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WORKFORCE SAFETY: ENSURING A RESPONSIBLE REGULATORY ENVIRONMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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WORKFORCE SAFETY: ENSURING A RESPONSIBLE REGULATORY ENVIRONMENT

Wednesday, October 5, 2011
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2261, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, Goodlatte, Rokita, Bucshon, Woolsey, Payne, Kucinich, and Bishop.

Also Present: Representative Ribble.

Staff Present: Jennifer Allen, Press Secretary; Katherine Bathgate, Press Assistant/New Media Coordinator; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Barrett Karr, Staff Director; Ryan Kearney, Legislative Assistant; Donald McIntosh, Professional Staff Member; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Alissa Strawcutter, Deputy Clerk; Loren Sweatt, Senior Policy Advisor; Aaron Albright, Minority Communications Director for Labor; Kate Ahlgren, Minority Investigative Counsel; Daniel Brown, Minority Junior Legislative Assistant; Jody Calemine, Minority Staff Director; John D'Elia, Minority Staff Assistant; Liz Hollis, Minority Special Assistant to Staff Director; Brian Levin, Minority New Media Press Assistant; Richard Miller, Minority Senior Labor Policy Advisor; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; and Michael Zola, Minority Senior Counsel

Chairman WALBERG. A quorum being present, the subcommittee will come to order. This is our brand new refurbished hearing room. So any glitches that may come, I am not responsible for.

Chairman KLINE. Don't look at me.

Ms. WOOLSEY. I suppose I am.

Chairman WALBERG. No, no. Not even my ranking member would I lay that upon. I am not sure who I would lay it upon. But just forewarned is forearmed.

Good morning. I would like to welcome our guests, and express my appreciation to the witness, and the witnesses to come, for being with us today. Assistant Secretary Michaels, it is good to see you, and thank you for joining us. And I appreciate your offer to

join anytime we ask. We won't wear that out. We have a great deal to discuss in a short amount of time. And as a result of that, it may even become a little disjointed, but we want to use the time as appropriately as possible.

The policies and programs of the Occupational Safety and Health Administration touch upon virtually every private workplace across the country. That is a tremendous responsibility, not only for those of us in Congress who write the law, but for the agency officials charged with enforcing it in an economy as dynamic and as challenging as ours. The issues that come before your Agency are understandably complex. As great a challenge workplace safety is for an Agency staffed with sharp policy minds, imagine how much greater it is for an employer who lacks the resources needed to fully grasp the complexities of Federal safety standards, or the time, in some cases, to deal with them.

No one in this room questions the valuable role of OSHA and the role that it can play in promoting a safe work environment, doubts the need for strong safety and health protections, or believes bad actors should not be held accountable for jeopardizing the well-being of their employees. We all share the same goal. However, as with any difficult issue, and issues of great importance, there is often a difference of opinion in how we meet the goals.

It was clear from the early days of the administration a, quote, new sheriff was in town, who intended to take a much more punitive approach to workplace safety, and who threatened to publicly shame workers. It was tough rhetoric that made good press. But unfortunately, many of us remain concerned whether it is the best approach to worker safety.

That is why Republicans on this committee have established a strong oversight agenda which includes raising legitimate concerns, asking tough questions, demanding responsible answers, and holding hearings to learn from the men and women whose lives are directly impacted by OSHA policies.

Today's hearing is an important part of our efforts. In July, the Department of Labor released its semiannual regulatory agenda that includes a number of OSHA items. Many of the regulatory proposals are identified as economically significant, meaning they will cost $100 million or more for businesses to implement. Aside from the significant scope and cost of the administration's regulatory ambitions, there are additional concerns with specific proposals. The administration's injury and illness prevention program, commonly known as I2P2, is an unfinished rule that may require employers to write comprehensive safety and health plans. This plan would be in addition to the countless pages of existing rules and paperwork facing employers. We don't know what the plan will look like, but we can expect the details to be dictated uniformly by OSHA officials, regardless of the circumstances of individual businesses. This proposal has generated a great deal of uncertainty among employers, something our economy cannot afford.

This committee has also expressed concerns about proposed changes to the silica standard. When this initiative began almost 10 years ago, small business representatives raised alarms about the costs, urging the administration to rely instead on greater compliance and strengthened enforcement. In a difficult economy, the

administration is resurrecting this flawed proposal, and most of the details are yet unknown.

Two months ago, we requested the administration bring its proposal out into the open and encourage public feedback. Today, we are still waiting for the response.

For the sake of time, I will limit our concerns to these two examples. However, the underlying fear is the uncertainty surrounding much of the administration's regulatory actions. As I noted earlier, these are difficult issues to address, and they take time to get right. But we must not ignore the employers who are sitting on the sidelines, questioning the future costs of doing business, reluctant to hire new workers, jobs, in an economy that needs a workforce working.

Are there some who cut corners and place workers in harm's way? Absolutely. But most employers want to do the right thing. Most employers want to safeguard the health and well-being of their workers, while providing a livelihood for their families. They know more intimately the hazards and risks associated with their businesses, and they should be our partners in safety.

In closing, Dr. Michaels, let me express my commitment to working with you. We have our differences, I am certain, but we share, I am certain, the same goal. I have noted on a number of occasions that the cause of worker safety is best achieved when we work together. My Republican colleagues and I are eager to find common ground with you on policies that will protect workers and foster economic growth and opportunity and a workplace that is working.

[The statement of Chairman Walberg follows:]

Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on Workforce Protections

Good morning. I would like to welcome our guests and express my appreciation to the witnesses for being with us today. Assistant Secretary Michaels, it is good to see you and thank you for joining us. We have a great deal to discuss in a short amount of time.

The policies and programs of the Occupational Safety and Health Administration touch upon virtually every private workplace across the country. That is a tremendous responsibility, not only for those of us in Congress who write the law, but for the agency officials charged with enforcing it. In an economy as dynamic as ours, the issues that come before your agency are understandably complex.

As great a challenge workplace safety is for an agency staffed with sharp policy minds, imagine how much greater it is for an employer who lacks the resources needed to fully grasp the complexities of federal safety standards. No one in this room questions the valuable role OSHA can play in promoting a safe work environment, doubts the need for strong health and safety protections, or believes bad actors should not be held accountable for jeopardizing the well-being of their employees.

We all share the same goal; however, as with any difficult issue of great importance, there is often a difference of opinion in how we meet that goal. It was clear from the early days of the administration a "new sheriff was in town" who intended to take a much more punitive approach to workplace safety, and who threatened to publicly shame employers. It was tough rhetoric that made good press, but unfortunately many of us remain concerned whether it is the best approach to worker safety.

That is why Republicans on this committee have established a strong oversight agenda, which includes raising legitimate concerns, asking tough questions, demanding responsible answers, and holding hearings to learn from the men and women whose lives are directly impacted by OSHA's policies.

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meaning they will cost $100 million or more for businesses to implement. Aside from the significant scope and cost of the administration's regulatory ambitions, there are additional concerns with specific proposals.

The administration's injury and illness prevention program, commonly referred to as I2P2, is an unfinished rule that may require employers to write comprehensive safety and health plans. This plan would be in addition to the countless pages of existing rules and paperwork facing employers. We don't know what the plan will look like, but we can expect the details to be dictated uniformly by OSHA officials, regardless of the circumstances of individual businesses.

This proposal has generated a great deal of uncertainty among employers, something our economy cannot afford.

This committee has also expressed concerns about a proposed change to the silica standard. When this initiative began almost 10 years ago, small business representatives raised alarms about the costs, urging the administration to rely instead on greater compliance and strengthened enforcement. In a difficult economy, the administration is resurrecting this flawed proposal, and most of the details are yet unknown. Two months ago, we requested the administration bring its proposal out into the open and encourage public feedback. Today, we are still waiting for a response.

For the sake of time, I will limit our concerns to these two examples. However, the underlying fear is the uncertainty surrounding much of the administration's regulatory actions. As I noted earlier, these are difficult issues to address and they take time to get right. But we must not ignore the employers who are sitting on the sidelines, questioning the future cost of doing business, reluctant to hire new workers.

Are there some who cut corners and place workers in harm's way? Absolutely, but most employers want to do the right thing. Most employers want to safeguard the health and well-being of their workers while providing a livelihood for their families. They know more intimately the hazards and risks associated with their businesses, and they should be our partners in safety.

In closing, Dr. Michaels, let me express my commitment to working with you. We have our differences but we share the same goal. I have noted on a number of occasions that the cause of worker safety is best advanced when we work together.

My Republican colleagues and I are eager to find common ground with you on policies that will protect workers and foster economic growth and opportunity.

With that, I will now recognize the senior Democrat member of the subcommittee, Ms. Woolsey, for her opening remarks.

Chairman WALBERG. With that, I will now recognize the senior Democrat member of the subcommittee, Ms. Woolsey, for her opening remarks.

Ms. WOOLSEY. Thank you, Mr. Chairman. Mr. Chairman, this is certainly a timely hearing because it takes place against the backdrop of an irresponsible appropriations bill that was released as a draft by the chairman of the Labor-HHS Appropriations Subcommittee. It, meaning the draft appropriations subcommittee language, contains riders that will handcuff OSHA's ability to prevent deaths and disabling injuries from roof falls. It obstructs OSHA's progress on a rule to identify and correct hazards in the workplace on an ongoing basis. And it blocks an OSHA rule that would ensure employers record cumulative trauma disorders so workers and employers will know if there is an ongoing problem.

At the same time, this bill zeroes out OSHA's Susan Harwood Training Program. It is a program that awards grants to nonprofit organizations to train workers who are employed in high hazard industries. The National Roofing Contractors Association, which is testifying before us today, received $1.5 million over the past 5 years for this very same training.

Mr. Chairman, I commend you for inviting Assistant Secretary Michaels to testify, and making the timing work for his office, as well as all of us. We are going to learn a lot, and most certainly need to hear his opinions on whether worker safety will be advanced by the riders put on the draft appropriations bill.

Despite complaints about burdensome regulations, OSHA has issued only two modest regulations during the Obama administration. My question is, why only two? One updated an obsolete cranes and derricks rule. The other updated a shipyard rule. And complaints about OSHA piling on rules, they are just simply wrong. Two tiny rules is not a piling on.

So let me turn now to one of today's topics: OSHA's efforts to reduce the number of workers falling to their deaths in residential construction.

