behalf of the Oversight and Government Reform Committee. I want thank you both for being here today and sharing your testimony.

I know I speak for my colleague Mr. Kelly, we'd like to be partners with the job creators and with businesses. We'd like to work with you and not put up obstacles. So although there are many right now, many obstacles, many regulations, many situations that businesses face in upstate New York, we'd like to work with you to begin to solve these problems, these issues, so we can get our economy, not just in upstate New York but across New York and across the country, get it back on track and do what's right for the American people.

A lot of these hearings and the purpose of this Oversight and Government Reform Committee is to help restore the America dream, to give entrepreneurs who are willing to take that risk to spend money to create a dream to empower them to be successful and not to impede their success.

So on behalf of our committee, thank you both for being here today and we appreciate your testimony today.

At this time we are going to welcome our second panel of witnesses.

First is Mr. Andrew Reeves who is the owner of Reeves Farms. Welcome and thank you for being here today.

Nancy Hourigan is the owner of Hourigan's Dairy Farm. Welcome and thank you for coming this afternoon.

Mr. Tom DeMarree is the owner of DeMarree Fruit Farm, thank you very much for being here.

As is the custom of the committee, we'll ask you to please stand and be sworn in.

Panel II, consisting of three members: Andrew Reeves, Nancy Hourigan, and Tom DeMarree.

[Witnesses sworn.]

Ms. BUERKLE. Please let the record reflect that the witnesses answered in the affirmative. Thank you.

Again, we'll have each panelist give their opening statement and then we'll take some time to ask questions.

Mr. Reeves, if you would start? Thank you.

**STATEMENTS OF ANDREW REEVES, OWNER, REEVES FARMS;  
NANCY HOURIGAN, OWNER, HOURIGAN'S DAIRY FARM; AND  
TOM DEMARREE, OWNER, DEMARREE ORCHARDS**

**STATEMENT OF ANDREW REEVES**

Mr. REEVES. Thank you.

Distinguished members of the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending. Thank you for the opportunity to testify at today's hearing.

Ms. BUERKLE. If I could interrupt. Can you just move the mic a little closer so everyone can hear your testimony.

Mr. REEVES. Is this any better?

Ms. BUERKLE. That's better. Thank you.

Mr. REEVES. Agriculture is the largest industry in New York. It may be the largest industry left in the United States. In order for agriculture to continue to thrive, there must be a stream-lined process to bring in seasonal, temporary labor when necessary. The H-2A program is supposed to be a tool for the American farmers put in place by Congress to expedite a legal-temporary work force. This program is supposed to allow farmers to develop a good business plan which ensures a plentiful supply of top-quality produce, without having to worry about a work force. All other businesses are able to grow and shrink markets and production depending on demand. If a worker leaves for any reason, 10 others are always ready to fill the void immediately. These businesses are based on these variables.

If you hire an American recruit for temporary labor, they will be looking for another job with benefits and full-time, not seasonal status. Once another opportunity becomes available, they leave or don't show up for work 1 day. As a result, you must spend an average of \$650 per worker and begin a 10-12 week process to replace them with the H-2A program. The H-2A program should extend the same freedoms to American farmers as Congress originally intended. They should be able to expedite legal foreign workers after exhausting all legal, local employment opportunities and options in the existing State. If an H-2A certification has been granted in a neighboring State, this would mean the neighboring States have a shortage of eligible farm workers.

I believe to have me advertise in these neighboring States and continue the recruiting process throughout half the life cycle of my contract period is ridiculous. For my farm not to be able to ask for experience when hiring is ridiculous. For me not to be able to ask for production standards without a challenge from New York or the USDOL is ridiculous. Any other business would not and could not operate in the parameters now set by the present H-2A law.

The next problem that needs changing with the program is the length of the process. We used to be able to send an application to the State and Chicago for processing at the same time. Now we send one out to the State first, and once they finish their process, we then have the necessary order number to now move on to Chicago with a different form. Many times the State will approve something which the USDOL will reject. An example is Work Production Standards. New York State will allow them but the USDOL won't. They get rejected and thrown back, where either an appeal is necessary, or you remove the standards and move on. If you appeal, you have an 82 percent success rate, but you now have put your process behind schedule. If you choose to appeal, the USDOL no longer has to certify your order within 30 days of your date of need. New York State will not let me advertise asking for a resume, but the USDOL says I can.

After we have survived everything to this point, we now have to keep records of all applicants who have requested an interview or job. We also must document this for future audits and accept all

applicants throughout half the term of the work contract. Because the job posting goes on a national site, we are bombarded with applications such as a fishing camp cook with a degree in geography wanting to bop in and work for the month of May on his way to Alaska in June, but he must know more about the free housing first.

How about the family of Eastern Europeans asking if they can move the whole family here? How about the LPN wanting a job because she lost her license and needs a job, however, she won't work weekends. How about the lady from Manila? How about the kid from Auburn wanting a job loading? How about Burrell asking, what do I mean by a resume? These are some of the examples of resumes I deal with. How about the Ph.D. from California who lost his job and applied? Dr. Cool is his email handle. These are all lawsuits and possible litigations looming on the horizon because our present system encourages it.

Now, if everything is fine, we have 30 days or less to finish the process. We now move from overnight replies from government to snail mail. Homeland Security claims to turn your petition request around in 3 to 4 days. This is not true. If you over-night your I-129 to California, they stamp it on the day they receive it or the day after. A received letter with a next-day stamp on it comes to you after the check has cleared. Usually the process, with no problems, takes 12 to 14 days from beginning to end. We now have 15 to 18 days left. Under the old process we could block schedule groups when the order had a WAC number. Now we must wait until the acceptance comes.

Next we must pay for Visas before we can schedule interviews. We must email a request to CSC in order to get permission to access a site to schedule interviews. This takes 5 days if you make no mistakes in the requesting process. If you make a mistake, you will be notified within 5 days of the mistake and you redo it. In 5 more days you will receive access or another problem. The site will let you the electronically schedule or just fill out the spreadsheet and email it. I suggest email. The electronic system is on its third spreadsheet and if there is a specific problem, you'll receive a specific direction back with email scheduling. With the electronic system, you'll receive an error list, without a clue of where to begin. There's no direction as to how the system works. You attempt to understand and operate it. If you fail or have a problem, forget it. You will receive an email answer which will never answer the question you asked.

I had a problem with an order which 18 emails were not answered and 11 calls were not returned. One day during lunch I found another CSC branch with names and numbers. The human resources manager from another division was able to make proper contact to their other division for me. He was amazed how it took four calls to resolve the issue, so he thought. When my workers interviewed, it still required a call to the Nuevo Laredo Consulate to inform them the order scheduled and farm names were wrong. They, as usual, were very helpful.

The next issue I have with the H-2A program is its AEWR's of \$10.25 per-hour wage rate. This is a 15 percent increase in the labor cost from the program revamped during the past administra-

tion. The rate went up in these times from \$10.16. This is an unrealistic wage for the workers considered unskilled and not requiring any previous experience or work standards.

We pay for Visas, we pay for food and travel both ways. We take workers to the store. We must guarantee at least three-quarters of the total hours in the contract, we must provide housing and utilities at no additional cost. No taxes or Social Security are deducted.

Many portions of their jobs offer them an opportunity to earn even more when performing piecework. When your slower workers are guaranteed a minimum of \$10.25 per hour for piecework, your faster workers make considerably more because your production minimum standards are based on the slower workers. This is a reason we quit growing green and yellow beans, reduced acreage of peas, quit growing snow peas, and wouldn't raise blueberries if they weren't organic and bring us a higher price.

Lack of consistency is my final complaint with the program. I can send an I-129 with only one copy and get an acceptance. I have had a customer do the same and he was sent an approval form or requested and to send another copy and \$404 with another form or they may not be able to schedule appointments at the Consulate.

I have used production standards and have had customers denied standards. I have been told to hire Puerto Ricans and I have asked them to interview or submit a resume. I recently talked to a large orchard producer from Virginia. Their farm hires 178 H-2A workers. Last year they were forced to use a Puerto Rican labor force because of problems with the H-2A in Jamaica. I have the same labor-reporting system as this grower. My vendor verified the orchard production was half last year of other years. This farmer was asking me if there is any way around the Puerto Rican labor situation. He said if he has to use Puerto Rican workers this year, he will have an auction. How can you expect to tell a business owner how he has to run his business? No other business suffers these restrictions.

Now I'll briefly review areas I believe need change. Bullet form is easiest.

Apply to State and USDOL at the same time.

Allow standards and experience to be included in the job requirements.

Revamp the recruitment process. Why advertise in a State which already has been approved for H-2A workers.

Reduce the recruitment period until the time the H-2A workers arrive on the farm.

If the number of workers on an order are reduced because of referrals, these slots should remain open so the farmer can fall back on them if the referral workers don't work out or leave.

Introduce a form of arbitration to resolve issues. Legal service attorneys constantly look for areas to litigate.

The 30-day rule from the U.S. Department of Labor is not adequate. It encourages farmers to lie about their need date because the process cannot be completed within the 30-day period.

Allow a farm to select where he gets his work force. Every other business has that freedom.

Speed up the Homeland Security Process or make them tell the truth. USDOL and Department of State believe in this 3 to 4 day turnaround.

Reduce the wage to a realistic level. The Bush order was the best system thus far.

Repair the mess created by the new interview scheduling procedure. It was introduced before it was ready, and I guarantee it wasn't developed by CSC. They have always been a great company to work with.

We must include the dairy industry. AgJobs is a dead on arrival proposal. The changes have morphed it into a bad deal for agriculture.

Strive for more consistency across the board. State and USDOL, State Health Department, Homeland Security and Department of State.

Let the H-2A workers pay their own Visa fee. This is nonrefundable, and they should have some "skin in the game."

I have aired my grievances and hope I was able to shed light on the problems of H-2A. AgJobs is not the answer here either. Labor unions and legal service groups have killed the good in this bill already. I will not endorse any program with amnesty attached. The Amnesty Act of 1987 was another example of it not working. The workers moved up the ladder and left a vacuum which was filled with the millions of undocumented workers in the United States. Most of the workers I recruit once spent time illegally in the United States. I have convinced them to go back and enter the legal H-2A program. I have convinced not less than 10 farms to convert to legal H-2A workers. These people should remain at the front of the line.

What we now ask for is a program to be developed which will partner with today's agricultural industry and finally address the H-2A needs of our dairy industry also.

We need to work this out together for the salvation of the industry this country was built with. Let's once and for all do this together once and do it right. Leave the unions and the legal service ambulance chasers on the sidelines.

We owe this to an industry already bombarded with new EPA and DEC regulations every year. We also have the Traceback and Food Safety Requirements whose costs are all the burden of the farmers presently. We are at a point of losing our producers if something isn't done.

Washington needs to become proactive with this issue. Four different programs in 3 years are confusing the lack of continuity necessary for Agribusiness to develop and maintain a long-term business plan.

Thank you very much for your time and the invitation.

Ms. BUERKLE. Thank you, Mr. Reeves.

[The prepared statement of Mr. Reeves follows:]

Written Testimony of Andrew O. Reeves

The Committee on Oversight and Government Reform Subcommittee on  
Regulatory Affairs, Stimulus Oversight and Government Spending

April 20, 2011

Distinguished members on the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, thank you for the opportunity to testify at today's hearing. I would like to address the H-2A temporary farm worker program.

Agriculture is the largest industry in New York. It may be the largest industry left in the United States. In order for agriculture to continue to thrive, there must be a streamlined process to bring in seasonal, temporary labor when necessary. The H-2A program is supposed to be a tool for the American farmers, put in place by Congress, to expedite a legal, temporary workforce. This program is supposed to allow farmers to develop a good business plan which insures a plentiful supply of top quality produce, without having to worry about a workforce. All other businesses are able to grow and shrink markets and production depending on demand. If a worker leaves for any reason, 10 others are always ready to fill the void immediately. These businesses are based on these variables.

If you hire an American recruit for temporary labor, they will be looking for another job with benefits and full time, not seasonal status. Once another opportunity becomes available, they leave or don't show up for work one day. As a result, you must spend an average of \$650 per worker and begin a 10-12 week process to replace them with the H-2A Program. The H-2A program should extend the same freedoms to the American farmers as Congress originally intended. They should be able to expedite legal foreign workers after exhausting all legal, local employment options in the existing State. If H-2a certifications have been granted in a neighboring State, this would mean the neighboring State has a shortage of eligible farm workers. I believe to have me advertise in those neighboring States and continue the recruiting process throughout half the life cycle of my contract period is ridiculous. For my farm not to be able to ask for experience when hiring is ridiculous. For me not to be able to ask for production standards without a challenge from New York or the USDOL is ridiculous. Any other business would not and could not operate in the parameters now set by the present H-2A Law.

The next problem that needs changing with the program is the length of the process. We used to be able to send an application to the State and Chicago for processing at the same time. Now we send one out to the State first, and once they finish their process, we then have the necessary order number to now move on to Chicago with a different form. Many times the State will approve something which the USDOL will reject. An example is Work Production Standards. New York State will allow them but the USDOL won't. They get rejected and thrown back, where either an appeal is necessary, or you remove the standards and move on. If you appeal, you have an 82% success rate, but you now have put your process behind schedule. If you choose to appeal, the USDOL no longer has to certify your order within 30 days of your date of need. New York State will not let me advertise asking for a resume, but the USDOL says I can.

