

Testimony of William Pollock, PE, President of Optimization Technology, Inc. for the hearing on held by Congresswoman Buerkle for the Committee on Regulatory Affairs, Stimulus Oversight and Government Spending, April 20, 2011.

I distinctly remember the morning of July 12, 2010. I arrived at work about six in the morning ready to take on the challenges of another day. I picked up the mail from the evening before and began to open it. Included was a letter from the US Department of Labor announcing a health care audit. In their words "Dear Mr. Polloci, (they spelled my name incorrectly) The U.S. Department of Labor has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the Optimization Teclmology, Inc. Medical Plan. The Plan is scheduled for investigation by this office. Investigative authority is vested in the Secretary of Labor by Section 504 of ERISA, which states in part: "The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order hereunder to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title. We ask that you submit to this office the documentation indicated on the enclosed list with respect to the above referenced plan by **Monday, July 19,2010.**"

We had seven days to respond to four pages of questions and produce answers along with 28 documents about our heath care plan. Failure to comply would mean that I could be subpoenaed to go to Boston for an in office audit. I should point out to you that we simply buy a plan offered by one of the local health care providers. We do not profess to be health care plan experts nor have we created or drafted any of the terms of this health care plan. But it became our job to review all the fine print, terms and conditions of the plan offering and make certain that they were in full compliance with the Federal health care laws. I already had a full plate. Optimization is in the business of designing manufacturing equipment. The past three years have been challenging ones in our business as most manufacturing firms had cut back or eliminated their capital spending. Optimization presently has about 350 employees. During the past decade we have added over 300 jobs. Our payroll in a normal business year is about twenty million dollars. In order to survive the downturn without massive layoffs we had to adopt a lot of austerity measures, reduce our own spending as well as the work hours of many of our staff. Our reward has been a massive increase in government oversight and compliance requirements. This latest audit was only one more piece of fuel on the fire of frustration, disappointment and exhaustion. The health care audit was one in a long string of government audits and compliance requirements that had filled my time during the year allowing little time for entrepreneurial activities, strategic planning or growth. That morning, for the first time after more than 25 years in business, I actually thought perhaps I should just close the business down. I wrote that in an email to one of our Vice Presidents. Why go on when it appeared that the government was determined that we should be shut down. Let them provide the unemployment that would support our ongoing twenty million dollar payroll.

By that point in 2010 we had already had 6 government audits prior to that one. And this did not include the original record keeping, filings and reporting that was necessary to stay in compliance prior to the audits being scheduled.

We have been told that during the past two years that the government has expanded its employment at all levels including hiring additional auditors to enforce compliance. From the perspective of individuals like myself, who are trying to run and grow businesses, they have adopted a culture that assumes that every business is out to take unfair advantage of its employees. The inference that we feel is that employers, such as myself, are merely criminals intent on abusing, robbing or cheating the people we employ. Compliance appears to be a way of discouraging and harassing employers so that they will give it up and close their doors. That July 12 the arrival of the menacing letter from the Department of Labor came close to achieving that result from me. Only the thought of the employees and their families, who were dependant on their employment, held me back. I resisted the impulse.

During 2010 we had a total of 7 government audits. These included three NYS DOL audits in addition to the US DOL audit, an IRS COBRA audit, a 401K audit two years of IRS financial audits as well as over a dozen different Census Bureau surveys to complete. These audits were on top of the week to week month to month forms from the INS, IRS, DO, OSHA and other agencies that we complete and file. In spite of the barrage of audits and demands, for the most part there have been no fines or penalties assessed against us. The cost has been the cost of compliance, the time to scramble, respond and “argue” our case. It is true that we have, at times in the past, paid the IRS additional tax rather than arguing further, even though we knew we were in the right. At times the time spent being principled is simply too much higher than caving in and paying them.

In my opinion the government sector responsible to license, regulate, audit business has grown out of control. The function now feels more like government gone wild, with a clear intent to harass and intimidate. I suspect that like myself many of my counterparts, are ready to give it up and close the doors rather than fight the bureaucratic red tape any longer. I withstood the urge to do that last July. Perhaps the next surprise audit will be the one that puts me over the edge.

We provide benefits as best we can for our employees. These include a 401K plan with a portion of company matching funds as well as a Employee Stock Ownership plan which allows us to distribute stock in the company to our employees. In turn we are required to engage private CPA firms to provide annual audits of both of these plans. The cost and effort involved in performing these audits is significant.