Between 2003 and 2010, at least 866 workers were killed from falls while working in residential construction. Thirty-five percent of these deaths, some 299 of our fellow citizen workers, were caused by workers falling off residential roofs. OSHA has tackled this problem with a series of actions. First, they issued fall protection rules in 1994, which mandated the use of fall protection equipment. Next, to accommodate feasibility concerns, OSHA issued interim guidance in 1995, exempting the use of personal fall protection for residential roofs that were less than 25 feet off the ground and had less steep roofs. Third, 13 years later, in 2008, the National Association of Home Builders, unions, and other stakeholders recommended that OSHA repeal these exemptions for residential construction. This past December, OSHA repealed the exemptions with a 9-month phase-in period. Yet OSHA is now accused of hurting employers, despite doing exactly what was asked of it.

Let's rewind the clock for a moment. Three years ago, the National Association of Home Builders wrote OSHA a six-page letter urging it to withdraw its interim guidance, saying that it does create uncertainty and confusion. Three years later, this same trade association is demanding that OSHA stop doing precisely what it asked for. Two weeks ago, they reversed their position in a letter to the White House, and declared that uncertainties abound as a result of the new guidance, and urged OSHA to postpone implementation.

Mr. Chairman, I want to know—well, no, really what I want to do is enter these two NAHB letters into the record so it is clear that OSHA has been getting a very mixed message from this organization, which is a very important organization to this subject.

The National Roofing Contractors Association has also opposed OSHA eliminating this exemption. They claim that mandating personal fall arrest systems on residential roofs creates a greater hazard than using what are called slide guards. Slide guards are basically two by six toe boards against which roofers brace themselves. And there is a picture on the easel of a worker bracing themself on a slide board.

However, this is not a universal view amongst contractors. According to a memo from LeBlanc Construction in Arizona, one of its employees was walking down a slightly pitched roof in August 2008, when he stumbled and lurched over the two by six slide guard. Fortunately, he was wearing a properly fitted full-body harness, which engaged, and his fall was broken before he ever reached the ground. Lucky him, he had the full protection. The company's safety director wrote that this incident would likely have

resulted in a serious or deadly injury had he not been using conventional fall protection.

So Mr. Chairman, this real-world example points out that it is reasonable to question whether slide guards can be used as the sole means to save lives. It is also clear that the costs of conventional personal fall protection are not excessive. In this bucket—I can't lift it, so Richard has to—in this yellow plastic bucket is a conventional fall protection device, which includes a harness, a lanyard, and an anchor. It costs $99 at Home Depot. Sophisticated systems can cost a bit more, but this works. So Mr. Chairman, I am sure you would agree that a responsible contractor wouldn't risk the life of his or her employees by refusing to purchase a simple fall protection device. And I hope you would agree that if a contractor decides to skimp on basic life safety devices, then they shouldn't be in the roofing business.

And I thank you, and I look forward to hearing from our witnesses today and having a good conversation. Thank you very much.

[The statement of Ms. Woolsey follows:]

Press Office: (202) 226-0853
Wednesday, October 5, 2011

Rep. Lynn Woolsey (D-CA) Opening Statement for the Hearing on Workplace Safety

WASHINGTON, D.C. – *Below are the prepared remarks of U.S. Rep.* Lynn Woolsey (D-CA*), the ranking member of the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce for the hearing on* "Workplace Safety: Ensuring a Responsible Regulatory Environment."

***

Mr. Chairman, thank you for holding this timely hearing. It takes place against the backdrop of an irresponsible appropriations bill that was released as a draft by the Chairman of the Labor-HHS Appropriations Subcommittee.

It contains riders that will:

- handcuff OSHA's ability to prevent deaths and disabling injuries from roof falls;
- obstruct OSHA's progress on a rule to require employers to identify and correct hazards in the workplace on an ongoing basis; and
- block an OSHA rule that would ensure employers record cumulative trauma disorders so workers and employers will know if there is a problem.

At the same time, this bill zeroes out OSHA's Susan Harwood Training Program, which awards grants to nonprofit organizations to train workers who are employed in high hazard industries. The National Roofing Contractors Association, which is testifying before us today, received $1.5 million over the past five years for training.

Mr. Chairman, I commend you for inviting Assistant Secretary Michaels to testify. We will most certainly want to hear whether he thinks workers' safety will be advanced by the riders put on the draft appropriations bill.

Despite complaints about burdensome regulations, OSHA has issued only two modest regulations during the Obama Administration. One updated an obsolete cranes and derricks rule; and the other updated a shipyard rule. Complaints about OSHA piling-on rules are simply wrong.

Let me turn now to one of today's topics: OSHA's efforts to reduce the number of workers falling to their deaths in residential construction. Between 2003 and 2010, at least 866 workers

were killed from falls while working in residential construction. Thirty five percent of these deaths—some 299 of our fellow citizens--were caused by workers falling off residential roofs.

OSHA has tackled this problem with a series of actions.

First, OSHA issued fall protection rules in 1994 which mandated the use of fall protection equipment.

Second, to accommodate feasibility concerns, OSHA issued "Interim" Guidance in 1995 exempting the use of personal fall protection for residential roofs that were less than 25 feet off the ground and had less steep roofs.

Third, thirteen years later, in 2008, the National Association of Home Builders, unions and other stakeholders recommended that OSHA repeal These Exemptions for residential construction. This past December, OSHA repealed the exemptions with a nine month phase-in period.

Yet OSHA is now accused of hurting employers despite doing exactly what was asked of it.

Let's rewind the clock for a moment. Three years ago, the National Association of Home Builders ("NAHB") wrote OSHA a six page letter urging it to withdraw its Interim Guidance, saying that it creates "uncertainty" and "confusion".

Three years later, this same trade association is demanding that OSHA stop doing precisely what it asked for. Two weeks ago, NAHB reversed its position in a letter to the White House and declared that "uncertainties abound" as a result of this new guidance, and urged OSHA to "postpone implementation."

Mr. Chairman, I would like to enter these two NAHB letters into the record so it is clear that OSHA has been getting mixed messages.

The National Roofing Contractors Association has also opposed OSHA eliminating this exemption. They claim that mandating personal fall arrest systems on residential roofs creates a greater hazard than using what are called "slide guards." Slide Guards are basically 2 x 6 toe-boards against which roofers brace themselves.

However, this is not a universal view amongst contractors.

According to a memo from LeBlanc Construction in Arizona, one of its employees was walking down a slightly pitched roof in August 2008 when he stumbled and lurched over the 2 x 6 "slide guard". Fortunately, he was wearing a properly fitted full body harness, which engaged and his fall was broken before he ever reached the ground. The company's safety director wrote that this incident would: "likely have resulted in a serious or deadly injury, had he not been using conventional fall protection."

Mr. Chairman, this real world example points out that it is reasonable to question whether "slide guards" can be used as the sole means to save lives. It is also clear that the costs of conventional personal fall protection are not excessive.

In this bucket, is a conventional fall protection device, which includes a harness, a lanyard, and an anchor. It costs $99 at Home Depot. Sophisticated systems cost a bit more.

Mr. Chairman, I am sure you would agree that a responsible contractor wouldn't risk the life of his or her employees by refusing to purchase a simple fall protection device. And I hope you would agree that, if a contractor decides to skimp on basic life saving safety devices, then they shouldn't be in the roofing business.

Thank you. I look forward to hearing from our witnesses today.

http://democrats.edworkforce.house.gov

Chairman WALBERG. I thank the gentlelady. And without objection, we will submit for the record the documents that she requested. Hearing no objection, they are submitted.

[The information follows:]

Gerald M. Howard
Executive Vice President
Chief Executive Officer

April 11, 2008

The Honorable Edwin G. Foulke, Jr.
Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Request to Withdraw OSHA STD 03-00-001 - STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction

Dear Assistant Secretary Foulke:

The National Association of Home Builders (NAHB) recognizes that falls continue to be the leading cause of injuries and fatalities in the home building industry and we are concerned that there is too much confusion in the residential construction industry as to what fall protection standards must be complied with and what methods must be used to prevent fall-related accidents. Therefore, NAHB requests that the Occupational Safety and Health Administration (OSHA) consider withdrawing the directive *OSHA STD 03-00-001 - STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction*, which sets out the Agency's interim enforcement policy on fall protection for certain residential construction activities.

As you know, NAHB is a Washington-based trade association representing members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB's builder members construct about 80 percent of the new housing units, making it one of the largest engines of economic growth in the country. When NAHB speaks, it speaks on behalf of its members and the home building industry.

We believe that OSHA STD 03-00-001 is a further source for uncertainty surrounding fall protection for the residential construction industry. This directive has created confusion as to what fall protection standards must be complied with by the residential construction industry. Although previously supportive of OSHA STD 03-00-001, now that it has been implemented for nearly 13 years, NAHB is concerned that this OSHA directive has created confusion in the residential construction industry as to what fall protection methods and systems must be used to comply with OSHA standards.

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(202) 266-8257 - (800) 368-5242 ext. 8257 - Fax: (202) 266-8559
Email: ghoward@nahb.com

We believe the confusion stems from the variety of sources of fall protection compliance information that builders and trade contractors need to find, read, understand, and then follow. NAHB believes that following § 29 CFR Subpart M--Fall Protection would eliminate confusion in the residential construction industry as to what fall protection methods and systems must be used and would make compliance with OSHA fall protection requirements for the home building industry much simpler and easier to understand, as well as put into practice.

NAHB also requests that OSHA define the term "residential construction" based on the materials and methods used in construction, regardless of the end use of the structure. Although § 29 CFR Subpart M has specific requirements for "residential construction" the standard does not define that term. Residential construction should be defined to include light commercial structures in which the materials, methods and work environment are essentially the same as in home building. We believe that the hazards on both residential and these light commercial structures are essentially the same and the limitations for providing conventional fall protection are equally similar.

Finally, NAHB requests that OSHA allow employers to develop and use a standardized fall protection plan that is consistent with the "product" being built, such as a single story ranch, two story homes, or a multi-family structure, and that addresses the fall hazards associated with the type of product being constructed, in lieu of creating a specific fall protection plan for each separate individual house being built. We believe that requiring a "product" specific fall protection plan that complies with the criteria in §1926.502 (k) would likely eliminate burdensome paperwork requirements on employers, while providing an improved level of worker safety.

Thank you, in advance, for your consideration of this request. We would appreciate the opportunity to meet with you to discuss our concerns in greater detail, if you believe that such a meeting would be beneficial. Please call our Assistant Staff Vice President of Labor, Safety and Health, Rob Matuga, at (202) 266-8507 if you have any questions, require additional information, or if you would like to schedule a convenient time to meet. I look forward to resolving this issue in a prompt and amiable manner.