After we have survived everything to this point, we now have to keep records of all applicants who have requested an interview or job. We also must document this for future audits and accept all applicants throughout half the term of the work contract. Because the job posting goes on a national site, we are bombarded with applications such as a fishing camp cook with a degree in geography wanting to bop in and work for the month of May on his way to Alaska in June. But he must know more about the free housing first. How about the family of Eastern Europeans asking if they can move the whole family here? How about the LPN wanting a job because she lost her license and needs a job? However, she won't work weekends. How about the lady from Manila? How about the kid from Auburn wanting a job loading? How about Burrell asking what do I mean by a resume? These are some of the examples of resumes I deal with. How about the PHD from California who lost his job and applied? DRCool is his email handle. These are all lawsuits and possible litigations looming on the horizon because our present system encourages it.

Now if everything is fine, we have 30 days or less to finish the process. We now move from overnight replies from government to snail mail. Homeland Security claims to turn your petition request around in 3-4 days. This is not true. If you overnight you I-129 to California, they stamp it that day or the day after they receive it. A received letter with the next day stamped on it comes to you after the check has cleared. Usually the process with no problems takes 12 to 14 days from beginning to end. Now we are down to 15 to 18 days left. Under the old process we could block schedule groups when the order is given a WAC number. Now we must wait until the acceptance comes. Next we now must pay visas before we can schedule interviews. We must email a request to CSC in order to get permission to access a site to schedule interviews. This takes 5 days if you make no mistakes in the

requesting process. If you make a mistake, you will be notified within 5 days of the mistake and you redo it. In 5 more days you will receive access or another problem. The site let's you electronically schedule or just fill out the spreadsheet and email it. I suggest email. The electronic system is on its third spreadsheet and if there is a specific problem, you'll receive a specific direction back with email scheduling. With the electronic system, you'll receive an error list, without a clue of where to begin. There are no directions as to how the new system works. You attempt to understand and operate it. If you fail, or have a problem, forget it. You will receive an email answer which will never answer the question you asked. I had a problem with an order which 18 emails were not answered and 11 calls were not returned. One day during lunch I found another CSC Branch with names and numbers. The Human Resources Manager was able to make proper contact to their other division for me. He was amazed how it took him 4 calls to resolve the issue so he thought. When my workers interviewed, it still required a call to the Nuevo Laredo Consulate to inform them the order scheduled and farm name were wrong. They, as usual were very helpful.

The next issue I have with the H-2A program is with the AEWR's \$10.25 per hour wage rate. This is a 15% increase in the labor cost from the program revamped during the past administration. The rate went up in these times from \$10.16. This is an unrealistic wage for the workers considered unskilled and not requiring any previous experience or work standards. We pay for the visas, we pay for food and travel both ways, we take workers to the store, we must guarantee at least ⅓ of the total hours in the contract, and we provide housing and utilities at no additional cost. No taxes or Social Security are deducted. Many portions of their jobs offer them an opportunity to earn even more when performing piecework. When your slower workers are guaranteed a minimum of \$10.25 per hour for piecework, your faster workers make considerably more because your production minimum standards are based on the slower workers. This is a reason we quit growing green and yellow beans, reduced acreage of peas, quit growing snow peas, and wouldn't raise blueberries if they weren't organic and bring us a higher price.

Lack of consistency is my final complaint with the program. I can send an I-129 with only one copy and get an acceptance. I have had a customer do the same and he was sent an approval but requested to send another copy and \$404 with another form or they may not be able to schedule appointments at the Consulate. I have used production standards and have had customers denied standards. I have been told to hire Puerto Ricans and that I couldn't ask them to interview or submit a resume. I recently talked to a large orchard producer from Virginia. Their farm hires 178 H-2A

workers. Last year they were forced to use Puerto Rican Labor. I have the same labor reporting system as this grower. My vendor verified the orchard production was half last year of other years. This farmer was asking me if there were ways around the Puerto Rican labor situation. He said if he has to use Puerto Rican workers this year, he will have an auction. How can you expect to tell a business owner how he has to run his business? No other business suffers these restrictions.

Now I will briefly review areas I believe need to change. Bullet Form may be the easiest way.

- Apply to State and USDOL at the same time
- Allow standards and experience to be included in the job requirements
- Revamp the recruitment process. Why advertise in a state which already has been approved for H-2A workers
- Reduce the recruitment period until the time the H-2a workers arrive on the farm
- If the number of workers on an order are reduced because of referrals, these slots should remain open so the farmer can fall back on them if the referral workers don't work out or leave
- Introduce a form of arbitration to resolve issues. Legal Service Attorneys constantly look for area to litigate
- The 30 day rule from USDOL is not adequate. It encourages the farmers to lie about their need dates because the process cannot be completed within the 30 days period
- Allow a farm to select where he gets his workforce. Every other business has that freedom
- Speed up the Homeland Security Process or make them tell the truth. USDOL and Department of State believe the 3-4 day turnaround
- Reduce the wage to a realistic level. The Bush Order was the best system thus far
- Repair the mess created by the new interview scheduling procedure. It was introduced before it was ready, and I guarantee it wasn't developed by CSC. They have always been a great company to work with
- We must include the Dairy Industry. AgJobs is a Dead on Arrival proposal. The changes have morphed it into a bad deal for Agriculture
- Strive for more consistency across the board. State and U.S. DOL, State Health Dept., Homeland Security, and Department of State.
- Let the H-2A Workers pay their own visa fee. It is non refundable, and they should have some "Skin in the Game".

I have aired my grievances and hope I was able to shed some light on the problems of H-2A. AgJobs is not the answer either. Labor Unions and Legal Service Groups have killed the good in that bill already. I will not endorse any program with amnesty attached. The Amnesty Act of 1985 was another example of it not working. The workers moved up the ladder and left a vacuum which was filled with the millions of undocumented workers in the United States. Most of the workers I recruit once spent time illegally in the United States. I have convinced them to go back and enter the legal H-2A program. I have convinced not less than ten farms to convert to legal H-2A workers. These people should remain at the front of the line. What we now ask for is a program be developed which will partner with today's Agriculture Industry and finally address the H-2A needs of our Dairy Industry also. We need to work this out together for the salvation of the industry this country was built with. Let's once and for all do this together once and do it right. Leave the Unions and the Legal Services ambulance chasers on the sidelines. We owe this to an industry already bombarded with new EPA and DEC regulations every year. We also have the Traceback and Food Safety Requirements whose costs are all the burden of the farmers presently. We are at a point of losing our producers if something isn't done now. Washington needs to become proactive with this issue. Four different programs in three years are confusing, and lack the continuity necessary for Agribusiness to develop and maintain a long term business plan.

Thank you very much for your time and invitation.

The H-2A program is the only viable program in existence which addresses the most important issue in The Agriculture Industry today, availability of legal and experienced farm workers.

I have been recruiting for the past 6 years H-2A workers out of Mexico.

The program has change 4 times in the past three years, and twice, these changes occurred in the mid season.

The H-2A program is able to be utilized in around 50 Countries worldwide.

My experience will focus on the recruitment activities in Mexico alone.

The H-2A program deals with several different State and Federal agencies, all of which seem to lack a good understanding of the other.

Let's now take a journey together and maybe we'll better be able to decide if this system runs like a Rolex, or this is just another example of why people in general scratch their heads when the words Government Program are mentioned.

First of all, let's look at the titles and addresses we have to either fit on an envelope or attempt to list on an overnight form.

- How about the name of this committee first; **The Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending**
- Next, we have; **New York State Department of Labor ; Office of Foreign Labor Certification; W.Averell Harriman State Office Building; Building 12; Room 500, Albany, New York 12240**

This is the easy one.

- Next, we move on to Chicago; U. S. Department of Labor Employment and Training Administration; Office of Foreign Labor Certification; Chicago National Processing Center; 536 South Clark Street Federal Building; 9<sup>th</sup> Floor; Chicago, IL 60605
- Then there is California; U.S. Citizenship and Immigration Services; California Service Center; Att: H-2A Processing Center; 24000 Avila Road, Second Floor, Room 2312, Laguna Niguel, CA 92677 Make sure you don't overnight on a Friday, and write H-2A on the outside of the packet.

**Now we'll review the steps necessary to bring experienced, dependable labor to your farm.**

- The farmer must decide if he plans to recruit an H-2A workforce for the coming season.
- To do this, he must answer some important questions first:
- What will be the hourly rate?
- Don't know AEWB changes in February.
- Can I get my workers where I want?
- Not necessarily, depends on how people are feeling that day. Talk about Virginia.
- Can I get experienced workers?
- Yes if you are in the hands of a good agent.
- Do I have to hire anyone who applies for the job?
- Well, not necessarily but that depends.
- How soon will I have to decide?
- Yesterday or the day before.
- **You cannot apply sooner than 75 days prior to day of need. You cannot apply fewer than 45 days prior to date of need.**
- Contact an Agent or your local SWA, New York State Rural Labor Representative.
- Fill out form ETA 790 and the required attachments and send it to Albany DOL to list on the State Site and request a camp inspection through your County Health Department.

- State will look to see you do not require any experience in your application because farm workers are unskilled.
- When everything is complete and approved by the State DOL, you receive an approval and permission to move on with the process.

5-7 Days with no problems

- **Fill out Form ETA 9142 and send it with your Form ETA 790 to Chicago DOL.**
- Don't ask for experience or standards unless you have extra time.
- You will not receive certification any sooner than 30 days before you date of need out of Chicago.
- NYSDOH inspects your housing and forwards results to Chicago.
- If you have to make modifications to your application, USDOL can go beyond the 30 day limit.
- One week or more after applying, you'll be asked to begin the recruiting process.
- Your job order will be listed in Puerto Rico, and you must advertise locally and in two neighboring states. These states already have H-2A certifications from the USDOL.
- The order is placed on a National Job Listing.
- You must keep records of all applicants. I advertise for resumes. USDOL says I can, NYSDOL says I can't I advertise no phone call will be returned.
- You must accept referrals and applicants from this point until the midpoint of your job order.
- Many times you have 2 to 4 days to advertise and have your recruitment plan back in Chicago.
- At least Chicago uses Overnight Delivery.
- I've done this process in 14 day before with no problems, but an appeal or modification can make this a 3 to 4 week process.

14 Days with no problem. You however, will only have 30 days or less to finish the process.

- **Fill out form I-129 and send it to USCIS, Homeland Security, in California. Better overnight it, you only have 30 days left Make sure you include the complete certification back from Chicago with your package. You must send 2 copies of everything. Make sure you keep a color copy of your certification. If your package is lost, and it does happen, you'll need another color copy of your certification.**
- Per Homeland Security, they turn your petition request around in 3-4 days. This is on paper only. Show I-797B.

- USCIS won't even send you a notice of review form without you check clearing first
- You'll receive a review notification around 10 or 12 days after you send out the I-129
- You will receive a petition acceptance

12-14 days with no modifications

- **US Dept of State is the next Agency. Schedule interviews through CSC online. You will need all information from your recruits at the time the appointments are scheduled. Also visas must be paid before interviews are scheduled.**
- Try to find information about the process now required to file. You go to the Consulates Webpage and they are out dated.
- Email CSC [H2BMex@csc.com](mailto:H2BMex@csc.com) and in 5 days you'll receive instructions as how to email a request to schedule interviews.
- This request may be answered in 5 days or more. You will gain access to their new online system. You now can access the spreadsheet and electronically schedule your interviews and select dates.
- Works with one or two workers. 1st spreadsheet crashed and burned with more than 17 workers.
- Second spreadsheet also crashed and burned because all of the names from the first spreadsheet were lost in the system.
- 18 emails and 11 phone messages over 2 ½ weeks not returned.
- Any emails you receive come at least 5 days later and never answer your question.
- Both emergency numbers go to voicemail. Dial number.

10-14 days with no problems

23 days with my order

**Workers interview at the Consulate. This is a two day, two location process beginning this year. Workers need lead time to prepare and travel to the interview. There is a 2 to 3 week lead time for interviews for groups of workers. This includes minimum of 5 days worker notification.**

14-20 days

36-48 day process for only a 30 day window

This system has a pay rate of \$10.25 per hour. Last year we had a rate of \$8.98 per hour. This does not include the free inspected housing and utilities, free transportation both ways, and no deductions taken out. The average cost to apply for this program and get the worker on your doorstep is \$600- \$675 per worker.

Ms. BUERKLE. Ms. Hourigan.

**STATEMENT OF NANCY HOURIGAN**

Ms. HOURIGAN. Thank you for inviting me to testify before you today.

My name is Nancy Hourigan and I'm a member of the Onondaga County Farm Bureau and on the board of directors of the New York Agricultural Land Trust. My husband John and I and my son Matt work about 8,000 acres of land in Onondaga County and operate a dairy farm.

My family and I are proud of our farm and the time and hard work that we have put into the operation to make it successful and to keep it growing.

Our heritage and our roots are in the community and our farm, and we want to see this business succeed at what is our core mission—producing healthy, local milk for our neighbors and fellow citizens of New York State. Our milk is sold to Byrne Dairy; doesn't get much more local than that.