The regulations regarding the new federal health care plan are also significant while at the same time proving to be at times vague or ambiguous. We are finding it necessary to send staff members to classes and conferences to attempt to understand the rules and regulations so that we can be compliant. We have also found it necessary to spend additional dollars hiring outside

consultants and attorneys to help us to be vigilant and compliant. Implementing the new law is proving to be expensive and time consuming. At this point in time we have no idea how expensive or how time consuming. Even those who drafted and approved it appear to know only an approximation of the costs. We are encouraged by the fact that some of this is coming to light and being corrected. The agreement at all levels for elimination of the new mandatory requirement for 1099s is an example of this acknowledgement. But at the same time we should observe that part of this law contain compliance issues that reach far beyond simply the regulation of health care. The 1099s mentioned above are not directly related to implementing health care alone.

During parts of 2009 and 2010 the Federal Government provided a 65% subsidy for employees who left their employment. It was the responsibility of employers like ourselves to pay the health care bill and then to collect this money back from the former employees and the government. Former employees sometimes paid on time, sometimes late, sometimes not at all. The Federal Government was often late with their payments. The cost of implementation of the plan and the interest on borrowed money to pay the premiums fell totally on us. But the IRS was quick to show up and demand to audit our records. No mention was ever given that they did not effectively hold up their part of the bargain. This was just another form of compliance harassment.

When an IRS auditor arrived to make an audit of our tax records last spring his first request was for a copy of every financial transaction we had made during the tax year in question. We provided for him over 40,000 pages of transaction files. I then asked him how long he anticipated he would be onsite performing the audit. "I expect to be here for six months" was his reply. We arranged office space for him and all the coffee he could drink. The audit was expanded from a single year to include two tax years. During the next five and a half months we continued to provide additional files and documentation. While the end result was a letter from the IRS stating that there were no findings and we were assessed no additional taxes or fees, the cost of compliance was significant. I spent over 200 hours of my own time in addition to that of our staff and hired CPAs to respond to the many questions. We were assured that it was a random audit based on the size of our firm. There were no red flags or indications of impropriety that led to the audit. But the IRS mandate was to increase surveillance and the number of firms being audited and to generate additional tax revenue. The result is a clear disincentive to growing businesses.

Government bureaucracy, red tape, and the costs of compliance have grown out of control. It is time that this change. The average business owner is an honest citizen like myself trying to make a living and offering employment to others. The focus of changes in business law should be to simplify compliance, reduce red tape, encourage and enable. We don't need government subsidies or handouts. What we need is simply the right to run our businesses without overregulation or harassment. Thank you for arranging this hearing and allowing me and other the opportunity to air our frustrations. It is our hope that you can make a difference.

William Pollock, PE

Bill Pollock is founder and President of Optimization Technology, Inc. Optimization is in its 26th year. During the last quarter century the company has grown from a one man operation to a company of about 350 employees. Optimization is an industrial systems integration firm with full concept to completion project capabilities. They are distinguished from other firms by the broad cross section of complementing services they offer as well as by their employee focused HR processes and their talented, motivated employees. Optimization has grown significantly over the past decade. Sales increased from 6M in 2002 to \$50M in 2008. The company was number 3 on Rochester Top 100 list of fastest growing companies in 2009 and number 2 in 2008.

Prior to founding Optimization, Bill was an associate professor of systems engineering at the State University of New York at Alfred. Earlier in his career he also spent ten years as a control systems engineer at Eastman Kodak Co. and two years as a volunteer teaching high school math and physics in Alexandria, Egypt.

Bill earned a BS and an ME in electrical engineering from Rensselaer Polytechnic Institute where he was elected to the RPI Athletic Hall of fame for his running ability. Bill continues to be an avid runner and balances his long work days with afternoon runs. He was recipient of the VandenBrul Award as Rochester's entrepreneur of the year in 2010.

Committee on Oversight and Government Reform
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

We have a contract from the National Research Energy Lab for \$250,000

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

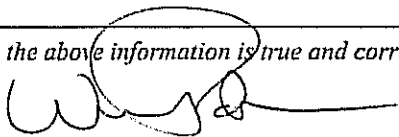
I am the president & CEO of Optimization Technology, Inc

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

As referenced above - we have a single contract from NREL for \$250,000 to build an energy instrumentation^{test} system for them.

I certify that the above information is true and correct.

Signature:



Date:

4/18/11