Sincerely,

Gerald M. Howard
Executive Vice President
and Chief Executive Officer

GMH/rm

Attachment

Attachment

Request to Withdraw OSHA STD 03-00-001 - STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction

Safety is, and continues to be, of high importance to the home building industry and the National Association of Home Builders (NAHB) is at the forefront of enhancing safety and health in our industry. NAHB has recently renewed its alliance with the Occupational Safety and Health Administration (OSHA) to provide safety training and education to the residential construction industry workforce. Among the efforts that NAHB has made with the Agency is the production of several safety and health educational materials, including the recently developed NAHB-OSHA *Fall Protection Handbook* and *Fall Protection Video*. These materials address fall hazards encountered during residential construction operations and provide employers with practical solutions, including explaining in a simple and straightforward manner how to establish a written fall protection plan, how to use safe work practices that can prevent costly accidents and injuries, and how to comply with the intent of OSHA's § 1926 Subpart M – Fall Protection.

In addition, NAHB has had a long relationship with OSHA, which has led to collaborative efforts to reach out and educate approximately 25,000 individuals in the home building industry since 1997. Most recently, NAHB, in conjunction with the NAHB Research Center, was awarded an OSHA Susan Harwood Training grant, under which we have developed and delivered a 4-hour fall protection training seminar for builders, trade contractors, supervisors, and workers. This training focuses on identifying fall hazards in residential construction as well as providing student attendees an understanding of the OSHA fall protection regulations and how to use fall protection equipment, develop fall protection plans, and comply with 1926 Subpart M.

NAHB has also worked with OSHA to develop and deliver training on the "Big-4" residential construction safety hazards that focuses on the prevention of falls, developing and implementing a safety program that concentrates on helping small businesses create clear, cost effective, and easy-to-understand safety programs, and providing residential construction safety training which centers on the ways to reduce the risks of occupational injuries, particularly from falls, for those working in the residential construction industry.

I. Background On Fall Protection In Residential Construction

In general, OSHA's fall protection standard requires the use of "conventional" fall protection when an employee is exposed to a fall hazard of six feet or more.[1] When OSHA first published its final rule on fall protection for the construction industry on August 9, 1994, § 1926 Subpart M

[1] § 1926.501 (b)(1)
"Unprotected sides and edges." Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

§ 1926.501 (b)(2)
"Leading edges." Each employee who is constructing a leading edge 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

clarified the duty for employers to provide fall protection to employees engaged in residential construction.[2] OSHA stated in the preamble of the rule that the Agency was being responsive to concerns raised by NAHB that there were some situations where the use of "conventional" fall protection systems (i.e. guardrails, safety nets, or personal fall arrest systems) is infeasible or would create a greater hazard than would exist if such a system was not used. The regulatory mechanism established by OSHA to address these concerns was for an employer to develop a fall protection plan, as outlined in § 1926.502 (k). The burden of proof was placed on the employer to show that the use of "conventional" fall protection systems was infeasible (e.g. erecting scaffold around the entire perimeter of a house would be infeasible, according to OSHA) or would create a greater hazard (e.g. roof trusses or rafters are subject to collapse if a worker falls while attached to a single truss with a personal fall arrest system or safety net). The fall protection plan was to be a written, site-specific document that would explain why conventional fall protection could not be used and list safe work practices that would be implemented to protect employees. A sample fall protection plan, developed in conjunction with NAHB, covering the installation of exterior walls, roof trusses and rafters, roof sheathing, floor joists and floor trusses and floor sheathing was included in Appendix E of § 1926 Subpart M.

Upon implementation of the 1994 fall protection standard, NAHB asserted that employees engaged in work on top of block foundation walls, concrete foundation walls and formwork, and work in attics or on roofs to install electrical, environmental, security and safety systems should also be able to utilize a fall protection plan and appropriate safe work practices. NAHB also asserted that OSHA should not require employers to make case-by-case determinations in order to use fall protection plans and that the safe work practices to be implemented did not have to be contained in any written document. OSHA agreed with these concerns and on December 8, 1995 the agency published STD 3.1 – Interim Fall Protection Compliance Guidelines for Residential Construction, which established the Agency's interim enforcement policy on fall protection for certain residential construction activities. Subsequently, OSHA issued the STD 3-0.1A "Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction" on June 18, 1999, which was written in plain language for clarification to field personnel and was recently renumbered to STD 03-00-001.[3]

OSHA STD 03-00-001 modifies the fall protection requirements for residential construction and permits employers engaged in certain residential construction activities to use alternative procedures (i.e. safe work practices to be followed at the work site to prevent falls) routinely instead of conventional fall protection for foundation work, some installation work on roofs and in attics, and

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[2] § 1926.501 (b)(13)
"Residential construction." Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with 1926.502 (k) for a particular workplace situation, in lieu of implementing any of those systems.

[3] See http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=2288

some residential roofing work. The STD 03-00-001 clarifies that an employer is not require to show conventional fall protection is infeasible in some cases before using safe work procedures and although a fall protection plan is required, it does not have to be written nor does it have to be specific to the jobsite.

OSHA acknowledged in STD 03-00-001 that the Agency would re-evaluate the interim fall protection policy after further analysis of the rulemaking record. On July 14, 1999, OSHA solicited additional public comment on fall protection issues in residential construction in an Advance Notice of Proposed Rulemaking (ANPRM) on Subpart M. This ANPRM began OSHA's evaluation of residential construction fall protection practices and of STD 03-00-001 [STD 3-0.1A]. Specifically, the Agency was looking at whether there was a need for alternative procedures for residential construction. Although the comment period for this ANPRM ended on January 24, 2000, it wasn't until December 2002 that OSHA stated in its semi-annual regulatory agenda that no rulemaking action was anticipated, therefore the Agency withdrew its plans to revisit the fall protection standard for the construction industry from the agenda. Further action is undetermined at the present time.

II. NAHB Urges OSHA To Follow § 29 CFR Subpart M – Fall Protection

Although previously supportive of OSHA STD 03-00-001 [STD 3-0.1A], now that it has been implemented for nearly 13 years, NAHB is concerned that this OSHA directive has created confusion in the residential construction industry as to what fall protection methods and systems must be used to comply with OSHA standards. We believe the confusion stems from the variety of sources of fall protection compliance information that builders and trade contractors need to find, read, understand, and then follow. Before builders can start to understand what they need to do to protect workers from falls, they must start with § 1926.500 (Subpart M – Fall Protection), then read STD 03-00-001 Interim Fall protection Compliance Guidelines for Residential Construction, and then go to 25 or more letters of interpretation, if they can find them, to understand what the Interim Fall protection Compliance Guidelines for Residential Construction is telling them to do. With all these overlapping and confusing layers of information, it makes understanding the OSHA fall protection requirements for home builders difficult, particularly for small and medium size builders who do not have a full-time safety professional on staff.

Rightly so, § 29 CFR Subpart M – Fall Protection allows some flexibility for residential construction employers. NAHB believes, and OSHA has acknowledged in the fall protection standard, that some employers in the residential construction industry might have difficulty providing conventional fall protection for certain operations. NAHB believes that difficulties are expected during the erection of roof trusses and the installation of roof sheathing, exterior wall panels, floor joists, and floor sheathing. NAHB believes developing and using a written fall protection plan for these residential construction operations is an acceptable alternative to conventional fall protection measures. We now believe that OSHA STD 03-00-001 extended the use of fall protection plans to other tasks, trades, and work activities that may no longer be appropriate because, due to the development of new equipment, conventional fall protection may be used. For example, during roofing operations personal fall arrest systems can be used when applying roofing materials such as felt and shingles.

NAHB believes that following § 29 CFR Subpart M – Fall Protection would make compliance with fall protection requirements for the home building industry much simpler and easier to

understand as well as put into practice. Therefore, NAHB urges OSHA to withdraw the directive *OSHA STD 03-00-001 - STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction.*

III. OSHA Must Define "Residential Construction"

Although § 1926 Subpart M has specific requirements for "residential construction" the standard does not define that term. NAHB has previously asserted that "residential construction" should be defined to include light commercial structures in which the materials, methods and work environment are essentially the same as in home building. Many home builders construct light commercial structures and because the hazards on both residential and these light commercial structures are essentially the same, the limitations for providing conventional fall protection are equally similar. For example, finding an attachment point for an anchor that meets the OSHA requirements for anchor points is equally problematic for home builders as it is for those constructing light commercial structures.

In contrast to the NAHB-preferred definition, OSHA defines residential construction in STD 03-00-001 as including work on structures where the working environment, construction materials, methods, and work procedures are essentially the same as those used for building typical single family homes and townhouses. Also, STD 03-00-001 states residential construction is characterized by materials such as wood framing (not steel or concrete); wooden floor joists and roof structures and methods such as traditional wood frame construction techniques. It further states that work on discrete parts of a large commercial structure could be considered residential construction as long as the working environment, materials, methods, and procedures were similar to those used for single family homes and townhouses, such as a wood frame, shingled entranceway to a mall, may fit within the definition of residential construction.

NAHB believes that OSHA should define "residential construction" based on the materials and methods used in construction, regardless of the end use of the structure. Therefore, NAHB recommends that OSHA define "residential construction" as:

> Construction activity performed on structures where the working environment, materials, methods, and procedures are essentially the same as those used in building a typical single-family home or townhouse. Materials include wood framing and wooden or metal floor joists and roof structures. Methods include traditional wood frame construction techniques. Materials and methods in residential construction may also use steel I-beams, poured concrete or concrete masonry unit (CMU) walls, structural insulated panels (SIPs), insulated concrete forms (ICF), stucco exterior, or metal stud framing instead of wood stud framing.
>
> Work on discrete parts of a large commercial structure could be considered residential construction as long as the working environment, materials, methods, and procedures are similar to those used for single family homes and townhouses. For example, a wood or light gauge metal stud framed, shingled entranceway to a mall may fit within the definition of residential construction.

NOTE: NAHB asserts that poured concrete or concrete masonry unit (CMU) walls, structural insulated panels (SIPs), insulated concrete forms (ICF), and metal stud framing walls or trusses are not structurally stronger than a wood stick-built wall and provide no more stability than a wood framed structure. If using any of these materials during construction, they should not be relied upon to resist any lateral load during construction because if these materials were relied upon for anchoring points for conventional fall protection systems and there was a fall, the structure could possibly collapse creating a greater hazard to the workers in the area.

IV. OSHA Should Allow "Product" Specific Fall Protection Plans

NAHB believes that employers should be allowed to use alternative fall protection procedures/safe work practices and a fall protection plan that complies with the criteria in §1926.502 (k) when constructing homes. As specified in §1926.502 (k), Fall protection plans are available for use to employers engaged in residential construction who can demonstrate that the use of conventional fall protection equipment is infeasible *or* creates a greater hazard. The fall protection plan must be prepared by a qualified person and developed specifically for the site where the residential construction work is being performed. The plan must also be in writing, and the plan must be maintained up to date on the jobsite. The fall protection plan must also document the reasons why the use of conventional fall protection systems (i.e. guardrail systems, personal fall arrest systems, or safety nets systems) is infeasible *or* why their use would create a greater hazard. Finally, the plan must include a discussion of other measures that will be taken to reduce or eliminate the fall hazard for workers who cannot be provided with protection using conventional fall protection systems.