But the family farm has changed significantly over the years. As we have had to grow in order to keep up with ever escalating regulatory burdens and a price we receive for our milk is at the mercy of global market conditions, even though our cost factors are particularly influenced by being in a State like New York, where all businesses face an unreasonable high cost of taxes, energy and labor and regulatory compliance.

While I can and will expand upon some specific topics that are of concern to me, the single biggest point I want to make at this hearing is that the amount of actual time that I and my family have to spend complying with various Federal regulations and that has escalated to the point where I spend more time in an office and on a computer and filing paperwork than I ever did working with the cows, the crops and the personnel on the farm.

Each and every day I spend filing paperwork to comply with various Federal regulations, and each and every new piece of paper I have to put up on my central-posting area on the farm has a cost to it that is profound and can never be recouped. The cost is my time and my husband's time. No amount of cows or cropland added to the farm to ensure our financial stability will enable us to recoup that time that we have to spend filing ever increasing paperwork with various agencies.

I do not believe that each Federal agency that we deal with has a comprehensive understanding of what it is like to try to farm in this environment. I have to meet mandates from the U.S. Department of Labor, wage and hour paperwork, the Homeland Security Office, I-9 Forms, U.S. Department of Agriculture, conservation and sanitation issues, the U.S. Department of Transportation, DOT truck numbers, hours of service regulations, the EPA for nutrient management issues, as well as a various State compliance issues.

While President Obama discussed this issue in his State of the Union speech in January, I can tell you that on the farm itself, we have not felt much, if any, impact from a lessening of governmental regulations and paperwork.

Clearly we need to have government engaged in ensuring safety for consumers in the food they purchase, the roads they travel on

and the environment. However, the current emphasis on simply putting more and more regulations and paperwork on farms and small businesses like mine, is out of control. I will never regain the time I lost and continue to lose in making sure that I'm complying with everything that I have to file.

So how can the Federal Government help New York State farm families like myself? First and foremost, just stop imposing new mandates. Follow the spirit of the Regulatory Review Commission that President Obama discussed and actually implement the recommendation to reduce the amount of time that I spend filing paperwork.

Second, I would also like to suggest that the Federal Government wrap up its activity in redirecting farmland protection dollars to New York State. As stated, I serve on the board of directors of the New York Agricultural Land Trust. It is clear to me that with the vulnerability of New York's farmland to development made more acute by the barriers placed on farmers by the cost of complying with regulatory mandates, the existing funds from U.S. Department of Agriculture have not been directed to New York State as they have been to other States where farmland is not so acutely in danger of being lost to parking lots and housing developments.

When farmland is conserved in the local community not only does the land provide wildlife, habitat and improved water quality, it also ensures that a locally produced food supply is secured and a family farm can remain with the land.

I would strongly suggest that the formula that drives the allocation of funds to the various States be reviewed with an eye toward ensuring that farm land that is particularly vulnerable, especially on Long Island, in the city of Syracuse and the Hudson River receive a priority.

Third, I would like to discuss one issue with the EPA that has me very concerned because of the precedent-setting nature of the agency's actions.

A section of Onondaga County is located in the Chesapeake Bay watershed. My farm is not located within that watershed, but the issue is very important to me as my family is connected to other farm families who are in the watershed and rely on our farm to provide cow feed and to do custom work and planting for them that allows their farms to prosper and grow.

While I'm certainly not opposed to improving water quality in the Chesapeake Bay, it strikes me as odd that all the environmental stewardship practices that I have put in place on my farm and other neighbors have put on their farm were not originally recognized in the EPA's overly zealous desire to clean up the bay by imposing strict regulations on agriculture.

On my farm alone we have spent tens of thousands of dollars constructing a nutrient management storage facility and we are a partner in a community digester whereby waste from our farm and several other farms will help generate energy for county facilities.

As a family farmer, I and my neighbors care about the environment that we leave for our children. We are not going to tolerate sloppy behavior, nor are we going to fail to do what's right on our farms to protect the environment even when such practices are expensive to implement and are not paid for by the consumer dollar.

However, the EPA's overreach on this issue is frightening to me and my fellow farmers as with one single regulation originally proposed in the draft TMDL, the EPA was willing to sacrifice over 900 farms in the Chesapeake Bay watershed.

I am pleased that the State DEC and EPA, in consultation with New York farm bureaus and others, came to an agreement to accept New York's watershed implementation plan, but I realize this plan may still impose significant regulatory burdens on some smaller family farms. So I need to urge you to continue to work for conservation dollars in the next farm bill cycle for the on-the-farm environmental stewardship measures.

But the main point I want to make is that knowing that the Federal Government can act this precipitously and unfairly and jeopardize my own and my neighbor's farm operation by issuing one poorly thought out regulation, makes me lose sleep at night and question long-term ability of my family to keep our farm in operation for the next generation.

The last issue I want to discuss is the need for realistic and not clogged with paperwork guestworker program that you have already heard about from Mr. Reeves.

Thank you for the opportunity to speak with you today and present testimony from the farmers perspective of the serious and ever increasing Federal barriers to growth.

I appreciate you taking the time to listen to me and your consideration of my own time as a farm family business in New York State to try to reduce the time I spend in compliance costs.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Ms. Hourigan follows:]



**Statement of the  
Onondaga Farm Bureau**

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**To the House Committee on Oversight and Government Reform  
Subcommittee on Regulatory Affairs, Stimulus Oversight  
and Government Spending**

**“Regulatory Impediments to Job Creation in the Northeast”**

**Presented by Nancy Hourigan;  
Onondaga County Farm Bureau**

**Wednesday, April 20, 2011**

Thank you for inviting me to testify before you today. My name is Nancy Hourigan, and I am a member of Onondaga County Farm Bureau and on the Board of Directors for the New York Agricultural Land Trust. My husband John, son Matt and I farm 8000 acres of land in Onondaga County and operate a dairy farm.

My family and I are proud of our farm, and the time and hard work that we have put into the operation to make it a successful, growing business. Our heritage and our roots are in the community and our farm, and we want to see this business succeed at what is our core mission – producing healthy, local milk for our neighbors and fellow citizens of New York. We sell to Byrne Dairy so our milk stays local!

But the family farm has changed significantly over the years, as we've had to grow in order to keep up with ever increasing regulatory burdens, and a price received for our milk that is at the mercy of global market conditions even though our cost factors are particularly influenced by being in a state like New York - where all businesses face an unreasonably high cost of taxes, energy and labor, and regulatory compliance. While I can and will expand upon some specific topics that are of concern to me, the single biggest point that I want to make at this hearing is that the amount of actual time that I and my family have to spend complying with various federal regulations has escalated to the point where I spend more time in an office, on a computer, and filing paperwork, than I do actually working with the cows, crops, and personnel that it takes to run my farm. Each and every hour I spend filing paperwork to comply with various federal regulations, and each and every new piece of paper I have to put up on my central posting area on the farm has a cost to it that is profound and can never be recouped. The cost is my time, and my husband's time. No amount of cows or crop land added to the farm to ensure our financial stability will enable us to recoup the time that we have to spend filing ever increasing paperwork with various agencies.

I do not believe that each federal Agency that we deal with has a comprehensive understanding of what it is like to try to farm in this environment. I have to meet mandates from the U.S. Department of Labor, (for wage and hour paperwork) the Homeland Security Office (for completion of I-9 forms), the U.S. Department of Agriculture, (for various conservation and sanitation issues) the U.S. Department of Transportation (for DOT truck numbers, hours of service regulations) the Environmental Protection Agency (for nutrient management issues) as well as the various state compliance issues. While President Obama discussed this issue in his State of the Union speech in January, I can tell you that on the farm itself, we have not felt much if any impact from a lessening of governmental regulations and paperwork. Clearly we need to have government engaged in ensuring safety for consumers in the food they purchase,

the roads they travel on, and the environment. However, the current emphasis on simply putting more and more regulations and paperwork on farms and small businesses like mine is, quite simply, out of control. I will never regain the time I have lost, and continue to lose, in making sure that I am complying with everything I have to file with the various federal agencies.

So how can the federal government help New York State family farms like mine? First and foremost, just stop imposing new mandates. Follow the spirit of the Regulatory Review Commission that President Obama discussed and actually implement the recommendations to reduce the amount of time I spend filing paperwork.

Secondly, I would also like to suggest that the federal government ramp up its activity in re-directing farmland protection dollars to New York State. As stated, I serve on the Board of Directors of the New York Agricultural Land Trust. It is clear to me that with the vulnerability of New York's farm land to development, made more acute by the barriers placed on farmers by the cost of complying with regulatory mandates, the existing funds from the United States Department of Agriculture have not been directed to New York as they have to other states, where farmland is not so acutely in danger of being lost to parking lots and housing developments. When farmland is conserved in the local community, not only does the land provide wildlife habitat and improved water quality, it also ensures that a locally produced food supply is secured and a family farm can remain on the land. I would strongly suggest that the formula that drives the allocation of funds to the various states be reviewed, with an eye towards ensuring that farmland that is particularly threatened by development (such as my farm with the proximity to the city of Syracuse, or farm land in Long Island and the Hudson Valley) receives priority.

Thirdly, I would like to discuss one issue with the Environmental Protection Agency that has me extraordinarily concerned because of the precedent setting nature of the Agency's actions. A section of Onondaga County is located within the Chesapeake Bay watershed area. My farm is not located within that watershed but the issue is particularly important to me, as my family is connected to other farm families who are in the watershed, and rely on us to provide cow feed and do custom work planting and harvesting, that allows their farms to prosper and grow. While I am certainly not opposed to improving water quality in the Chesapeake Bay, it strikes me as odd that all of the environmental stewardship practices that I have put in place on my farm (or my neighbors have put on their farms) were not originally recognized in the EPA's overly zealous desire to clean up the Bay by imposing strict regulations on agriculture. On my farm alone, I have spent tens of thousands of dollars to construct a nutrient management storage

facility and am a partner in a community digester, whereby waste from our farm and several other farms, will help generate energy for county facilities.

As a family farmer, I and my neighbors care about the environment that we leave for our children to farm. We are not going to tolerate sloppy behavior, nor are we going to fail to do what is right on our farms to protect the environment, even when such practices are expensive to implement and are not paid for by the consumer dollar. However, the EPA's over-reach on this issue is frightening to me, and to my fellow farmers, as with one single regulation originally proposed in the draft TMDL the EPA was willing to sacrifice over 900 farms in the Chesapeake Bay watershed. I am pleased that the state Department of Environmental Conservation and the EPA, in consultation with New York Farm Bureau and others came to an agreement to accept New York's Watershed Implementation Plan, but I realize that this WIP may still impose significant regulatory burdens on some smaller family farms, and so I need to urge you to continue to work for conservation dollars in the next Farm Bill cycle for on-the-farm environmental stewardship measures. But the main point I want to make is that knowing that the federal government can act this precipitously and unfairly, and jeopardize my own and my neighbors farm operation by issuing one poorly thought out regulation, makes me lose sleep at night and question the long term ability of my family to keep our farm in operation for the next generation.

The last issue I want to discuss, briefly, is the need for a realistic and not clogged with paperwork guest worker program. I understand from my neighbors who do utilize the H2a program that it has become more difficult to use, as the federal Department of Labor keeps imposing additional paperwork requirements and costly mandates on the system. As a dairy farmer, it would be difficult for me to access another costly, filled with paperwork, program. However, I would like to ensure that as a dairy farmer I can gain access to this program in case I need it to keep running the farm. Currently, I am largely excluded from utilizing the program. A statutory or regulatory change should be made in order to allow farms like mine to access the program in the event there is not enough local labor. Unfortunately, New York State has been losing population in the demographic that farms like mine seek to employ – younger individuals with agricultural and manual labor skills. Unless and until New York reduces the high cost of living, and doing business, in the state, that key demographic will continue to be increasingly difficult for me to find, so I would like to have the option to utilize the H2a program in the event that I run out of local labor to meet my farm's needs.

Thank you for the opportunity to speak with you today and to present testimony, from the farmer's perspective, of the serious and ever-increasing federal barriers to growth. I appreciate

your taking the time to listen to me, and your consideration of my own time, as a farm family business in New York State, to try to reduce the time I spend in compliance costs.

Ms. BUERKLE. Mr. DeMarree.

**STATEMENT OF TOM DEMARREE**

Mr. DEMARREE. Good afternoon. I appreciate being given the opportunity to discuss apple industry labor concerns. Thank you for your attention.

I'm Tom DeMarree and I own and operate a 200-acre fruit farm in the Town of Williamson, Wayne County. I'm also the current president of the New York State Horticultural Society and past board member of the New York Apple Association.

We grow over 100,000 bushels of apples as well as processing peaches and a few other stone fruits. We also own and operate cold storages on our farm. Six people work full-time or part-time on our farm and an additional 29 people depend on the seasonal work available through our farm to support their families.

According to the New York State orchard survey, over 42,000 commercial acres of apples in the State, and in the past 20 years growers have renewed this acreage of 3 to 4 percent per year. More than 65 percent of the New York apple acreage is in the seven counties of the south shore of Lake Ontario. In the past 4 years most of the fresh apple growers in these counties have been replanting it at a rate of 500 to 1,300 trees per acre which costs between \$6,500 and \$13,000 an acre.

This means that apple growers in these counties over the past 4 years have invested around \$46 million in new apple orchards alone. Twice this amount is likely to have been invested on farm machinery, equipment, labor, housing and other real estate improvements as well as apple storages, packing lines and other cooperative marketing facilities over the same period.

Our own operation has invested hundreds of thousand of dollars in capital improvements over the past 4 years. We spend over \$5,000 an acre annually growing, harvesting and delivering our fruit, 80 percent of which benefits the local economy.

This is our sixth year using H-2A program. Securing H-2A labor is expensive and increasingly fraught with government red tape and stress. The U.S. Department of Labor and New York State Department of Labor in Albany are attempting to make this program so difficult that no one will choose to use it. Growers, however, have almost no choice but to use this program if they wish to secure legal employees skilled enough to perform the required work efficiently and on time.

The Labor Department tells growers what they must put on the work orders, limiting the experience requirements requiring employers to tolerate employees missing up to 5 consecutive days of work without notifying the employer in advance. How are growers supposed to harvest each apple variety at an optimum quality when the workers can miss work without notifying the employer.

The Department of Labor in Albany has also been requiring referrals to Puerto Ricans to be interviewed within 10 days when these referred persons often have no experience working on a fruit farm. Growers should not have to argue with or petition DOL employees with no practical experience in operating a fruit farm about the experience required for fruit farm employees in a business producing perishable crops.

Thousands of dollars were lost in New York fruit farms in our local economies last year because of delays in securing farm labor. Fruit was picked late and had a lower quality plus a lower value. The failures to secure labor or the loss of skilled labor during critical planting, crop protection or harvesting operation results in financial losses that are not only jeopardizing the farm business but also the local economy. Losses in apple quality jeopardize both year-round and part-time employees' income.

Fruit growers need employees familiar with their particular varieties and the market requirements those farms are attempting to meet to secure the best possible price for each variety of fruit. Fruit growers do not want to train new employees annually. They want to retain trained employees. Untrained employees make expensive mistakes that today's businesses cannot afford. Workers also prefer to work with the same farm year after year.

As time goes on there are fewer skilled people who are willing to move from place to place every 6 to 10 weeks to harvest crops as they mature. Given a choice, most people would prefer to earn a living in one place in a clean, dry environment that does not require continuous physical labor.

I know that these issues are difficult and controversial at times, but growers must have some assurance that they will have a consistent, skilled labor work force available to them that will be willing to retain trained workers.

Congresswoman Slaughter has been recently working as a strong advocate on behalf of growers in contacting the Labor Department to solve some of these problems. I would urge you to contact her office to work with her to get the H-2A program to be more responsive to their needs.

Thank you very much for your time.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Mr. DeMarree follows:]

Good afternoon! I appreciate being given the opportunity to discuss apple industry labor concerns. Thank you for your kind attention. My name is Tom De Marree and I own and operate a two hundred acre fruit farm in Town of Williamson, Wayne County. I am also the current President of the NYS Horticultural Society and past a board member of the New York Apple Association.

We grow over 100,000 bushels of apples as well as process peaches and a few other stone fruits. We also own and operate cold storages which hold over 60,000 bushels of apples. Six people work full or part-time on our farm and an additional twenty nine people depend on the seasonal work available through our farm to support their families.

According to the 2006 NYS Orchard and Vineyard Survey there are over 42,000 commercial acres of apples in this state. In the past 20 years, growers have renewed their acreage at rates of 3 to 4% annually.

More than 65% of New York's apple acreage is in seven counties on the south shore of Lake Ontario. In the past four years, most of the fresh apple growers in these counties have been replanting apple trees at 500 to 1,300 trees per acre, which costs between \$6,500 to \$13,000 per acre.

This means that apple growers in these counties over the past four years have invested around \$46 million in new apple orchards alone. **Twice** this amount has also likely been invested in on-farm machinery and equipment, labor housing and other real estate improvements as well as in apple storages, packing lines and other cooperative marketing facilities in this same time period.

Our own operation has invested hundreds of thousands of dollars in capital improvements over the past four years. We also spend over \$5,000 an acre annually growing, harvesting and delivering our fruit, eighty percent of which benefits the local economy.

This is our sixth year of using H-2A labor. Securing H-2A labor is expensive and increasingly fraught with government red tape and stress. The US Department of Labor and the NYS Department of Labor in Albany are attempting to make this program so difficult that no one will choose to use it.

Growers, however have almost no choice, but to use this program if they wish to secure legal employees skilled enough to perform the required work efficiently and on time.

The labor department tells growers what they must put on their work orders; limiting experience requirements and requiring employers to tolerate employees missing up to 5 consecutive days of work without notifying the employer in advance. How are growers supposed to harvest each apple variety at optimum quality when workers can miss work without notifying their employer?

The Department of Labor in Albany has also been requiring "referred" Puerto Ricans to be interviewed within ten days, when these "referred" persons often have no experience working on a fruit farm. Growers should not have to argue with or petition DOL employees (with no practical

experience in operating a fruit farm) about the experience requirements for fruit farm employees in a business producing a perishable crop.

Thousands of dollars were lost to New York fruit farms and their local economies last year because of delays in securing farm labor. Fruit was picked late and of lower quality, thus lower value. The failure to secure labor or the loss of skilled labor during critical planting, crop protection (spraying) or harvest operations results in financial losses that not only jeopardize the farm business, but also the local economy. Losses in apple quality jeopardize both year round and part time employee income.

Fruit growers need employees familiar with their particular varieties and the market requirements those farms are attempting to meet to secure the best possible price for each fruit variety. Growers do not want to train new employees annually, they want to retain trained employees. Untrained employees make expensive mistakes that today's businesses cannot afford! Workers also prefer to work for the same farm, year after year.

As time goes on, there are fewer skilled people who are willing to move from place to place every 6 to 10 weeks to harvest crops as they reach maturity. Given a choice, most people prefer to earn their living in one place in a clean, dry environment that does not require continued physically strenuous labor.

I know that this is a difficult and controversial matter, but growers need some assurance that they will have a consistent, skilled labor force available to them and that they will be able to retain trained workers. Congresswoman Louise Slaughter has recently been a strong advocate on the growers' behalf in contacting the labor department to begin to solve these problems. I would urge you to contact her office and to work with her to get the H-2A program to be more responsive to grower needs as well as support Ag Jobs. Thank you for listening to my concerns.

Ms. BUERKLE. And thank you to all of our panelists.

I sit here and I listen to your testimonies and I shake my head and wonder how did we get to this point where you're subject to both the State as well as the Federal regulations. And I want you to know that we were sympathetic here, and we would like to work with you.

The issue that is recurring and recurring, and I hear from both the agricultural as well as the dairy industry, is this H-2A program. And I would like to ask all of you if you could imagine what the perfect H-2A program would look like, if you could tell us what that would mean to you and what would an ideal H-2A program look like.

Mr. REEVES. Well, to me it would be able to, at the same time, apply to the State and the Federal Government, same form. They virtually ask for the same information. It's a Federal program, so I think the Federal Department of Labor, U.S. Department of Labor, should supercede anything regulated by New York State. And at the same time, Homeland Security would be your next step. If the process takes 12 to 14 days, then let's give more than 30 days to process from beginning to end and not lie about it.

What I have to do—I shouldn't say this—but I'll tell you what I have to do. If I need workers on the first of March, I have to turn around and say I need them on the middle of February, first of February, because if everything goes well, there's no way with the new system from the time I get a certification out of Chicago to the time I interview my workers, that I can do it in 30 days. And in my presentation you'll see a day breakdown on it: It's going to take 12, 14 days for Homeland Security. I'm going to spend the next 5 days—this is if I'm sitting in my chair. And as soon as I get a notification, I'm on the computer and going to work with scheduling appointments. You know, there's no day in between. It's overnight stuff, everything else.

Next thing I do is go to CSE say, "Hey, I want to be on scheduled appointments."

So what do they do? Five days later, if I ask them properly—you know, if I miss one number or something like that, in 5 days they'll tell me, "Hey, you missed a number."

So then I redo it again with the number, then again in 5 days they'll say, "OK now you can schedule."

What I need top to bottom is a program developed with the farmer's input. The people that have to work with it, that have to make it work, we're left away from the table. I went to seminar in December in Atlanta on the new program. The guy that developed this new program for the Department of State didn't want to hear anything from anyone. This was his deal; he knew what he was doing; and this is the way all the concepts are going be.

To sit there in the room, we had State, we had Homeland Security there, we had Department of Labor there. The representatives of the Consulates and the Department of State and the Department of Labor couldn't believe it when I sat up and said, "What do you mean it takes 3, 4 days for Homeland Security to process? It takes 12 days to 2 weeks."

Here's two Federal branches that said, "No, it doesn't. It's 3 to 4 days."

I said, "They cheat on their stamp on the form. That's how it's 3 to 4 days. But it's a 12 to 14-day process."

And you've got two Federal agencies that are all working together with this that are unaware of it.

Ms. BUERKLE. You mentioned in your testimony about the Bush administration. Was there a different set of standards and now it's changed? You mentioned you were in a conference about the change.

Mr. REEVES. The changes. Three days before President Bush left office, he did an executive order that changed H-2A. He rolled back the wage. There were some pluses or minuses to it but it was still best program yet. He streamlined the referrals.

When you have to advertise State applications, he made it where when they hit your farm, you don't have to take any more applications and keep a record of them, because all this period of time, like 75 days up to that point, his administration felt was adequate time to look for referrals in U.S. workers. And that was changed—actually, that was changed 3 days before he left office and there's been three other changes back and forth since that one. So in 3 years we've had four changes.

And the funny thing is, if you're a farmer, how do you turn around and say, "Well, I'm going to H-2A this year. But what's the law going to be?"

When I was down in Atlanta in December, the only thing we were handed out was the agenda for the meeting. There was not any handout—the program south of the border had changed; the forms north of the border had changed; not one agent or farmer was given anything but agenda for the meeting because here it was December 6th and they didn't have this program ready to launch January 1st, but yet January 10th it took effect. I mean, that's just ridiculous.

Ms. BUERKLE. Have you received any specifics since the January 10th implementation?

Mr. REEVES. My brothers will tell you that I've lived in my living room on the computer trying to find rules and regulations on where do I get the spreadsheet; how do I get the spreadsheet.

The spreadsheet had—it's on its third copy now—the first one I wanted to schedule 22 workers, and I called CSC and said, "Your spreadsheet won't work. It's not formatted properly to take more than 17 workers, because 5 of the 22 that it would take, were formatted properly."

They told me, "You don't know what you're talking about. Cut and paste and come right down through the country names," that they had there.

So I cut and paste 33 on there, and did it electronically, and it crashed in the system. And it took—it took 18 emails, 11 calls, and the problem was, they said, "Well, once the system ate them up, we can't sort them out."

And so this was a 2½ week process that should have been 3 days. But at least now they have a spreadsheet that is pretty much working. But it's the third one since January.

Ms. BUERKLE. Thank you. I'm way over my 5 minutes.

Mr. Kelly, I'll yield to you. Thank you.

Mr. KELLY. Thank you. You can take as much time as you want. Really we need to hear you for as long as you want to go because I know how frustrating it is.

I'm trying to understand. I'm going to ask Ms. Hourigan, what's the reason for the EPA? Is there anybody finding anything that the EPA does that makes sense to any of us?

Now, we all have State DEPs that should have the primacy over how—I would like to think that the local folks know a lot more about what the local issues are than somebody in Washington, DC, that's never been here and doesn't understand what it is that you do, that any of you do.

So if you can, this EPA issue is huge. It is huge, and it's shutting down America as we go across the board. I just wish—listen, I wish we could tell you it's only in agriculture. I spent 2 days with health care providers. Their problem is they can't see any reason to stay in the business. You talk to people in the banking business, their regulations are so onerous, they're afraid to lend money to anyone because they don't know who's going to come in and shut them down.

If this is the United States of America and we're more worried about internal conflict and internal regulation than outside? I mean, we've got a real problem. Tell me on this EPA thing, this is absolutely incredible, and I don't think the American public has any idea. You know, they ride down the interstate and see these beautiful farms and say, "God, I'd love to do that. That's got to be fun."

Just from listening to you folks, I mean, at some point there's an old saying, don't worry about the mule, just load the wagon. I think the mule is about ready to unhitch itself.

Ms. HOURIGAN. The only thing I can say, is all three of us here we do what we do because we just like to be farmers. Bottom line. And we've all been pulled away from what we like to do because of these regulations and the paperwork.

And I'm sure his brothers are ticked at him a little bit because he's not out there with them physically with the people that are working. I'm sure hoping you're listening and you can find answers for us, because I certainly don't understand it all. It's just evolved in the last 10 to 20 years to such a critical mass of paperwork and regulations, and we just can't farm anymore.

Mr. KELLY. Let me ask you something. Because Ms. Buerkle asks this question all the time. If you knew then what you knew now, would you be doing what you're doing?

Ms. HOURIGAN. Well, you can see I'm not the youngest one here.

Mr. KELLY. Me either.

Ms. HOURIGAN. We're starting to question if this is any fun anymore. And when my husband says it's not any fun anymore to farm, that's serious.