However, NAHB believes that it makes little sense to require each contractor or employer to demonstrate that it is infeasible or creates a greater hazard to use alternative fall protection procedures or to develop a project or site specific fall protection plan. Therefore, NAHB urges OSHA to allow employers to develop and use a standardized fall protection plan that is consistent with the "product" being built, such as a single story ranch-style home, two story homes, or 3-story multi-family or town home structure, and that addresses the fall hazards associated with the type of product being constructed in lieu of creating a separate fall protection plan for each separate individual house being built. Requiring only a "product" specific fall protection plan would likely eliminate burdensome paperwork requirements on employers, while providing an improved level of worker safety.

In summary, NAHB is requesting that the Occupational Safety and Health Administration (OSHA) withdraw the directive *OSHA STD 03-00-001 - STD 3-0.1A - Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction*, while defining "residential construction" based on the materials and methods used in construction, regardless of the end use of the structure, and allowing employers to develop and use a standardized fall protection plan that is consistent with the "product" being built, such as a single story ranch, two story homes, or multi-family structure, and that addresses the fall hazards associated with the type of product being constructed.

National Association of Home Builders (NAHB)
April 11, 2008
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September 14, 2011.

Hon. BILL DALEY, *Office of the Chief of Staff,*
The White House, 1600 Pennsylvania Avenue, NW, Washington, DC 20500.

DEAR MR. DALEY: As a follow-up to our discussion of regulatory impediments during our May 20th meeting in Washington, DC, I am writing to express the National Association of Home Builders' (NAHB) rising concern regarding the Occupational Safety and Health Administration's (OSHA) plans to implement and enforce the recent changes made to its fall protection requirements.

You will recall that on Dec. 16, 2010, OSHA withdrew the "Interim Fall Protection Compliance Guidelines for Residential Construction," and replaced it with the "Compliance Guidance for Residential Construction," a change NAHB initially supported. Unfortunately, although the new requirements are set to take effect on Sept. 16, OSHA has not yet resolved the critical issue of how home builders are expected

to comply. Since December, NAHB has met several times with the OSHA leadership to discuss acceptable and feasible methods of reducing or eliminating fall hazards while performing various residential construction tasks. For months, builders have been attempting to implement OSHA's fall protection standard, determine what safe practices can be used, identify what engineering limitations exist, and train their workers.

Despite these efforts, compliance uncertainties abound. The many outstanding and unanswered questions leave home builders unsure of what they need to do to fully comply and to protect their workers. In addition, our members are finding instances where the requirements are not practical or attainable. These compliance challenges, coupled with OSHA's move away from compliance assistance and toward vigorous, heavy-handed enforcement, have left home builders fearful of the potentially large fines associated with unintentional non-compliance. This fear is not without merit, as some OSHA inspectors have gone so far as to announce that there will be "open season" on home builders once the phase-in period for the revised fall protection requirement ends on Sept. 15.

In the spirit of this Administration's commitment to reducing burdens on small businesses and ensuring that regulations are efficient and effective, it is incumbent upon OSHA to ensure that its fall protection requirements are attainable, practical, cost-effective, and demonstrably improve jobsite safety. OSHA must also provide clear guidance, additional compliance assistance, and penalty relief for those who make a good faith effort to comply so as to foster and facilitate long-term compliance.

As a first step, OSHA should continue to delay the enforcement date of the revised policy until such time that feasible and cost-effective fall protection practices are developed for the small businesses that make up the bulk of the home building industry. Second, OSHA's fall protection regulation should be reviewed under Executive Order 13563, "Improving Regulation and Regulatory Review," and revisited and reworked to make it more effective and less burdensome, exactly as envisioned by the President.

Jobsite safety is of paramount importance to NAHB members and their families. With the compliance deadline quickly approaching, we look forward to working with you to resolve these issues so that home builders, remodelers and their employees can continue to be safe on the job.

Best regards,

BARRY RUTENBERG, CHAIRMAN-ELECT OF THE BOARD,
National Association of Home Builders.

Chairman WALBERG. I would also ask, without objection, that the written statement from the National Association of Home Builders dealing with some of the questions and statements that you made with those records be submitted as well. Hearing no objection, that is submitted for the record.

[The information follows:]

Prepared Statement of the National Association of Home Builders

The National Association of Home Builders (NAHB), on behalf of its more than 160,000 members, appreciates the opportunity to submit a statement to the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce regarding its hearing on "Workplace Safety: Ensuring a Responsible Regulatory Environment." As the Subcommittee examines this critical issue of responsible workplace safety regulation, NAHB looks forward to contributing in a positive way to seek solutions that both provide for worker safety in the residential construction industry and acknowledge the economic challenges small businesses face.

Introduction

Over the last three years, the Federal Occupational Safety and Health Administration (OSHA) has unleashed a regulatory tsunami—a significant growth in the number and scope of regulations, along with the associated costs of these regulations. The increase in the number of OSHA regulations under development and their impact on the home building industry has raised concerns among NAHB's members about OSHA's priorities. NAHB believes that there are a number of ways in which to make regulatory compliance more cost-effective and make OSHA more user friendly for small businesses, while improving housing affordability and continuing to protect the safety of workers in the home building industry. We applaud

the efforts of Chairman Walberg and this subcommittee to promote a responsible regulatory environment, and look forward to the opportunity to discuss ideas for improving worker safety while reducing the burden on small business.

Home builders not only acknowledge a legal and moral obligation to comply with OSHA regulations and provide their employees with a safe workplace, they share the concerns of this subcommittee, as well as OSHA, to ensure the health and safety of all men and women employed in the home building industry. Further, we share the same ultimate goal of ensuring a safe working environment. Builders know that creating a safe work environment makes good business sense. It is no secret that safety saves lives—and money. Builders have learned that the money saved through reduced workers' compensation costs, lost time due to worker injuries, and less time spent on accident claims and reports can be converted into improvements in the way they operate their businesses, including the management of safety and health on the jobsite. It is also no surprise that a safe jobsite is also the key to retaining good employees and hiring new ones.

Regulatory Burdens on the Home Building Industry

NAHB is a building trade association that represents more than 160,000 member companies nationwide. Our membership consists of builders and remodelers of single-family homes, townhomes, apartments, and condominiums, as well as thousands of specialty trade contractors. More than 95 percent of NAHB builder members meet the federal definition of a "small entity," as defined by the U.S. Small Business Administration and our members employ approximately 5.6 million people nationwide. Our association's builder members will construct about 80 percent of the new housing units in 2011. The more than 5,800 firms that belong to NAHB Remodelers comprise about 17 percent of all firms that specify remodeling as a primary or secondary business activity. The NAHB Multifamily Council is comprised of nearly 800 builders, developers, owners, and property managers of all sizes and types of condominiums and rental apartments. Clearly, NAHB's members touch on all aspects of the industry and our members provide Americans the opportunity to realize the American dream of homeownership.

The majority of the home building industry is comprised of very small businesses. Over 80 percent of NAHB's builder member's build fewer than 25 homes per year and more than half build fewer than 10 homes per year. A typical NAHB builder member firm is truly a small business, employing fewer than 12 workers.

In most small home building companies the owner is the president or chief executive officer. Many businesses are a family affair with husband and wife teams, brothers, sisters, or kids frequently involved in the business. Many times, owners employ only a few workers and view them as family, regularly working in the same conditions as their employees. The staff and owners at these small companies also wear many hats, such as: investor—responsible for funding construction projects; salesman—meeting with prospective home buyers; purchasing manager—in charge of ordering construction materials and supplies; marketing manager—promoting the company and its products; accountant—ensuring creditors and employees are paid; construction manager—ensuring that the home gets built on time and within budget; and even construction worker—swinging the hammer to ensure a quality product.

Many small home builders are often puzzled by the complexity and range of OSHA requirements imposed upon them. Most small construction firms do not have a full-time safety professional to implement the array of regulations because it is simply not possible or economically feasible for these small businesses. They use their limited resources to prevent recognized and serious jobsite hazards, such as falls, excavations/trenching, electrical safety and improving other worker safety and health concerns. A safe and productive workforce is crucial to any company, particularly a small one, and it should be stressed again that these employers want jobsites free of dangerous hazards.

The home building industry continues to be one of the most heavily regulated industries in the nation, which is a significant reason why home ownership is beyond the reach of many Americans. The time and costs of compliance not only impact a business's ability to thrive and grow, they can also negatively affect housing affordability and stifle economic development. Currently, small businesses in the United States bear a disproportionate share of the cost of our nation's regulatory burden. According to the Small Business Administration, federal regulations cost small businesses 40 percent more per employee than it costs large businesses, and compliance with these existing regulations can be very costly—averaging $10,585 per employee in 2010. In our industry, a considerable number of these regulations come from OSHA, and the costs imposed by all regulations are financially onerous to every aspect of the home building industry.

These government rules are a constricting web of regulatory requirements which affects every aspect of the home building process, adding substantially to the cost of construction and preventing many families from becoming home owners. The breadth of these regulations is largely invisible to the home buyer, the public, and even the regulators themselves, yet nevertheless has a profound impact on housing affordability and homeownership. These regulations stem from legislation, including the Occupational Safety and Health Act.

While each of these regulations on its own may not be significantly onerous or problematic, home builders and contractors are often subject to a layering effect, where numerous regulations are stacked on top of one another. When a number of seemingly insignificant regulations are imposed concurrently by a wide variety of government agencies, the cost implications, complexities and delays can be considerable. OSHA for example, in 2011 alone, has thirty-one rules that have been selected for review or development during the coming year, with eleven rules that directly impact the home building industry. Of these eleven rules, five regulations (i.e., hazard communication, combustible dust, Injury and Illness Prevention Program—I2P2, crystalline silica, and walking working surface) were determined to be "economically significant" rulemakings by the Department of Labor, which means that the final rule will have an annual effect on the economy of $100 million or more.

OSHA must examine the cumulative impacts and burdens placed by the myriad regulations—some of which are excessively burdensome, impractical and unworkable—particularly for small businesses. NAHB believes that OSHA will find sufficient room for efficiencies and streamlining.

Working with OSHA

NAHB supports sensible regulation of the residential home building industry to ensure worker safety, and we have been successful in collaborating with OSHA in a variety of voluntary endeavors to advance jobsite safety throughout the home building industry. We believe that our collaborative efforts with OSHA have helped our home builders work more safely, which has saved them time and money—savings which builders can then pass on to home buyers. Some of the collaborative efforts between NAHB and OSHA that have had a positive impact on construction safety in the home building industry include:

• Participation in the OSHA Alliance program, where NAHB and OSHA have combined its collective resources and focused its attention on addressing the safety educational needs of the home building industry workforce. This Alliance has been vitally important to increasing the awareness at OSHA, and among OSHA inspectors, of the differences between residential and commercial construction jobsites, and the often crucial differences between "best practices" at residential vs. commercial build sites.

• Participation in OSHA's Harwood Training Grant program, which has allowed NAHB to provide valuable safety training, for free, at our local home building associations to over 10,000 home builders and trade contractors. Participating in this program has given us a greater ability to reach some of our very small builders, who otherwise would have no access to organized OSHA training opportunities. Additionally, this program has helped us to target the growing Hispanic workforce in our industry. As many of the small businesses in our industry will tell you, it is vitally important that the training and safety materials we provide reach the non-English speaking employee population. NAHB is working hard to get Spanish-language safety materials out to our builder members, and we continue to urge OSHA to do more to ensure that their inspectors and safety materials can target this population.

• Participation on the OSHA's Advisory Committee on Construction Safety and Health (ACCSH), which has opened line of direct communication for home builders with OSHA and has ensured that home builders' viewpoints and opinions are taken into account prior to OSHA issuing construction safety regulations.

• Participation in the OSHA Partnership program by our local associations, which has improved communication between our members and OSHA and has had a positive impact on construction safety in our industry.

NAHB is not an opponent of safety regulations, as long as these safety regulations and rules for enforcement are clearly defined, practical, feasible, cost-effective, and improve worker safety. Ultimately, NAHB believes the best way to improve worker safety is through a collaborative approach with OSHA and a shared goal of regulatory compliance.

Clear Rules and Compliance Assistance; Not Heavy Handed Enforcement

Since December 2010—when OSHA withdrew the "Interim Fall Protection Compliance Guidelines for Residential Construction," and replaced it with the "Compli-

ance Guidance for Residential Construction," (a change NAHB initially supported)—NAHB has been working with OSHA to determine acceptable and feasible methods of reducing or eliminating fall hazards while performing various residential construction tasks. NAHB has met with OSHA leadership on a number of occasions and home builders have been attempting to implement OSHA's fall protection standard, determine what safe practices can be used, identify what engineering limitations exist, and train their workers. Still, compliance uncertainties abound. Home builders remain unsure how to comply with OSHA's new compliance directive because the Agency has not yet clearly defined situations when it may be appropriate to use a fall protection plan and alternative fall protection procedures, which leaves home builders uncertain of what they need to do to fully comply with the regulations and to protect their workers. In addition, our members are finding instances where OSHA's fall protection regulation are not practical or attainable for home builders, especially small companies.

These compliance challenges, coupled with OSHA's move away from compliance assistance and towards vigorous, heavy—handed enforcement, have left home builders fearful of the potentially large fines associated with unintentional non-compliance with OSHA's fall protection standard, as well as other safety and health regulations. Since OSHA has revised its administrative penalty calculation system in 2010, the average fine has doubled. The change in policy came about because the Agency believed the previous penalty structure was too low to have an adequate deterrent effect—an assumption that home builders believe is absolutely false. At a time when home builders are facing extreme economic hardships and construction injury and fatality rates are declining, NAHB believes that the solution to reduce serious injuries and fatalities in the construction industry is compliance assistance from OSHA; not heavy-handed enforcement.

A better solution is an increased focus on OSHA's compliance assistance. NAHB is a strong proponent of the Agency's compliance assistance programs, such as the on-site Consultation Program, which offers free and confidential occupational safety and health compliance assistance to small and medium—sized businesses across the United States. Such programs greatly benefit home builders who do not have the resources to hire a full-time safety professional or develop, implement, and maintain extensive safety and health programs on their own.

Suggestions for Regulatory Reform

On January 18, 2011, President Obama signed Executive Order 13563 "Improving Regulation and Regulatory Review" which is aimed at reducing unnecessary regulatory burdens, promoting economic growth and job creation, and minimizing the impacts of government actions on small businesses. In addition, the Department of Labor (DOL) has recognized the importance of having a formalized system for routine regulatory review and is committed to complying with E.O. 13563. The DOL recently issued its Preliminary Plan for Retrospective Regulatory Review, which creates a framework for reviewing its rules and determining whether they are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive or duplicative of other regulations. NAHB soundly supports this initiative. We are also hopeful this regulatory reform initiative leads to streamlined requirements and reduced burdens on the home building industry and will help get all struggling industries back on their feet.

However, the DOL Preliminary Plan for Retrospective Regulatory Review does little to reduce burdens on the home building industry. This plan lists OSHA's "Signature Burden-Reducing Retrospective Review Projects", which falls very short of expectations. As part of this plan, OSHA has committed to identify those construction standards that are outdated, duplicative, unnecessary, or inconsistent for removal or revision. While we commend OSHA for its effort to address its construction standards (for the first time ever) through the popular standards improvement project, past experience has shown that the Agency is unwilling to tackle revisions to significant rules nominated or recommended by the impacted regulated community.

NAHB has already made a number of suggestions regarding prioritizing rules for review and we recommended in March 2011 that OSHA seriously consider our candidates for immediate regulatory review and revision, including:

- OSHA's fall protection standard, which continues to cause confusion in the residential construction industry due to the array of different trigger heights for which fall protection is required;
- OSHA's Lead in Construction standard, which has never been through the formal notice and comment review process;

• OSHA's trenching and excavation standard due to questions being raised as to whether it is appropriate to apply the provisions of this rule to house foundations/basement excavations; and

• Administrative enhancements to OSHA's penalty policy, which should be evaluated to determine the impacts on small businesses and seek their input on whether or not increasing citations and penalties will improve the safety and health of workers.

In the spirit of the President's commitment to reducing burdens on small businesses and ensuring that regulations are efficient and effective, it is incumbent upon OSHA to ensure that its safety regulations are attainable, practical, cost-effective, and demonstrably improve jobsite safety.

Conclusion

The deep recession that has pervaded all segments of the housing industry since 2008 continues to retard economic recovery in the United States. Home building alone represents between 12 percent and 15 percent of the nation's Gross Domestic Product, and without a revival in this critical industry it is hard to imagine a return to the solid, sustainable levels of growth that would provide the jobs our economy so desperately needs. The already-battered housing industry, however, cannot successfully face these challenges while weighed down by excessive regulatory burdens that do little to protect the health and safety of the home building industry workforce. These dire conditions clearly demonstrate the need for, and benefits of, ensuring that all existing and future OSHA regulations are carefully designed, promulgated, implemented, and enforced to achieve a clearly defined goal while minimizing the burden on small business.

NAHB appreciates the opportunity to provide this statement to the Subcommittee and welcomes the opportunity to work with OSHA and Congress to review existing and new regulations in an effort to ensure they are efficient, effective and workable for home builders and small businesses that drive our industry.

Chairman WALBERG. With that, I will now carry on with the hearing as planned. Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow questions for the record, statements, and extraneous materials referenced during the hearing to be submitted for the official record.

[The information follows:]

[Additional submissions of Mr. Korellis follow:]

NATIONAL ROOFING CONTRACTORS ASSOCIATION,
WASHINGTON, D.C. OFFICE, 324 FOURTH STREET, N.E.,
Washington, D.C. 20002, October 25, 2011.

Hon. TIM WALBERG, *Chairman,*
Subcommittee on Workforce Protections, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN WALBERG: The National Roofing Contractors Association (NRCA) greatly appreciates the opportunity to testify at the Workforce Protections Subcommittee hearing on Oct. 5, 2011, with respect to the Occupational Safety and Health Administration's (OSHA) recent change in fall protection policy and its impact on the roofing industry. We believe the hearing allowed for further dialogue on this important safety issue and we look forward to continuing to work to address the concerns of our industry with both Congress and the agency moving forward to resolve the issues discussed at the hearing.

NRCA is also appreciative of the opportunity to meet with Deputy Assistance Secretary for Occupational Safety and Health Jordan Barab and other OSHA officials on Wednesday, Oct. 12, to further discuss OSHA's fall protection directive. We believe the discussion of our concerns at this meeting was productive and we look forward to working with agency officials to find the best possible solutions for improving worker safety in our industry.

In an effort to continue this dialogue, NRCA offers the following comments in response to the testimony of Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, during the hearing and requests that these comments be included in the hearing record.

First and foremost, NRCA agrees with Dr. Michaels when he says that "Over the longer term, of course, safety pays: good safety and health management tends to translate into profitability and a stronger national economy by preventing worker injuries, saving on a host of costs, spurring worker engagement, and enhancing the company's reputation." This is a message we have been delivering to our 4,000 members, consistently, for many years.

In fact, NRCA was the very first association to develop a joint labor, management and government safety partnership program with OSHA in 1997, which helped OSHA to focus its attention on the most egregious violations in our industry. What we do object to, however, is the promulgation of rules that are not based on empirical data, do not involve the affected stakeholders and fail to provide the flexibility necessary to ensure the best possible safety solutions for the many different types of workplace conditions encountered by contractors on roofing worksites.

That is the crux of our objection of the regulatory action OSHA took in December, 2010, by rescinding its interim guidelines for fall protection in residential construction.

In his written statement, Dr. Michaels asserts that "some residential construction operations (for example, on less steep roofs) had received a temporary exemption in 1995 while a few remaining feasibility issues were resolved." In point of fact, OSHA did not issue a temporary exemption in 1995; it issued interim guidelines for fall protection. The distinction is important because those guidelines were intended to replace the existing standard until a new rulemaking could be conducted. A full rulemaking was never conducted; instead, OSHA simply rescinded the interim standard without sufficiently consulting with NRCA and other affected stakeholders. While that action may be technically within OSHA's purview, it is hardly consistent with the "extensive consultation with all affected parties" that Dr. Michaels says is "one of the most important parts of the regulatory process."

Dr. Michaels goes on to say that "many states, including California and Washington, never adopted our exemption (sic), and have required residential construction to protect workers with fall protection since 1994." A casual reader of that statement might conclude that California and Washington have implemented fall protection programs that are at least as vigorous as OSHA's.

However, the California fall protection standards were carefully developed with the involvement of affected stakeholders—much like the ideal Dr. Michaels mentions—and arrived at a much different outcome than the current federal rules now in place.