Mr. REEVES. That's a key phrase that I've heard from more farmers in the last 2 or 3 years. My brothers and I say the same thing. The fun is out of agriculture. I mean it used to be with seasonal business you could go on vacation in the winter. There is none of this any longer. You're just bogged down with regulations. We had DEC the other day, going through the DEC audit—that's another deal that's necessary. You know, it's an absolute necessary thing,

but also a lot of the regulations that they are requiring of you, are absolutely absurd.

You know, on your sprayer you've got to have a label in a bag, on the sprayer, not only in the cab, because if you drive across the road and a car or something hits you, they have to be able to see what's in that tank. And—but every time they're telling you about these regulations and these changes, they're also reminding you what the fine is going to be if you don't do it. They seem more fine oriented than they are production oriented.

That's difficult for the agricultural mind to understand. We're not into, "Do this or you're going to get fined." We're into, "Let's take the proactive approach and let's get this done."

Mr. DEMARREE. I think there's an awful lot of regulation coming both from Washington and New York State combined. It doesn't matter which government you're referring to.

I've been in the business 30 years. Thirty years ago we could farm and not necessarily do anything that we are doing differently than what we are today, but we have to certify; we have to fill out forms; we have to follow regulations. It isn't changing anything that we're really, truly doing other than we're spending time filling out forms to tell somebody else in Albany or Washington what it is that we're doing. It's the same practices. The same thing we are doing. We're not doing anything different. We aren't improving anything. There's no improvements to our fruit, or dairy, or vegetables or whatever. But we're just having to spend more and more and more of my time, my wife's time, in following paperwork, following rules, doing things, doing things that somebody else says that we have to do that isn't changing anything. It isn't improving how the fruit is grown, how the vegetables are grown or how the milk is produced. It isn't different. It hasn't changed in 30 years. It's the same, but yet we're spending—I'm spending 10 hours a week just doing forms and reading new rules and regulations.

Albany just came down with a new set of rules that you have to follow a new form every time that there's a change in an employee status. If an employee works—has a work agreement with us, it says they're going to work 45 hours. We worked 48 hours last week. I have to get new paperwork and fill out a new form because his hours changed. That's how crazy the system has gotten to be because somewhere along the line somebody got taken advantage of. Probably.

I won't say that isn't the way that it should be, but when you start making everybody try to solve problems because of one incident, the world is going to come to a stop because you can't regulate everything—every problem, every issue out of reality. So—

Mr. KELLY. I appreciate your testimony, because I find it absolutely intriguing that a business that runs somewhere between a trillion three and a trillion five a year in the red has the audacity to come in and tell you how to run your business.

My question really comes down to have any of these people that come in and set the bar—I asked the last group this—the people that set the standards, have any of them actually ever done anything in agricultural, actually been in farming?

Mr. DEMARREE. Absolutely not.

Mr. KELLY. So this is a software program that somebody puts on their laptop and tells you what you are going to do.

Mr. DEMARREE. Absolutely. As was said a few minutes ago, the H-2A that we're using to have labor that's legal and that I can sleep at night knowing I'll have a work force there tomorrow, that ISSA isn't going to come in and take them away because I thought they were legal. They showed me documents that I determined to be legal, but they weren't, they can come in and take my work force away and my crop will fall on the ground and I'll have no recourse. This is the program that I am using so I can sleep at night knowing that I can get a cropped picked of apples, and yet we have all kinds of problems trying to secure a legal work force.

And nobody wants to hear when you try to talk to somebody, as what's been said, nobody wants to hear what your problem is. Absolutely nobody wants to hear what your problem is. They know better in the agencies that you're dealing with than what I do when I'm trying to do my job. That's a very frustrating thing.

And we spend more time right now on organizations, as you can tell from the people sitting here, we spend a lot of time in organizations trying to just to keep a toe in the door in trying to keep some of this regulation at bay and nobody wants to hear us.

Mr. KELLY. Do you ever have an audience with any of these folks, this alphabet soup of people that show up, whether it's EPA, DEP, whoever it is, any of them ever give you the audience to sit down and discuss with you what your problems are and what the comment fixes would be from the people that actually do it? No.

So other than seeing Ms. Buerkle and myself, you really wouldn't have a chance to talk to a government that pretty much dictates how you're going to run your business.

Mr. DEMARREE. I've been to Washington in the last Congress, and the organization that I'm president of has been to Washington this year. And I've been there last year and talked about these same issues. And it's just the same thing over and over and over again. We keep asking for relief and don't get anywhere.

Every time—virtually every time they make a program different, they make it more difficult. They don't make it easier. They make it more difficult, because the mindset is that we're going to put—we're going to reduce the unemployment rate so we're not going to allow foreign nationals to come in and work in this country. That's the mindset of what's going on with this program. That's where the whole problem with this program is, that the mindset is we don't want that program because we want to put U.S. citizens to work.

My business, and everybody's business, is a short window of time that we need people. I can't hire somebody for 6 to 8 weeks or 10 weeks, put on 30 employees for 8 to 10 weeks, and then tell them that they can't work anymore because I don't have anything else for them to do. Who's going to come to work for me 10 weeks, work 40 to 50 hours a week depending on how the week goes, and then tell them at the end of 8 to 10 weeks, "I'm sorry. I don't have any work for you."

How do I hire somebody that's only going to work for me 8 to 10 weeks a year. That's my business; that's what I'm in; that's what I have to face. That's why this program gives me that opportunity to try to bring somebody in that isn't out of a country—that has

people that are willing to work. And yet nobody wants to seem to help us make that system work, at least reasonably well for us.

Thank you.

Mr. REEVES. Food safety is a big issue. And we're deep into the food safety with daily deliveries, fresh produce all the while. Fortunately this year, we're able get 100 percent return workers from Mexico. What this does, and people don't understand it, the U.S. Department of Labor, State doesn't, this is critical because our food-safety program has standards. Everything we harvest in the field has a written standard that has to be followed and inspected twice a year. Our workers return, they know the standard. It's the same thing. They follow the procedure. We go through the inspections. We do a great job of food safety.

This is why it's critical to have continuity in your work force and not have to—imagine having the same workers as last year and have to jump through all these hoops to try to get them back and hope you get them back, and it's all tied in with everything else. The food safety issue—wildlife. I have to monitor wildlife in our fields on a daily basis and keep a log. If I see a goose, I have to document where I saw it and how I chased it off. Same with the deer. These are the food safety requirements that Wal-Mart, Price Chopper and Wegmans—it's good. They're looking out for the consumer. And we don't mind that, but there has to be somewhere, someone on our side.

And a lot of it is our own fault. I think laborer—myself is the biggest issue in agriculture. No. 2 is perception. And, you know, the news media is as guilty as anyone else. Look at an agricultural commercial on television. Green Giant and here's five guys picking sweet corn in peach boxes. Here's a Stouffer's commercial—I think it's Stouffers. Here's a guy growing peppers on the other side of the fence is a dairy farm. Now, isn't that ridiculous? You can't have anywhere near anything. And we tolerate it.

Pick Right, here's a company that's owned by a farmer. He's got an old John Deere 430 cultivating in the field and says, "That's my business manager as soon as he gets finished plowing."

I wrote him a letter stating, "This is bad for agriculture. We're high tech. We're an industry to be reckoned with. We've got to stop this."

He sent me a certificate for a 12-ounce bag of frozen veggies. But we're our own worst enemy. We are high tech. I'm proud of what I do for a living.

I've worked in industry. Nothing is as challenging as agriculture is. You do all this and deal with the weather besides. We need to do a better job of advertising the technology in our business, the education it takes to run a business like this, and run it successfully, and we need to pound it into the media also. Get out there on the farm and do a story. Follow through one of these audits in the field on food safety. Look at what we're doing in agriculture and we should not any longer tolerate these commercials that degrade agriculture and farmers and make us look like a bunch of country hicks, because no one is going to be successful in farming any longer if they don't have an education and they don't have the ability to put two and two together and take a proactive approach for the future.

Mr. DEMARREE. I would just say ditto. I mean, it's exactly how so many of us feel in agriculture today, that we're the Green Acres generation back with the pitch forks and bib overhauls and riding around. You know, that's the perception that we work against—well, in the media, but also in the regulatory agencies that we deal with—is that the mindset is that agriculture in this country is run by a bunch of hillbillies. Pardon me to the reference for anybody who takes offense to it. But that's exactly how it's felt, that when, as I said in my statement, when somebody else sitting at a desk in Albany or in Washington can tell me how to fill out and what I have to put in my work order and what a work order can and cannot have in it, and is telling me that my business will operate because of what this work order has in it, how am I going to survive?

I can tell you the generation working my farm is the last generation that's going to work that farm.

Ms. HOURIGAN. I'll end by saying—and I told you our milk is sold to a Byrne Dairy, which is a local business—I'm really glad these two guys are still in business because I appreciate local food. And I'm glad to know where it's coming from and how it's produced. And I hope all the rest of you do the same.

Mr. KELLY. I'm going to finish up and turn it back over.

Keep your passion and don't give it up because I'm telling you, the way we'll fix it is by staying on message and not getting distracted. I know it's hard to do and I know that every day you wonder why I keep doing this and how much longer can I do it. Just keep in mind, if we don't get it fixed here, there's no other place in the world it can be fixed. Let's just make sure we stay on target. We'll get this fixed. It's going to take a lot of fight from all of us.

Thank you for being here. I appreciate your bravery for being here and taking the time out of what you do every day to spend it with us. Thank you.

Ms. BUERKLE. Thank you, Mr. Kelly.

And I would like to thank all of you as well. I, too, would like to echo Mr. Kelly's comments. If you quit, they win. And so this is about preserving all that you've worked for.

We want you to know how much we appreciate your efforts and for you to be here today and take time off your busy schedules. We'd like to work with you and continue this dialog, we would like to take your message to Washington, which we will.

I failed to introduce—we have members from the Oversight Government Reform Staff, so they're listening and working with us as well. So we will take this message to Washington. It won't stop here in this room. We want to encourage you, and please work with us and dialog with us, and let's continue to get this job done.

Thank you all very much for being here.

At this time we are going to welcome our third panel of witnesses.

First we have Orrin MacMurray of C&S Companies. Welcome and thank you for being here.

Mr. Travis Glazier is the director of Intergovernmental Relations of Onondaga County. Thank you for being here.

And Mr. Thomas Squires is the administrator of Cayuga County. Thank you very much for being here.

As is complying with the rules of the committee, I would ask you all to stand and be sworn in before your testimony.

Panel III, Orrin MacMurray, Travis Glazier and Thomas Squires.  
[Witnesses sworn.]

Ms. BUERKLE. Please let the record reflect that the witnesses have all answered in the affirmative.

Thank you very much. Please be seated.

At this time we will open up our hearing to all of you to give your opening remarks, and I will start with Mr. MacMurray.

#### STATEMENT OF ORRIN MACMURRAY

Mr. MACMURRAY. Thank you very much, Vice Chairwoman Buerkle and Representative Kelly. Appreciate this opportunity.

I'm Orrin MacMurray. I'm the chairman of the C&S Companies. We're a 500-person architectural, engineering and construction company. We have 14 offices around the United States.

And the activities of the Federal Government, as it relates to both legislation and regulation, have a significant impact on our business and our ability to create jobs here and elsewhere.

I'd like to give you about six examples of things that do have a direct impact on our ability to grow business.

The first relates to government competition with the private sector. Various Presidential memoranda and Federal agency guidance documents over the last year or so have indicated a preference on the part of the Federal Government to begin to remove commercially available services that have historically been performed by private industries creating jobs in the private sector into the government sector. This is harmful to the private sector, especially to firms such as the C&S Companies and it places a heavy and needless burden on the taxpayers who are looking for ways, in fact, to reduce the size and the expense of government much more so than to expand and increase it.

It's a threat to our economy a couple other ways, specifically as it relates to professional services. The specialized and innovative design capabilities that are available in the private sector are important to meeting government's needs. Life-cycle costs can be higher when work is performed entirely in-house by the government. A recent study performed in the State of New York comparing the services of private design professionals to government professionals showed a 15 percent savings in using private professionals for that purpose.

And it certainly can be argued strongly that designing and constructing the infrastructure that we need to support our economy in this country and maintain the standard of living that we have, is certainly not inherently governmental such as other functions of the Federal Government are.

Another example is the way overhead is calculated. The Federal Government promulgates Federal regulations under the Federal Acquisitions Regulation, specifically FAR, and that's used by individuals that provide services to the government for calculating fees that could potentially cost—that could be potentially charged to government.

Unfortunately, these regulations, although they are national in nature and scope, they're interpreted differently by different

States, and what this creates is a situation where firms like C&S that operate in most of the States across the country are required to go through multiple audits in order to satisfy each individual State government that we're complying with the Federal Acquisition Regulations, as opposed to having one cognizant audit, one calculation and one audible amount for our company that would be accepted across the country for work performed that is either performed directly for the Federal Government or for States and local government with Federal funds.

This creates extra work for the government, it creates extra work for business and it consumes dollars that we could be putting toward hiring people and putting them to work and being more productive.

The third example is the 3 percent withholding mandate that was put into place under Public Law 109-222. This creates a new requirement that will be effective in January 2012 where 3 percent of the gross amount of billings to any government that contracts out \$100 million or more for goods and services on an annual basis will be withheld as effectively as a withholding tax or a withholding against an income tax obligation.

First of all, in our business 3 percent is frequently our total profit, if that, not to mention the amount that we owe in taxes. It creates a tremendous unfair burden on business.

First of all, we will lose the use of those funds and provide the Federal Government with an interest-free loan for between a year and 2 years while we go through the reimbursement process.

And second, it will create tremendous infrastructure cost, and I mean, government infrastructure cost to maintain and to administer this system.

This bill was scored, I am told, at about an \$11 billion savings in 1 year. The Department of Defense has indicated that in the first 5 years of implementing this legislation it will cost that department alone \$17 billion in order to implement it. I find it very difficult to see the logic in a 1-year savings of \$11 billion being justified by then spending \$17 billion in just one department and that doesn't include the costs that will be required in the State of Pennsylvania or in the State of New York in order to collect all this money and forward it on to the Federal Government. Who's going to pay to hire those staff? Who's going to pay for the computer programs that will be necessary to track this? Who's going to develop the paperwork and administrative infrastructure that's necessary to save \$11 billion in 1 year so that we can all spend hundreds of billions of dollars in the future years. It just baffles.

Another area that we could use some relief is in the Securities and Exchange Commission area, the Dodd-Frank Wall Street Reform and Consumer Protection Act created a need or established a requirement for municipal advisors to register. Engineers were carved out of this requirement, consulting engineers that work for government. Now the SEC is writing regulations that will reapply this regulation to consulting engineering businesses that provide services to counties and cities and towns throughout our country. Effectively it's part of any consulting engineer's job to cost out alternatives, to do cash-flow analysis, to provide financial analysis of

those things that they design and oversee the construction of—and construction contractors do the same.

Improving the environment is another area. There have been numerous commissions, the latest of which was authorized under SAFETEA LU, the previous surface transportation legislation that has come back and recommended streamlining of environmental permitting processes. So you were talking earlier about the EPA, the EPA has a very valid mission and needs to make sure that we're paying attention to natural resources nationwide. But the reality is that when we have to do a draft Environmental Impact Statement, a final Environmental Impact Statement where you have to have State regulatory review, city regulatory, town regulatory review, national review, we are superimposing review on review on review to the point where we're so buried in review that it takes 7 to 10 years to build a bridge over a creek out in the country that should take us 18 months to 2 years to design and construct and simultaneously go through the permitting process. We are burying ourselves in administrative costs and in delays that drive the cost up as well.

The last item I wanted to mention is immigration reform. You have already heard other speakers so I will be brief. We have 65,000 H1-Bs authorized nationally. C&S employs hundreds of engineers and scientists. We need access to those that graduate from colleges with engineering and scientific degrees in this country that are not necessarily U.S. residents and citizens. We need the availability of those people so that we can create additional jobs, more economic activity and compete in a global marketplace, which is definitely what we have in the world we have today.

So thanks for conducting these hearings and thank you for listening to my comments. I'd be happy to answer any questions that you have.

Ms. BUERKLE. Thank you very much.

[The prepared statement of Mr. MacMurray follows:]

**TESTIMONY OF**

**ORRIN B. MAC MURRAY, P.E., FACEC  
CHAIRMAN  
C&S COMPANIES**

*Before the committee on Oversight and Government Reform, subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending on Wednesday, April 20, 2011, at the Southside Innovation Center, Syracuse, New York.*

Good afternoon. My name is Orrin MacMurray, and I'm the Chairman of the Board for the C&S Companies, headquartered here in Syracuse. C&S is a family of companies providing architectural, engineering, construction management and construction services to municipalities, industry, developers, state and federal government, and the military. We have nine full-time offices and numerous project offices supporting projects throughout the United States, from Maine to Southern California and from Alaska to Florida.

C&S has a staff of nearly 500, the majority of which provide design and construction services to government. As such, these hearings today provide an important opportunity for us to share thoughts with you related to how regulatory impediments can affect job creation and our business in the Northeast and across our country.

**GOVERNMENT COMPETITION WITH THE PRIVATE SECTOR** – Various presidential memoranda and federal agency guidance documents seek to bring work of a commercial nature “in house”, to be performed by government employees. C&S is opposed to this effort. Government performance of commercial activities is especially harmful to private-sector firms, such as ours, that provide these services. According to inventories compiled under the Federal Activities Inventories Reform (FAIR) Act, there are still more than 850,000 federal employees engaged in activities that are commercial in nature. This places a heavy and needless burden on taxpayers who are looking for ways to reduce the size of government, not increase it.

There are many reasons why in-sourcing of infrastructure engineering services is a threat to our economy. Critical infrastructure improvements require specialized and innovative design services that are readily available in the private sector. These services can be provided at an overall life-cycle cost that is lower than that from the public sector. A study recently completed by the Department of Civil Engineering at the Polytechnic Institute of New York University concluded that “the in-house engineer actual expected costs to the taxpayer exceeds the cost of a private engineer by at least 15%”. In addition, each project has a finite lifespan, and contracting out design and construction services allows the government to pay for only those resources it needs to accomplish a specific project. In the final analysis, the design and construction of publicly owned infrastructure is not an “inherently governmental” function and, therefore, taxpayers shouldn't be asked to pay for unnecessary government costs.

**OVERHEAD CALCULATIONS FOR FEDERAL PROJECTS** – The Federal Acquisition Regulations (FAR) provide guidance for the calculation of overhead costs that may be reimbursed by the federal government on federally aided projects. Design and construction companies use these regulations to calculate acceptable charges when designing airports, highways, bridges, wastewater facilities, and many other types of infrastructure projects. These regulations are interpreted by states in different ways. Companies such as C&S provide services broadly across the country. This creates an undue burden to businesses like ours, as we are required to develop multiple auditable documentation to satisfy multiple interpretations, all while complying with the same Federal Acquisition Regulation. One calculation and one auditable amount should suffice anywhere in the country and would result in significant savings, not only to businesses such as C&S, but to the federal government itself by avoiding this redundant effort.

**THREE- PERCENT WITHHOLDING MANDATE** – Section 5.II of the Tax Increase and Reconciliation Act of 2005 (P.L. 109-222) is a sweeping new requirement mandating that federal, state and local Governments withhold 3% from payments to design, construction and other contractors for goods and services. The law, which takes effect in 2012, will cover all payments for products and services made by the federal government, state governments, and any local government that has annual expenditures exceeding \$100,000,000. This new mandate will create yet another unfair burden on honest taxpayers, while inducing cash flow problems that will have a particularly adverse effect on companies such as C&S, whose total profit on a project frequently does not reach 3%. The law will also impose significant administrative costs and information reporting requirements on both governments and businesses. The added cost of implementing this requirement far exceeds any financial benefit to the federal government. This requirement should be repealed immediately, just as the IRS Form 1099 requirement has been.

**SEC REGISTRATION OF MUNICIPAL ADVISORS** – Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires “municipal advisors” to register with the Securities and Exchange Commission (SEC). The law defines municipal advisors but includes, in Section 975, an exemption from registration for “engineers providing engineering advice”. This statute does not define “engineering advice”. The SEC’s interpretation of the engineering exemption is too narrow because it fails to reflect the reality of engineering work, in which financing analysis is an integral part of the design decisions made on every project. Costing out of design alternatives, cash flow modeling, and user fee analysis are standard components of a proper engineering analysis. The SEC should not be allowed to change Congress’ intent through the development of regulations regarding the engineering exemption, which adds to our cost of doing business with little, if any, benefit to the public.

**IMPROVING THE ENVIRONMENTAL REVIEW PROCESS** – Requirements under the National Environmental Policy Act (NEPA), as well as various permitting processes and other review mandates, often result in excessive delays to important projects. These delays inflate costs, while doing little to mitigate environmental impacts. The National Transportation Policy and Revenue Study Commission authorized under SAFETEA LU offered a number of important recommendations to streamline these processes. The commission recommended the creation of a simplified process for projects with few significant impacts, allowing for a single environmental impact statement (opposed to the draft and final requirements of today) and requiring greater coordination among agencies such that environmental issues are considered

once - not multiple times to satisfy multiple stakeholders at significant additional time and cost. These recommendations and many others need to be adopted to allow companies such as C&S to more efficiently progress projects at reduced cost on behalf of their owners, both public and private.

***IMMIGRATION REFORM*** – The C&S Companies employ hundreds of architects and engineers. Tied directly to our ability to be competitive are issues related to federal immigration policy. It is increasingly difficult to fill our staffing needs solely with U.S. citizens, and the attraction and retention of international talent, especially those who are highly skilled, are increasingly important. We need to significantly increase the number of skilled worker visas (H1-B and L-1). Currently, there's a cap of 65,000 on these visas, a number that falls dramatically short of the needs of the private sector nationwide. We also need to allow foreign students who study and graduate at U.S. universities to stay beyond the current one-year limit (post-graduation) that is allowed under the Student Visa Program. This issue is of particular importance to companies such as C&S here in the Upstate New York region, where we have a high concentration of colleges and universities and a significant number of international students.

Thank you for conducting this hearing, and thank you for allowing me an opportunity to share these thoughts with you.

Ms. BUERKLE. Mr. Glazier.

**STATEMENT OF TRAVIS GLAZIER**

Mr. GLAZIER. Madam Chair, Representative Kelly, thank you very much.

Thank you for the opportunity—sorry. By the way, I'm speaking on behalf of Deputy County Executive Matt Millea, who was not able to be here. He's the Deputy County Executive in charge of fiscal services for Onondaga County.

Thank you for the opportunity to appear before you, the committee, today. I thought this would be a good opportunity to discuss the impacts of Federal mandates in our municipality, specifically how Federal mandates that provide a one-size-fits-all approach have created waste and inefficiency in the use of tax dollars and drives up property taxes.

Onondaga County has strived to provide a clean, healthy, safe place to live. As with many historic urban areas, our county and city have had to deal with the challenges of environmental cleanup, aging infrastructure and a decreased population base to support these needs. Despite these challenges, we have made monumental strides toward cleaning up our lakes and modernizing our infrastructure for wastewater treatment. However, despite all of these efforts, Onondaga County continues to fight an uphill battle. This is due, in part, because of Federal mandates that fail to take into account an analysis of costs and benefits tied to mandatory regulatory actions, and that can result in scarce tax dollars being spent on compliance measures that are neither effective nor equitable.

One example of this concerns the Federal Government's apparent efforts to pursue uniform national nutrient control standards for surface waters across the county. Reliance on approaches that do not account for varying ecological conditions on nutrient pollution in different water bodies, and the use of one-size-fits-all technology approaches to address nutrient pollution problems can result in major public expenditures with little or no improvement in water quality.

Site-specific factors, the cost of controls and current economic conditions call for approaches other than mechanical application of outdated command and control methods. Onondaga County and the city of Syracuse, like many communities across the country, support an aging infrastructure system. The combined sewer system that leads to sewer overflows here in Syracuse has been in place for over a century, and as a result, would be excessively costly to completely replace.

To address this challenge Onondaga County has taken a lead role in implementing an innovative and balanced approach to combined sewer overflows that combines elements of traditional gray infrastructure, as well as a more practical and cost effective green technology, or green infrastructure, that captures the rain wastewater where it falls, rather than constructing large treatment plants that cost a lot to build and operate.

The challenges we face in applying this innovative and cost-effective approach to combine sewer overflows is that the regulatory community is geared toward decades old, traditional technology approaches, and can be somewhat inflexible and resistant to inte-

grating these new innovative approaches into practical compliance schedules, design approvals and compliance monitoring methods. Regulatory guidance documents and compliance criteria haven't been written for the new green technologies, and this inhibits the pursuit of more cost-effective approaches to these widespread challenges.

Another example is the EPA needs to establish a National Sanitary Sewer Overflow wet-weather policy that incorporates cost effective and realistic wet-weather related standards. SSOs are overflows of sanitary sewers resulting from a number of factors, including significant wet weather events such as heavy rains and rapid melting snow pack or a combination of the two. Currently, there are no EPA approved national wet-weather SSO standards. This has left wastewater collection systems such as the county's vulnerable to enforcement actions following record setting wet-weather events that exceed approved design standards, even after the district has expended millions of dollars to construct the projects, whose design has been approved by the permitting authority.

In Onondaga County, wastewater treatment is supported by user fees. The costs of penalties for noncompliance and infrastructure improvements drive up these user fees. These user fees, combined with the excessive property tax burden in our region, have created an unfriendly business environment.

From the perspective of a local municipality there is no local control over these mandates. While in Onondaga County there has been in a monumental effort to mitigate the issues around CSOs and ensuring clean water, the residents are still penalized for situations that are the result of circumstances out of their control.

In closing, there are significant benefits to Federal regulation. However, instituting more practical assessment of the cost effectiveness of regulatory measures would relieve some of the unnecessary burdens that are the result of outcomes which are far beyond the scope of fiscal possibility. Proper recognition of the fiscal limitations that exist in the goals set forth in these mandates, coupled with greater flexibility in the implementation of solutions by local stakeholders, will promote a more competitive business environment.

Thank you very much for the opportunity to speak before the committee.

Ms. BUERKLE. Thank you very much, Mr. Glazier.