For example, California's rules provide for exemptions from fall protection in some cases involving minor repairs. California's rules also allow for the use of "roof jacks," or "slide guards," which are now prohibited by federal OSHA except in unusual cases. California's rules have different height restrictions from federal OSHA's, and have different fall protection requirements based on the type and slope of roof being installed. This common-sense approach has proven to be incredibly effective, and has been well received by employers and workers alike. In 2009, the last year for which complete data are available from Cal-OSHA, there were exactly 3 fatal falls involving roofing workers in California. The data do not show how the falls occurred, but since about 10% of construction workers in the U.S. are employed in California, one would expect the number of fatal falls in California to be much higher.

During questioning, Dr. Michaels was asked whether slide guards prevent falls. He responded by saying: "What slide guards do is they stop slides, they don't stop trips." As the only evidence for this assertion, he referred to an anecdote mentioned earlier by Rep. Woolsey about a worker roofer; regardless, it reinforces our position that OSHA has no reliable data to support its policy change.

Interestingly, our review of OSHA data for fatal falls from roofs tells a much different story. In the period from 2004 to 2008, OSHA reports a total of 153 fatal falls from roofs. Exactly two of those (Dr. Michaels, elsewhere, has said three) ostensibly involved the use of slide guards. But the information surrounding even those two cases is unclear; one cites the use of a "toeboard" and the other a "roof bracket." So it is possible that the information in those two reports may not reflect use of an OSHA-compliant slide guard. Nevertheless, neither of the two accident reports we found described a worker tripping and falling over a slide guard; instead, they were attributable to the roof bracket and toeboard being improperly installed.

Those same data reveal 14 fatal falls from roofs when personal fall arrest systems—harnesses and lanyards—were used. In most cases, the worker detached himself from either the anchor point on the roof or from the harness itself. In a July 18, 2011 letter to Chairman Walberg, Dr. Michaels states that "* * * IMIS records showed no instances where workers experienced a fatal fall while using a personal fall arrest system." Subsequently, Dr. Michaels amended that language to say that

there were "a few fatalities" that involved the use of personal fall arrest systems, but only when those were improperly used. However, this misses the point. Workers do—and will—detach themselves from the harnesses, no matter how thoroughly they have been trained. They do so because the harnesses are cumbersome to work with; because the workers are expected to move around the roof—especially when they are removing an existing roof—and because personal fall arrest systems introduce a variety of new and greater hazards, most notably tripping.

The other point to be made is that it appears that most of the fatal falls from roofs in the OSHA database occurred when no fall protection at all was used. NRCA has never argued for no fall protection; instead we continue to maintain that slide guards have proven to be effective (more effective than the now-mandated personal fall arrest systems) and, especially in reroofing and repair operations, are a much more realistic approach to fall protection. NRCA believes strongly that all contractors must use effective means of fall protection and is willing to partner with OSHA in efforts to improve compliance with fall protection regulations that truly embody the best possible solutions for the roofing industry.

In the course of the hearing, Rep. Woolsey displayed a chart which she said showed that fatal falls from commercial roofing facilities decreased in the period from 1992-2008, which is true. She went on to say that "commercial didn't get the exemption," and that "residential went up considerably" in comparison and did get the exemption. The implicit suggestion is that conventional fall protection methods are required on commercial roofing projects, but were exempted from residential roofing projects. That is simply not the case. A number of fall protection options exist for commercial (or more correctly, low-slope) roofing projects that include the use of a warning line and safety monitor. In commercial roofing, in other words, fall protection options are available that are most appropriately suited to the specific project and not a one-size-fits-all proscription. It is instructive that having multiple options best suited to the Fatal Occupational Injuries for the years 1992—2008 shows that fatal injuries from falls among residential roofing contractors "went up considerably." However, this is not consistent with our reading of BLS CFOI statistics. BLS officials indicate that CFOI data was not broken out between residential and nonresidential roofing contractors prior to 2003, so it is difficult to determine the long-term trend from 1992 to the present. However, from 2003 to 2010, fatal injuries from all types of falls among residential roofing contractors actually declined by 27.7 percent, from 18 in 2003 to 13 in 2010 (2010 data are preliminary), after peaking in 2006. Falls from roofs among roofing contractors actually decreased by 42.8 percent in that period, from 14 in 2003 to 8 in 2010. NRCA agrees that we need to continue working to see that fatal falls in residential roofing continue this pattern of decline in the future, and we fear that OSHA's fall protection directive will make it more difficult to achieve this goal. The most recent BLS data on roofing falls among residential and commercial contractors is enclosed.

OSHA's fall protection standard for residential construction does also allow for other means of fall protection to be used, in addition to personal fall arrest systems. These include the installation of guardrails around the home and the installation of safety nets or catch platforms around the home. These have been used by roofing contractors only in the rarest of circumstances; the obvious problem is how to protect the workers who are installing these devices from falling themselves.

OSHA also recently published a "Fact Sheet" on its website to help employers comply with the fall protection standard. The Fact Sheet says that roofing contractors might also consider the use of aerial lifts and scaffolds on roof repair or replacement projects. The Fact Sheet also shows a rooftop-mounted "whirlybird" in use on a new residential construction project. The installation of a whirlybird system on a typical reroofing project puts workers at substantial risk, and we would simply point out the infeasibility of using aerial lifts, scaffold systems or whirlybirds on a typical, landscaped single-family home.

In his written statement, Dr. Michaels alleges that "by issuing our new residential fall protection policy, OSHA leveled the playing field for that unhappy small contractor and for thousands of other responsible contractors who are trying to compete with those who are trying to cut corners and costs on worker safety." (He had previously described a small contractor who complained that many of his competitors weren't complying with the new policy.)

Unfortunately, the reality is entirely different. According to Census Department data from 2005, more than half of the roofing contractors in the country have four or fewer employees. Most of these companies work in a single community, doing primarily roof repair and replacement work.

Too many use no fall protection at all, and do in fact have a competitive advantage in the marketplace (an advantage, we agree, that is lost as soon as the com-

pany has a serious accident or injury). Quite simply, the more onerous and complex regulations become, the more of an advantage an irresponsible employer has.

In the course of the hearing, Rep. Woolsey displayed a package from The Home Depot that workers, because they are required to be used on steeper-sloped roofs. The issue is: what is the most effective means of preventing falls? The data suggest slide guards are the most effective method on lower-sloped roofs; data NRCA has compiled, and shared with OSHA, also show a significant number of non-fatal injuries that occur when personal fall arrest systems are used on lower-sloped roofs, mostly resulting from tripping.

Finally, Dr. Michaels describes, in his written statement, "the lengthy, careful and methodical regulatory process, with its robust opportunities for stakeholder input and comment * * *" that will "produce a common sense and successful Injury and Illness Prevention Program proposal and standard." As regards the new fall protection policy, those "robust opportunities" included exactly two meetings with NRCA; at one of those, on Dec. 8, 2010, NRCA was assured that a rule change was not imminent and that the discussions would continue. On Dec. 16, 2010, the new fall protection policy was issued, without any further dialogue.

We also find it ironic that Dr. Michaels took the trouble to point out the proposed Injury and Illness Prevention Program (commonly: I2P2) at this hearing. That program is based on the premise that accident and injury prevention should result from an analysis of hazards, so that the most suitable form of protection can be developed for each unique circumstance. That approach flies in the face of the new fall-protection policy, which essentially provides a single remedy for fall protection on all residential projects.

Again, NRCA appreciates the opportunity to testify before the Subcommittee and to respond further to the issues discussed at the hearing. We look forward to continuing to work with members of the Subcommittee and OSHA officials on this very important issue.

Sincerely,

WILLIAM A. GOOD, CAE,
Executive Vice President.

ENCLOSURE: BLS Statistics on Residential and Nonresidential Falls in Roofing

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Occupational Injuries/Illnesses and Fatal Injuries Profiles

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Fatal occupational injuries by selected worker characteristics and selected industry, All U.S., private industry, 2003 - 2010

Characteristic	All industries (4) (10)	Residential roofing contractors							
	2010	2003	2004	2005	2006	2007	2008	2009	2010
Total:	(P) 4,070	24	22	24	27	22	22	21	(P) 14
Employee status:									
Wage and salary workers (6)	(P) 3,071	16	12	15	19	15	14	12	(P) 6
Self-employed (7)	(P) 999	8	10	9	8	7	8	9	(P) 8
Gender:									
Men	(P) 3,776	23	22	24	27	22	22	21	(P) 14
Women	(P) 294	-	-	-	-	-	-	-	-
Age:									
Under 16	(P) 16	-	-	-	-	-	-	-	-
16 to 17	(P) 18	-	-	-	-	-	-	-	-
18 to 19	(P) 47	-	-	-	-	-	-	-	-
20 to 24	(P) 212	6	4	5	-	6	4	-	-
25 to 34	(P) 648	6	3	5	5	-	4	5	-
35 to 44	(P) 764	6	4	4	8	7	9	7	(P) 3
45 to 54	(P) 1,027	4	5	6	7	7	4	3	(P) 3
55 to 64	(P) 819	-	4	3	4	-	-	-	-
65 years and over	(P) 515	-	-	-	-	-	-	-	(P) 3
Race or ethnic origin (1):									
White, non-Hispanic	(P) 2,912	15	11	10	12	11	11	10	(P) 5
Black, non-Hispanic	(P) 321	-	-	-	3	-	-	-	-
Hispanic	(P) 651	9	10	13	12	11	10	10	(P) 7
American Indian, Aleut, Eskimo	(P) 26	-	-	-	-	-	-	-	-
Asian	(P) 126	-	-	-	-	-	-	-	-
Pacific Islander	(P) 5	-	-	-	-	-	-	-	-
Multiple races	(P) 6	-	-	-	-	-	-	-	-
Other or not reported	(P) 23	-	-	-	-	-	-	-	-
Event or exposure (8):									
Contact with objects and equipment	(P) 698	-	-	-	-	-	-	-	-
Struck by object	(P) 382	-	-	-	-	-	-	-	-
Struck by falling object	(P) 253	-	-	-	-	-	-	-	-
Caught in or compressed by equipment or objects	(P) 216	-	-	-	-	-	-	-	-