[The prepared statement of Mr. Glazier follows.]

Chairman Jordan, Ranking Member Kucinich, Madam Vice-Chair Buerkle and distinguished members of the committee:

Thank you for the opportunity to appear before this committee today. I thought this would be a good opportunity to discuss the impact of federal mandates on our municipality. Specifically, how federal mandates that provide a one size fits all approach have created waste and inefficiency in the use of tax dollars and drive up property taxes.

Onondaga County has strived to provide its residents with a clean, healthy, and safe place to live. As with many historic urban areas, our county and city have had to deal with the challenges of environmental cleanup, aging infrastructure and a decreasing population base to support these needs. Despite these challenges, we have made monumental strides towards cleaning up our lakes and modernizing our infrastructure for waste water treatment.

However, despite all of these efforts, Onondaga County continues to fight an uphill battle. This is due, in part, because of federal mandates that fail to take into account an analysis of costs and benefits tied to mandated regulatory actions, and that can result in scarce tax dollars being spent on compliance measures that are neither effective nor equitable.

One example of this concerns the federal government's apparent efforts to pursue uniform national nutrient control standards for surface waters across the country. Reliance on approaches that do not account for varying ecological conditions on nutrient pollution in different water bodies, and the use of "one-size-fits-all" technology approaches to address nutrient pollution problems can result in major public expenditures with little or no improvement in water quality. Site-specific factors, the costs of controls, and current economic conditions call for approaches other than the mechanical application of outdated command and control methods. Onondaga County and the City of Syracuse, like many communities across the country, support an aging infrastructure system. The "Combined Sewer System" that leads to sewer overflows here in Syracuse has been in place for over a century, and as a result would be excessively costly to completely replace. To address this challenge Onondaga County has taken a lead role in implementing an innovative and balanced approach to combined sewer overflows that combines elements of traditional gray infrastructure, as well as more practical and cost-effective "green technology," or green infrastructure, that captures the rain water where it falls, rather than constructing large treatment plants that cost a lot to build and operate. The challenges we face in applying this innovative and cost-effective approach to combined sewer overflows is that the regulatory community is geared toward decades old, traditional technology approaches, and can be somewhat inflexible or resistant to integrating these new innovative approaches into practical compliance schedules, design approvals and compliance monitoring methods. Regulatory guidance documents and compliance criteria haven't been written for the new green approaches, and this inhibits the pursuit of more cost-effective approaches to these widespread challenges.

Another example: the EPA needs to establish a National Sanitary Sewer Overflow wet weather policy that incorporates cost/effective and realistic wet weather related standards. SSOs are overflows of sanitary sewers resulting from a number of factors, including significant wet weather events, such as

heavy rains, rapid melting of a heavy snow pack, or a combination of the two. Currently there are no EPA approved national wet weather SSO standards. This has left wastewater collection systems such as the County's vulnerable to enforcement actions following record setting wet weather events that exceed approved designed standards, even after the District has expended millions of dollars to construct projects, whose design has been approved by the permitting authority.

In Onondaga County, waste water treatment is supported by usages fees. The costs of penalties for noncompliance and infrastructure improvements drive up these user fees. These fees, combined with the excessive property tax burden in our region, have created an unfriendly business environment.

From the perspective of a local municipality, there is no local control over the mandates that drive these expenses. While in Onondaga County there has been a monumental effort to mitigate the issues around CSOs and ensuring clean water, the residents are still penalized for situations that are the result of circumstances out of their control.

In closing, there are significant benefits to federal regulation. However, instituting more practical assessment of the cost-effectiveness of regulatory measures would relieve some of the unnecessary burdens that are the result of outcomes which are far beyond the scope of fiscal possibility. Proper recognition of the fiscal limitations that exist in the goals set forth in these mandates, coupled with greater flexibility in the implementation of solutions by local stakeholders, will promote a more competitive business environment.

Ms. BUERKLE. Mr. Squires.

**STATEMENT OF THOMAS SQUIRES**

Mr. SQUIRES. Madam Chair, Representative Kelly. Thank you for the opportunity to appear before you today, and I'd like to especially thank you for conducting this hearing in Central New York here locally. That's a great honor certainly for all our community here in Central New York. So thank you.

I'd like to take a few minutes and give you some examples of how Federal action, regulation and inaction hinder Cayuga County in hiring employees, cost us revenue and increase our costs.

We receive millions of dollars in Federal aid, primarily in the area of health and human services. All of these grants come with specific accountability and reporting requirements, requirements that cause staff to take time away from the core program to fulfill. The Temporary Assistance for Needy Families [TANF] program is a good poster child of this phenomenon.

Due to Federal regulation, the district staff spends a huge amount of their time on meeting Federal requirements for employability reporting. To be eligible for Federal TANF dollars, we must count, track and report for every TANF adult the time spent in countable work activity. We have coding requirements and monthly work verification reporting. This is labor intensive and could result in State and local penalties if not done. These requirements take away from work we could be doing with the clients, it eats up valuable staff time, takes resources away from the community for no more than reporting to the government.

The Federal Government also has strict requirements in place to entitle counties to be eligible for Title IV-E reimbursement for child welfare costs. There's a complex set of eligibility criteria that must be met. If all criteria and documents are not found, there is loss of funding based on Federal audits.

Costs associated with child welfare are huge expenses for the county. Due to the complexity of the requirements, we had to dedicate staff to function as our eligibility team. Again, a lessening of the requirements will enable counties to dedicate much needed resources to the clients.

To be sure, requirements are needed to protect the taxpayers. We respectfully ask that your committee look at decreasing the requirements for all Federal programs so their staff may spend more time delivering the program services that the taxpayers pay for.

Many times the Federal Government pushes mandates down to the States and in turn down to the counties. Many times these mandates aren't as applicable and should not apply to the counties because we're much smaller than cities and States. Along these lines is the Prison Rape Elimination Act. While noble in title, this act is filtered down to local jails and requires additional documentation, investigation and reporting that, frankly, is not necessary at the county level. It may be appropriate for larger facilities, but in our case will probably require adding an additional staff position to fulfill requirements that we don't believe should apply to us anyway.

In some counties, Indian Nations have been allowed to sell tobacco products and gasoline exempt from sales taxes. In our county

the cost is measured in the millions of dollars, as well as lost jobs and commerce to businesses that comply with the sales tax law. The Cayuga Indian Nation has applied to the Bureau of Indian Affairs for land in Seneca and Cayuga counties to be taken into Federal trust. These counties and the State of New York have repeatedly and vehemently opposed these trust applications, because their approval would impose a sovereign Indian reservation on the counties, which would mean not only land coming off the school, town and county tax rolls, but the uncontested opening of Class II electronic bingo parlors thus bringing gambling to counties that do not want it. It would also totally remove local jurisdiction over the lands placed in trust. House bill H.R. 1231 would allow any federally recognized Indian tribes to be granted land in trust. The Cayuga Indian Nation was not federally recognized in 1934 and would not be eligible to have land placed into trust, except for a provision in the bill called the Carcieri Fix. We strongly urge all Members of the House to oppose this Carcieri Fix provision in the bill.

I'd like to mention briefly unemployment. Somewhat regularly, Cayuga County decides to not hire when the position may be temporary or seasonal in nature. There is a local cost to unemployment. The decision to not hire is always driven by our desire to avoid the cost of unemployment. In some of these cases, the position may have the potential to turn into a permanent position. Unfortunately, too many times we aren't able to go down that road to explore that option. I would urge the committee to change the eligibility requirement for unemployment, or decrease the local share to allow us to put more people to work.

In closing, I would like to thank again the committee for giving me the opportunity to be here today. On behalf of Cayuga County, I thank you for all the support from the Federal Government and ask that you continue your hard work in finding ways to reduce the Federal impediments to the efficient operation of local government. Thank you and I will be happy to answer any questions.

[The prepared statement of Mr. Squires follows:]

Chairman Jordan, Ranking Member Kucinich, Vice-Chairman Buerkle, Members of this Committee, I thank you for inviting me here today to this hearing. It is quite an honor to be here in front of this committee, especially with it being held locally. It is an honor not only for me but for all Central New Yorkers that you chose to hold the hearing in our community.

I'd like to take a few minutes and give you some examples of how Federal action, regulation and inaction hinder Cayuga County in hiring employees, cost us revenue and increase our costs.

We receive millions of dollars in Federal aid, primarily in the area of Health and Human Services. All of these grants come with specific accountability and reporting requirements, requirements that cause staff to take time away from the core program to fulfill. Due to federal regulation the district staff spends a huge amount of their time on meeting the federal requirements for employability reporting. To be eligible for federal TANF dollars we must count, track and report for every TANF adult the time spent in countable work activity. We have coding requirements and monthly work verification reporting. This is labor intensive and could result in State and local penalties if not done. These requirements take away from work we could be doing with the clients. To be sure, requirements are needed to protect the taxpayers. We respectfully ask that your committee look at decreasing the requirements in place so that our staff may spend more time delivering the program services.

The federal government has strict requirements in place to entitle Counties to be eligible for IV E reimbursement for Child Welfare costs. There is a complex set of eligibility criteria that must be met. If all criteria and documents are not found there is loss of funding based on federal audits. Costs associated with Child Welfare are huge expenses for the County. Due to the complexity of the requirements we had to dedicate staff to function as our eligibility team. Again, a lessening of the requirements will enable Counties to dedicate much needed resources to the clients.

Along these lines is the Prison Rape Elimination Act. While noble in title, this act as filtered down to local jails requires additional documentation, investigation and reporting that frankly is not necessary at the County level. It may be appropriate for larger facilities but in our case will probably require adding an additional staff position to fulfill the requirements we don't believe should apply to us anyway!

In some Counties Indian Nations have been allowed to sell tobacco products and gasoline, exempt from sales taxes. In our County the cost is measured in the millions of dollars as well as lost jobs and commerce to businesses that comply with the sales tax law. The Cayuga Indian Nation has applied to the Bureau of Indian Affairs for land in Seneca and Cayuga counties to be taken into federal trust. These Counties and the State of New York have repeatedly and vehemently opposed these trust applications, because their approval would impose a sovereign Indian reservation on the Counties, which would mean not only land coming off the school, town

and county tax rolls, but the uncontested opening of Class II electronic bingo parlors thus bringing gambling to counties that do not want it. It would also totally remove local jurisdiction over the lands placed in trust. House bill H.R. 1231 would allow any federally recognized Indian tribe to be granted land in trust. The Cayuga Indian Nation was not federally recognized in 1934 and would not be eligible to have land placed into trust, except for a provision in the bill called the Carcieri fix. We strongly urge all members of the House to oppose this Carcieri fix provision in the bill.

I'd like to mention briefly unemployment. Somewhat regularly Cayuga County decides to not hire when the position may be temporary or seasonal in nature. This decision is always driven by our desire to avoid the cost of unemployment. In some of these cases the position may have the potential to turn into a permanent position. Unfortunately too many times we aren't able to go down that road. I would urge the committee to change the eligibility requirements for unemployment, or decrease the local share, to allow us to put more people to work. Prison Rape elimination act, filtered down to local jails, requires additional documentation, may be appropriate for bigger jails, not for ours, and may take an additional.

In closing, I would like to thank again the committee for inviting me to be here today. On behalf of Cayuga County I thank you for all the support from the Federal Government and ask that you continue your hard work in finding ways to reduce the federal impediments to the efficient operation of local government.

Thank you. I'd be happy to answer any questions.

Ms. BUERKLE. Thank you all very much, and thank you for your testimony this afternoon.

It's interesting, because this morning we had a hearing over in Monroe County, in Irondequoit, and we heard from Monroe County and the county executive and we also heard from the sheriff of Wayne County who many of their issues were very similar to yours.

But the interesting part—and we even heard it from the panel that preceded you—these rules and these regulations are made without the players being at the table. And these unfunded mandates create such a burden on the counties and the local governments and the taxpayers without them having any say in how those programs are going to be executed. We got onto the topic of Medicaid in Monroe County this morning, which is a separate hearing.

My first question is to Mr. MacMurray. I'd like to have you explain to us this SEC registration municipal advisors. Are you saying pursuant to Dodd-Frank that engineering firms are now going to be treated as if they were financial advisors?

Mr. MACMURRAY. The Dodd-Frank indicated in Section 975 that they were exempting engineers providing engineering advice. That was because Congress recognized in the preparation of legislation that what was targeted here were financial advisors, people that are advising on bank financing, people that are advising municipalities on bonding, on what types of financial structured deals should be used for public infrastructure. That, of course, is not the practice of engineering and construction companies. That's the practice of banks; that's the practice of financial folks.

So Congress specifically carved out the engineering and construction industry. What's happening is that in the rulemaking that's going on now, that the SEC is putting in place, is they're kind of expanding the definition or redefining much of what consulting engineers do for municipalities all over the country. They're redefining that now in terms that would require that we all—we in the consulting engineering business—obtain these municipal advisor staff certifications.

So it's just another example of—I think it's an example of two things: One of the Congress being wise and carving it out, but it's also an example of how, even when Congress is wise and makes sure that something is appropriate, that when it comes to rulemaking, it can get bifurcated.

Ms. BUERKLE. And I think that illustrates the issue that we've had with the Health Care Bill, as well as with Dodd-Frank, is the legislation was then handed over to the regulators and regulators came up with their interpretation of the law.

Mr. MACMURRAY. It may not always be consistent. It's like another example is the 1099 situation, which I'd like to thank both of you for your vote in support of appeal of that requirement. In fact, while we're on that, I would hope that you would sign onto H.R. 674, that's to repeal legislation for the 3 percent issue that I mentioned earlier too.

Yes. There are situations that need to be addressed after legislation has been passed. Sometimes there's things that come to light and we need to deal with that.

Ms. BUERKLE. Thank you. I yield 5 minutes to Mr. Kelly.

Mr. KELLY. Mr. MacMurray, tell me about this 3 percent and why you don't get paid interest on it? The government holds it and you don't get paid interest? How long do they hold it?

Mr. MACMURRAY. Effectively it's analogous to having withholding out of my paycheck for my income tax in the following year. So effectively it's the same sort of thing. What's being proposed here, though, is unfair on a number of levels.

First of all, if we provide services to the Federal Government and it costs about \$100,000, the Federal Government says, well, about 20 to 30 percent of that has to be subcontracted to minority disadvantaged business or to service connected disabled business. There are a number of programs.

So right off the bat, we might take, say, \$20,000 or \$30,000 off of that amount that a company like C&S is actually going to self perform.

Then there are some services that can't be performed by our company, so we turn around and possibly subcontract another \$5,000 or \$10,000 of work. So the actual work that we would do might be in the neighborhood of \$60,000 or \$70,000, in my example, out of a \$100,000 contract.

Now, if we are lucky, and we make the average profit on this type of work nationally, that's going to be someplace in the 5 to 10 percent range. So if we take, say, \$60,000 and suppose we made 5 percent on that, that's \$3,000. That's \$3,000 in profit. Our income tax obligation for that \$3,000 might be 20 percent, 30 percent, depending on what corporate rate we're paying. So it could conceivably be \$1,000 in my example.

Well, what the Federal Government—this law will require us to have \$3,000 deducted right off the top and the Federal Government will then hold those \$3,000 until we file our income tax and get that refund, which will be at least a year, and depending on when the services were provided, if they were provided at the end of tax year—you follow me? Or at the beginning of a tax year, it could almost be 2 years before you get the money back.

And, of course, under the Federal Acquisition Regulations, to make things even worse, if we do go out and borrow that money so we can meet payroll and pay our light bill, the Federal Acquisition Act [FAR], does not allow us to calculate interest as an eligible overhead expense, so there's no way we can recover that interest on that money. So effectively that comes out of our pocket. So in order to meet payroll and pay our employees and potentially add additional jobs, it's just another rock being thrown under the wheel.

Mr. KELLY. So your cost of operation is affected by this. So is this something when you do a government contract, you have to actually bid it higher than you would normally bid it to a normal entity to cover that 3 percent, because effectively your cost of operation, you know, the gross versus the net—I understand completely—you have to somehow recoup that.

Mr. MACMURRAY. We have to try.

Mr. KELLY. Or you walk away from the business.

Mr. MACMURRAY. We have to try or we have to make a decision that we can't work on that particular work with the Federal Gov-

ernment. And that's going to hurt the government, hurt our taxpayers because there's going to be less competition and that's not an attractive alternative either.

Mr. KELLY. Mr. Glazier, I want to ask you real quick, because I come from a community that's aging also. And when we talk about this problem that we have with storm and we have wastewater and everything else.

Look it, is there any type of remedial program? Because what I see is that the property transfer from people who own those houses—usually they're seniors. In order for them—there's some point in their life where they're going to sell where they live and they're going to move into another lifestyle. That has to be fixed, usually, before they can sell the house, does it not, if there's a problem where the downspouts are tied in?

Mr. GLAZIER. Yeah. In fact, in Onondaga County we've just begun a proactive downspout program, and I'm coming up short with the name of the program, but the program is going to go deal specifically with that. We have added a local law that when houses are sold, there's an inspection to ensure for specifically that purpose.

Mr. KELLY. In my community, it averages somewhere between \$12,000 and \$15,000 to fix this. These are homes that are being sold for \$30,000, \$35,000. So a senior, really, someone who's worked all their life, paid their taxes, lived within their means, have been good stewards of the community, are put in a position they really can't get out of the homes they live in because of this regulation.

What bothers me is I know we have these ideas that we think are going to be really great, but the unintended consequences really put people in a position where they can't, at this point in their life, actually move from where they've been because some of this over regulation. And I know it's important. I know. But it makes me scratch my head. Why are we doing this to the people that are most vulnerable that can't make the adjustment?

Mr. GLAZIER. Well, I think from our perspective, one of the main criticisms we have is that—there's—everything is regulation and measurement as opposed to helping to try and find ways as we're trying to proactively attempting to do, which is try and mitigate the issue where it begins.

Because of the stringency of the current Federal regulations there isn't real recognition of that effort. You know, they just sit at the end of the spout and measure and because of that we are, you know, we're making leaps and bounds as far as the situation we're in and the dates and the age of our physical infrastructure that deals with this, but we're still measured by the antiquated system.

Mr. KELLY. I know, it is. It's frustrating.

And just final, Mr. Squires, because I see this only in government. Is the cost of running a program have—it's totally irrelevant as to what the cost-benefit analysis is.

Have you seen any of these programs that make sense to you from a cost-benefit analysis, because in private business if the end product doesn't justify what you're doing, you either don't do it or

you just go out of business. So I'm trying to understand the cost overruns of these, and it's always absorbed by the taxpayer.

Do you have any input into any of these programs?

Mr. SQUIRES. We don't. We don't have a lot of input as far as the regulations, requirements and accountability and reporting and all that sort of stuff. I think you're right with the point you're driving at is that the cost of the program becomes so enormously expensive compared to the actual benefit that it flows to the intended beneficiaries of the program.

It's frustrating for us when we have a whole pile of regulation reporting and tracking and so forth and information that needs to be given, and it costs us employees, it costs dedicated staff to do that.

Chair Buerkle referenced earlier that government should not be the driver of jobs, and I absolutely agree with that. That being said, there are going to be jobs that are paid for and come from the government. It's frustrating when we have to increase the number of jobs that government pays for that we tax people for, for things that—we wonder if it's just jobs that put together a bunch of data that sit on someone else's desk and they check off on their checklist and say, "OK, we got it. Things must be fine." That's not the reality of the situation.

What we wonder sometimes is if we got less money from the Federal Government, the State government, passed through the State government, if we got a little less for the program and were relieved of a lot of the reporting requirements and a lot of the tracking and a lot of the administrative requirements, I think we would be further ahead because we would have fewer people on our payroll that we're taxing the taxpayers for and we would end up giving more benefit to the intended beneficiaries.

Mr. KELLY. Thank you.

Ms. BUERKLE. Just to give an illustration of your cost-benefit analysis, we spoke recently to a school superintendent and he received a Federal grant of \$40,000 and he said in order to comply with all of the strings attached of the \$40,000, it was going to cost him close to \$200,000 to administer that regulation—or that grant. So the cost-benefit analysis is certainly something that needs to be done more.

I have one last question because it came up this morning in Irondequoit, Mr. Squires. The Prison Rape Elimination Act. I asked Sheriff Virts over in Wayne County if it was his understanding that there was any way for the county jails, the smaller entities, to opt out of this law. He did not think so.

Mr. SQUIRES. I don't think so. I spoke to our sheriff, Sheriff Dave Gould in Cayuga County and this is something that he's looking at. Our interpretation is it absolutely applies to us. We're a small facility. We're not a State facility.

Incidents happen in jails, you know, violence and so forth. We think the staff that we have and the procedures and processes in place to address those issues are sufficient for our facility. They're appropriate. We're a well-run facility. So this is another layer of bureaucracy and administration that we have to pay for and we estimate it's going to be a position that will be dedicated almost full-time to these kinds of regulations.

Again, taxing people for positions that, in our view, aren't productive and give no benefit to the taxpayers we have been taxing.

Ms. BUERKLE. Have you been able to affix any cost to this law when it goes into effect?

Mr. SQUIRES. We think it's more work that can be absorbed by current staff, and we're talking about adding a staff position to do that. So the total cost including fringes would be somewhere in the ballpark I'm going to guess \$50,000, \$60,000. There may be other work that staff person could take on, but that's the additional cost that comes from this act.

Ms. BUERKLE. Thank you.

Do you have any further questions?

Mr. KELLY. No.

Ms. BUERKLE. I want to thank all of you for being here this afternoon and sharing your testimony with us.

Your input is so important to us as were the two previous panels and the three earlier today. It's so important that Congress hears from you all. And I want you to know that we will take your testimony, take the information that you have given to us, and bring it back to the full Oversight and Government Reform Committee and let them know. We'll share with them the concerns and the regulations and even the impediments that the Federal Government puts up.

So thank you all very much for being here today.

Thank you to those who sat through this hearing and participated today. I think it's good for us to hear from the community, from the job creators.

At this time we will adjourn the meeting. The committee is adjourned. Thank you all very much.

[Whereupon, at 5:15 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings follows:]

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**Statement of Congressman Elijah E. Cummings**  
**Ranking Member, Committee on Oversight and Government Reform**

**Regulatory Impediments to Job Creation in the Northeast**

April 20, 2011

Mr. Chairman:

The Chesapeake Bay is America's largest estuary and its biological productivity was once unparalleled in the world – making its current degradation all the more stunning.

As the Representative of Maryland's 7<sup>th</sup> Congressional District, I know first-hand what an incomparable resource the Chesapeake Bay is to the State of Maryland and indeed to this entire nation.

President Obama has made the restoration of this national treasure among his top environmental preservation goals.

Shortly after taking office, the President issued an Executive Order that created a Federal Leadership Committee on the Bay. The Committee has issued a variety of reports on the Bay's health.

These reports reaffirm that the Chesapeake Bay is one of the most studied water bodies in the world. They also reaffirm that there is no scientific doubt that the flow into the Bay of nitrogen, phosphorus, and sediment from a variety of sources is the cause of the Bay's decline. Together, these nutrients foster the rapid growth of algae and lower dissolved oxygen levels in the water; as oxygen levels fall, so-called "dead zones" develop where aquatic life cannot survive.

Controlling the flow of nitrogen, phosphorus, and sediments into the Bay is essential to restoring the Bay's ecosystem and enabling the Bay to thrive again.

Sadly, thirty years of voluntary agreements enforced only by good intentions have left the Chesapeake Bay with water quality that is still rated "very poor."

Particularly as the population in the Bay's watershed increases, it is evident that we must begin implementing more formal structures to control pollutant loadings; however, current law does not provide all of the authorities necessary to implement and assess the results of such new control measures.

Responding to these challenges, on October 20, 2009, I introduced the *Chesapeake Clean Water and Ecosystem Restoration Act of 2009*, H.R. 3852. This legislation was similar to legislation introduced in the Senate by Maryland Senator Ben Cardin.

H.R. 3852 would have required the Bay's watershed states and the District of Columbia to each contribute to the achievement of reductions in nutrient flows into the Bay until the levels established by Total Maximum Daily Load (TMDL) requirements were met.

I emphasize that to achieve overall nutrient flow reductions, H.R. 3852 would have required equitable reductions in pollution from all sources, including wastewater treatment plants, stormwater run-off, and run-off generated from agricultural activities.

H.R. 3852 also supported a renewed and reinvigorated partnership among Federal, state, and local governments, and between public and private interests. For our part, the bill would have authorized more than \$5 billion to support efforts to clean up the Bay, including providing \$1.5 billion to support initiatives that will control stormwater run-off and \$500 million for each of fiscal years 2010 through 2015 to support the Section 319 programs that help farmers implement nonpoint source management initiatives.

H.R. 3852 would also have established an innovative interstate nitrogen and phosphorus credit trading program.

While we were unable to enact that legislation during the last Congress, I continue to believe that this is the approach that needs to be taken to ensure the restoration of the Chesapeake Bay.

That said, states are still required to move forward with their implementation of the TMDLs that were issued for the Bay on December 29, 2010 consistent with consent decrees in Virginia and the District of Columbia dating from the late 1990s.

According to the Environmental Protection Agency, the TMDLs set Bay watershed limits of 185.9 million pounds of nitrogen, 12.5 million pounds of phosphorus and 6.45 billion pounds of sediment per year – limits that would achieve a 25 percent reduction in nitrogen, 24 percent reduction in phosphorus, and 20 percent reduction in sediment flowing into the Bay.

The TMDLs are tough – but they are realistic to achieve the reductions in pollution we need throughout the 64,000-square-mile watershed to restore the Bay's health.

And in no way do they threaten the viability of agricultural production – or the creation of jobs – in the Bay watershed.

Rather, implementation of the TMDLs will support the restoration of the thousands of jobs that have been lost due to the pollutant loadings in the Bay.

For example, the Virginia Institute of Marine Science has estimated that 40 percent of the jobs in Maryland and Virginia associated with crabbing were eliminated between 1998 and 2006 – an outcome resulting directly from the decimation of the crab population due to the continuing accumulation of pollution in the Bay.

We have seen that voluntary agreements and good intentions are simply inadequate to achieve our restoration objectives – and effective implementation of the TMDL process is the best chance we have of truly restoring the Bay's water quality.