Caught in running equipment or machinery	(P) 88	-	-	-	-	-	-	-	-
Falls	(P) 598	18	19	21	23	15	17	15	(P) 13
Fall to lower level	(P) 499	18	19	21	23	14	17	15	(P) 13
Fall from ladder	(P) 126	-	3	4	4	4	3	4	(P) 4
Fall from roof	(P) 112	14	16	16	18	7	14	11	(P) 8
Fall from scaffold, staging	(P) 43	-	-	-	-	3	-	-	-
Exposure to harmful substances or environments	(P) 384	-	-	-	-	4	4	-	-
Contact with electric current	(P) 156	-	-	-	-	4	3	-	-
Exposure to caustic, noxious, or allergenic substances	(P) 134	-	-	-	-	-	-	-	-
Oxygen deficiency (including drowning)	(P) 51	-	-	-	-	-	-	-	-
Transportation incidents	(P) 1,532	3	-	-	-	-	-	-	-
Highway incidents	(P) 837	-	-	-	-	-	-	-	-
Collision between vehicles, mobile equipment	(P) 428	-	-	-	-	-	-	-	-
Non-collision incidents	(P) 174	-	-	-	-	-	-	-	-
Non-highway incident, except rail, air, water	(P) 258	-	-	-	-	-	-	-	-
Overturned	(P) 146	-	-	-	-	-	-	-	-
Worker struck by vehicle, mobile equipment	(P) 229	-	-	-	-	-	-	-	-
Aircraft incidents	(P) 119	-	-	-	-	-	-	-	-
Fires and explosions	(P) 172	-	-	-	-	-	-	-	-
Assaults and violent acts	(P) 678	-	-	-	-	-	-	-	-
Homicides	(P) 423	-	-	-	-	-	-	-	-
Self inflicted injuries	(P) 214	-	-	-	-	-	-	-	-
Other or not reported	(P) 8	-	-	-	-	-	-	-	-
Primary source (2) (8) :									
Vehicles	(P) 1,605	3	-	-	-	-	-	-	-
Highway vehicles	(P) 1,118	-	-	-	-	-	-	-	-
Automobiles	(P) 147	-	-	-	-	-	-	-	-
Trucks	(P) 841	-	-	-	-	-	-	-	-
Plant and industrial powered vehicles, tractors	(P) 245	-	-	-	-	-	-	-	-
Forklifts	(P) 53	-	-	-	-	-	-	-	-
Tractors	(P) 183	-	-	-	-	-	-	-	-
Structures and surfaces	(P) 650	18	18	21	20	17	18	15	(P) 13
Floors, walkways, ground surfaces	(P) 586	17	18	20	19	16	17	15	(P) 13
Machinery	(P) 335	-	-	-	-	-	-	-	-
Agriculture and garden machinery	(P) 64	-	-	-	-	-	-	-	-
Construction, logging, and mining machinery	(P) 144	-	-	-	-	-	-	-	-
Material handling machinery	(P) 78	-	-	-	-	-	-	-	-
Parts and materials	(P) 288	-	-	-	-	-	-	-	-
Machine, tool, and electric parts	(P) 96	-	-	-	-	-	-	-	-
Persons, plants, animals, and minerals	(P) 223	-	-	-	-	-	-	-	-
Persons -other than injured worker	(P) 30	-	-	-	-	-	-	-	-
Robber	(P) 12	-	-	-	-	-	-	-	-
Co-worker, former co-worker	(P) 5	-	-	-	-	-	-	-	-
Trees, logs	(P) 92	-	-	-	-	-	-	-	-
Chemicals and chemical products	(P) 151	-	-	-	-	-	-	-	-
Tools, instruments, and equipment	(P) 89	-	-	-	-	-	-	-	-
Containers	(P) 60	-	-	-	-	-	-	-	-

Other	(E) 669	-	-	-	-	-	-	-	-
Bullets and pellets	(E) 428	-	-	-	-	-	-	-	-
Fire, flame, smoke	(E) 109	-	-	-	-	-	-	-	-
Secondary source (J) (8) :									
Vehicles	(E) 644	-	-	-	-	-	-	-	-
Highway vehicles	(E) 546	-	-	-	-	-	-	-	-
Plant and industrial powered vehicles, tractors	(E) 44	-	-	-	-	-	-	-	-
Structures and surfaces	(E) 522	13	13	16	15	10	14	13	(E) 9
Floors, walkways, ground surfaces	(E) 107	-	-	-	-	-	-	-	-
Structures	(E) 248	-	-	-	-	3	-	-	-
Machinery	(E) 194	-	-	-	-	-	-	-	-
Parts and materials	(E) 168	-	-	4	5	3	3	-	-
Machine, tool, and electric parts	(E) 84	-	-	-	-	3	3	-	-
Persons, plants, animals, and minerals	(E) 587	-	-	-	-	-	-	-	-
Persons -other than injured worker	(E) 398	-	-	-	-	-	-	-	-
Robber	(E) 160	-	-	-	-	-	-	-	-
Co-worker, former co-worker	(E) 52	-	-	-	-	-	-	-	-
Trees, logs	(E) 157	-	-	-	-	-	-	-	-
Chemicals and chemical products	(E) 119	-	-	-	-	-	-	-	-
Tools, instruments, and equipment	(E) 182	-	3	3	4	4	3	4	(E) 4
Containers	(E) 88	-	-	-	-	-	-	-	-
Other	(E) 132	-	3	-	-	-	-	-	-
Liquids (including water)	(E) 18	-	-	-	-	-	-	-	-
No secondary source	(E) 1,434	4	-	-	-	-	-	-	-
Nature (8) :									
Intracranial injuries	(E) 667	10	6	9	11	7	10	8	(E) 5
Other traumatic injuries	(E) 1,166	3	5	5	-	7	3	-	-
Internal injuries	(E) 421	-	4	3	-	3	-	-	-
Asphyxiations, suffocations	(E) 289	-	-	-	-	-	-	-	-
Drownings	(E) 103	-	-	-	-	-	-	-	-
Electrocutions	(E) 154	-	-	-	-	4	3	-	-
Poisonings, toxic effects	(E) 188	-	-	-	-	-	-	-	-
Open wounds	(E) 502	-	-	-	-	-	-	-	-
Gunshot wounds	(E) 431	-	-	-	-	-	-	-	-
Burns (heat, chemical, etc.)	(E) 91	-	-	-	-	-	-	-	-
Multiple traumatic injuries	(E) 1,468	8	10	9	8	7	8	11	(E) 5
Intracranial injuries and injuries to internal organs	(E) 220	-	-	-	-	5	3	-	-
Part of body (8) :									
Head	(E) 827	10	6	9	12	7	10	8	(E) 5
Trunk	(E) 649	-	4	6	4	4	-	-	-
Chest	(E) 324	-	3	3	-	3	-	-	-
Back	(E) 40	-	-	-	-	-	-	-	-
Neck	(E) 116	-	-	-	-	-	-	-	-
Lower extremities	(E) 61	-	-	-	-	-	-	-	-
Upper extremities	(E) 16	-	-	-	-	-	-	-	-
Body systems	(E) 718	-	-	-	-	4	3	-	-
Multiple	(E) 1,682	9	10	8	8	7	8	12	(E) 5
Worker activity:									
Vehicular and transportation	(E) 1,617	3	-	-	-	-	-	-	-

operations									
Using or operating tools, machinery	(P) 375	-	-	-	-	-	-	-	-
Constructing, repairing, cleaning	(P) 901	18	19	17	21	11	19	14	(P) 11
Protective service activities	(P) 61	-	-	-	-	-	-	-	-
Materials handling operations	(P) 284	-	-	4	-	-	-	-	-
Physical activities	(P) 247	-	-	-	-	7	-	-	(P) 3
Other activities	(P) 391	-	-	-	-	-	-	-	-
Tending a retail establishment	(P) 186	-	-	-	-	-	-	-	-
Not reported	(P) 194	-	-	-	-	-	-	-	-
Location:									
Private residence	(P) 400	19	18	21	21	16	17	17	(P) 12
Farm	(P) 470	-	-	-	-	-	-	-	-
Mine, quarry	(P) 70	-	-	-	-	-	-	-	-
Industrial place and premises	(P) 903	3	-	3	4	4	4	-	-
Place for recreation or sports	(P) 60	-	-	-	-	-	-	-	-
Street and highway	(P) 1,136	-	-	-	-	-	-	-	-
Public building	(P) 490	-	-	-	-	-	-	-	-
Residential institutions	(P) 20	-	-	-	-	-	-	-	-
Other or not reported	(P) 521	-	-	-	-	-	-	-	-
Occupation (2) :									
Management occupations	(P) 518	-	-	-	-	-	-	-	-
Business and financial operations occupations	(P) 20	-	-	-	-	-	-	-	-
Computer and mathematical occupations	(P) 10	-	-	-	-	-	-	-	-
Architecture and Engineering occupations	(P) 46	-	-	-	-	-	-	-	-
Life, physical, and social science occupations	(P) 12	-	-	-	-	-	-	-	-
Community and social services occupations	(P) 20	-	-	-	-	-	-	-	-
Legal occupations	(P) 8	-	-	-	-	-	-	-	-
Education, training, and library occupations	(P) 8	-	-	-	-	-	-	-	-
Arts, design, entertainment, sports, and media occupations	(P) 47	-	-	-	-	-	-	-	-
Healthcare practitioners and technical occupations	(P) 59	-	-	-	-	-	-	-	-
Healthcare support occupations	(P) 16	-	-	-	-	-	-	-	-
Protective service occupations	(P) 64	-	-	-	-	-	-	-	-
Food preparation and serving related occupations	(P) 59	-	-	-	-	-	-	-	-
Building and grounds cleaning and maintenance occupations	(P) 204	-	-	-	-	-	-	-	-
Personal care and service occupations	(P) 63	-	-	-	-	-	-	-	-
Sales and related occupations	(P) 273	-	-	-	-	-	-	-	-
Office and administrative support occupations	(P) 45	-	-	-	-	-	-	-	-
Farming, fishing, and forestry occupations	(P) 257	-	-	-	-	-	-	-	-
Construction and extraction occupations	(P) 727	23	20	23	24	21	22	21	(P) 14
Installation, maintenance, and repair occupations	(P) 324	-	-	-	-	-	-	-	-
Production occupations	(P) 213	-	-	-	-	-	-	-	-
Transportation and material moving occupations	(P) 1,077	-	-	-	-	-	-	-	-
Military specific occupations (3)	-	-	-	-	-	-	-	-	-

Footnotes

(1) Persons identified as Hispanic or Latino may be of any race. The race categories shown exclude data for Hispanics and Latinos.
(2) The primary source of injury identifies the object, substance, or exposure that directly produced or inflicted the injury. For most transportation incidents, the primary source identifies the vehicle in which the deceased was an occupant. For most falls, the primary source identifies the surface or object contacted.
(3) The secondary source of injury, if any, identifies the object, substance, or person that generated the source of injury or that contributed to the event or exposure. For vehicle collisions, the deceased's vehicle is the primary source and the other object (truck, road divider, etc.) is the secondary source. For most homicides, the "bullet" is the primary source and the "perpetrator" is the secondary source. For most falls, the secondary source identifies the equipment or surface from which the worker fell.
(4) Mining includes fatalities at all establishments categorized as Mining (Sector 21) in the North American Industry Classification System, 2002, including establishments not governed by the Mine Safety and Health Administration (MSHA) rules and reporting, such as those in Oil and Gas Extraction.
(5) Military specific occupations include fatalities to persons identified as resident armed forces regardless of individual occupation listed.
(6) May include volunteers and workers receiving other types of compensation.
(7) Includes self-employed workers, owners of unincorporated businesses and farms, members of partnerships, paid and unpaid family workers, and may include owners of incorporated businesses.
(8) Based on the 1992 BLS Occupational Injury and Illness Classification Manual.
(9) Based on the 2000 Standard Occupational Classification System.
(10) Industry data from 2003 to 2008 are classified using the 2002 North American Industry Classification System (NAICS). Industry data after 2008 are classified using the 2007 NAICS.
(11) Includes fatalities to workers employed by governmental organizations regardless of industry.
(P) Preliminary

NOTE: Dashes indicate no data or data that do not meet publication criteria. Totals for major categories may include subcategories not shown separately. Data for all years are final unless footnoted by "P" for preliminary data.
SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with State, New York City, District of Columbia, and Federal agencies, Census of Fatal Occupational Injuries, Oct 24, 2011

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Occupational Injuries/Illnesses and Fatal Injuries Profiles

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Create a New Profile Table

Fatal occupational injuries by selected worker characteristics and selected industry, All U.S., private industry, 2003 - 2010

Characteristic	All industries (4) (10)	Nonresidential roofing contractors							
	2010	2003	2004	2005	2006	2007	2008	2009	2010
Total:	(P) 4,070	14	32	11	19	19	15	16	(P) 14
Employee status:									
Wage and salary workers (6)	(P) 3,071	12	30	7	14	16	13	11	(P) 11
Self-employed (7)	(P) 999	-	-	4	5	3	-	5	(P) 3
Gender:									
Men	(P) 3,776	14	31	11	18	19	15	16	(P) 13
Women	(P) 294	-	-	-	-	-	-	-	-
Age:									
Under 16	(P) 16	-	-	-	-	-	-	-	-
16 to 17	(P) 18	-	-	-	-	-	-	-	-
18 to 19	(P) 47	-	-	-	-	-	-	-	-
20 to 24	(P) 212	-	3	-	-	-	-	3	-
25 to 34	(P) 648	5	6	-	5	5	4	5	-
35 to 44	(P) 764	-	13	5	7	3	6	-	(P) 5
45 to 54	(P) 1,027	6	5	3	3	6	-	3	(P) 4
55 to 64	(P) 819	-	3	-	-	3	-	-	(P) 3
65 years and over	(P) 515	-	-	-	-	-	-	-	-
Race or ethnic origin (1) :									
White, non-Hispanic	(P) 2,912	12	12	5	9	11	8	4	(P) 11
Black, non-Hispanic	(P) 321	-	4	-	-	-	-	-	-
Hispanic	(P) 651	-	16	6	8	7	5	12	(P) 3
American Indian, Aleut, Eskimo	(P) 26	-	-	-	-	-	-	-	-
Asian	(P) 126	-	-	-	-	-	-	-	-
Pacific Islander	(P) 5	-	-	-	-	-	-	-	-
Multiple races	(P) 6	-	-	-	-	-	-	-	-
Other or not reported	(P) 23	-	-	-	-	-	-	-	-
Event or exposure (8) :									
Contact with objects and equipment	(P) 698	-	-	-	-	-	-	-	-
Struck by object	(P) 382	-	-	-	-	-	-	-	-
Struck by falling object	(P) 253	-	-	-	-	-	-	-	-
Caught in or compressed by equipment or objects	(P) 216	-	-	-	-	-	-	-	-

Caught in running equipment or machinery	(P) 88	-	-	-	-	-	-	-	-
Falls	(P) 598	11	22	6	14	12	12	14	(P) 11
Fall to lower level	(P) 499	10	22	6	14	12	12	14	(P) 11
Fall from ladder	(P) 126	-	-	-	3	-	-	-	-
Fall from roof	(P) 112	9	19	5	9	9	10	14	(P) 10
Fall from scaffold, staging	(P) 43	-	-	-	-	-	-	-	-
Exposure to harmful substances or environments	(P) 384	-	3	-	-	3	-	-	-
Contact with electric current	(P) 156	-	-	-	-	-	-	-	-
Exposure to caustic, noxious, or allergenic substances	(P) 134	-	-	-	-	-	-	-	-
Oxygen deficiency (including drowning)	(P) 51	-	-	-	-	-	-	-	-
Transportation incidents	(P) 1,532	-	6	-	-	-	-	-	-
Highway incidents	(P) 837	-	5	-	-	-	-	-	-
Collision between vehicles, mobile equipment	(P) 428	-	5	-	-	-	-	-	-
Non-collision incidents	(P) 174	-	-	-	-	-	-	-	-
Non-highway incident, except rail, air, water	(P) 258	-	-	-	-	-	-	-	-
Overturned	(P) 146	-	-	-	-	-	-	-	-
Worker struck by vehicle, mobile equipment	(P) 229	-	-	-	-	-	-	-	-
Aircraft incidents	(P) 119	-	-	-	-	-	-	-	-
Fires and explosions	(P) 172	-	-	-	-	-	-	-	-
Assaults and violent acts	(P) 678	-	-	-	-	-	-	-	-
Homicides	(P) 423	-	-	-	-	-	-	-	-
Self inflicted injuries	(P) 214	-	-	-	-	-	-	-	-
Other or not reported	(P) 8	-	-	-	-	-	-	-	-
Primary source (2) (8) :									
Vehicles	(P) 1,605	-	6	-	-	3	-	-	-
Highway vehicles	(P) 1,118	-	6	-	-	-	-	-	-
Automobiles	(P) 147	-	-	-	-	-	-	-	-
Trucks	(P) 841	-	5	-	-	-	-	-	-
Plant and industrial powered vehicles, tractors	(P) 245	-	-	-	-	-	-	-	-
Forklifts	(P) 53	-	-	-	-	-	-	-	-
Tractors	(P) 183	-	-	-	-	-	-	-	-
Structures and surfaces	(P) 650	10	21	6	16	13	12	14	(P) 10
Floors, walkways, ground surfaces	(P) 586	10	20	6	14	12	12	14	(P) 10
Machinery	(P) 335	-	-	-	-	-	-	-	-
Agriculture and garden machinery	(P) 64	-	-	-	-	-	-	-	-
Construction, logging, and mining machinery	(P) 144	-	-	-	-	-	-	-	-
Material handling machinery	(P) 78	-	-	-	-	-	-	-	-
Parts and materials	(P) 288	-	-	-	-	-	-	-	-
Machine, tool, and electric parts	(P) 96	-	-	-	-	-	-	-	-
Persons, plants, animals, and minerals	(P) 223	-	-	-	-	-	-	-	-
Persons -other than injured worker	(P) 30	-	-	-	-	-	-	-	-
Robber	(P) 12	-	-	-	-	-	-	-	-
Co-worker, former co-worker	(P) 5	-	-	-	-	-	-	-	-
Trees, logs	(P) 92	-	-	-	-	-	-	-	-
Chemicals and chemical products	(P) 151	-	-	-	-	-	-	-	-
Tools, instruments, and equipment	(P) 89	-	-	-	-	-	-	-	-
Containers	(P) 60	-	-	-	-	-	-	-	-

Other	(P) 669	-	4	-	-	-	-	-	-
Bullets and pellets	(P) 428	-	-	-	-	-	-	-	-
Fire, flame, smoke	(P) 109	-	-	-	-	-	-	-	-
Secondary source (3) (8) :									
Vehicles	(P) 644	-	7	-	3	3	-	-	-
Highway vehicles	(P) 546	-	5	-	-	3	-	-	-
Plant and industrial powered vehicles, tractors	(P) 44	-	-	-	-	-	-	-	-
Structures and surfaces	(P) 522	9	19	7	10	11	10	13	(P) 11
Floors, walkways, ground surfaces	(P) 107	-	-	-	-	-	-	-	-
Structures	(P) 248	-	-	-	-	-	-	-	-
Machinery	(P) 194	-	-	-	-	-	-	-	-
Parts and materials	(P) 168	-	-	-	-	-	-	-	-
Machine, tool, and electric parts	(P) 84	-	-	-	-	-	-	-	-
Persons, plants, animals, and minerals	(P) 587	-	-	-	-	-	-	-	-
Persons -other than injured worker	(P) 398	-	-	-	-	-	-	-	-
Robber	(P) 160	-	-	-	-	-	-	-	-
Co-worker, former co-worker	(P) 52	-	-	-	-	-	-	-	-
Trees, logs	(P) 157	-	-	-	-	-	-	-	-
Chemicals and chemical products	(P) 119	-	-	-	-	-	-	-	-
Tools, instruments, and equipment	(P) 182	-	-	-	3	-	-	-	-
Containers	(P) 88	-	-	-	-	-	-	-	-
Other	(P) 132	-	-	-	-	-	-	-	-
Liquids (including water)	(P) 18	-	-	-	-	-	-	-	-
No secondary source	(P) 1,434	-	3	-	-	3	-	-	-
Nature (8) :									
Intracranial injuries	(P) 667	4	11	5	8	3	7	3	-
Other traumatic injuries	(P) 1,166	-	-	-	-	6	-	3	-
Internal injuries	(P) 421	-	-	-	-	3	-	-	-
Asphyxiations, suffocations	(P) 289	-	-	-	-	-	-	-	-
Drownings	(P) 103	-	-	-	-	-	-	-	-
Electrocutions	(P) 154	-	-	-	-	-	-	-	-
Poisonings, toxic effects	(P) 188	-	-	-	-	-	-	-	-
Open wounds	(P) 502	-	-	-	-	-	-	-	-
Gunshot wounds	(P) 431	-	-	-	-	-	-	-	-
Burns (heat, chemical, etc.)	(P) 91	-	-	-	-	-	-	-	-
Multiple traumatic injuries	(P) 1,468	8	14	5	9	9	7	9	(P) 8
Intracranial injuries and injuries to internal organs	(P) 220	3	-	-	-	-	-	4	-
Part of body (8) :									
Head	(P) 827	4	11	5	8	3	7	3	-
Trunk	(P) 649	-	-	-	-	3	-	3	-
Chest	(P) 324	-	-	-	-	-	-	-	-
Back	(P) 40	-	-	-	-	-	-	-	-
Neck	(P) 116	-	-	-	-	-	-	-	-
Lower extremities	(P) 61	-	-	-	-	-	-	-	-
Upper extremities	(P) 16	-	-	-	-	-	-	-	-
Body systems	(P) 718	-	3	-	-	3	-	-	-
Multiple	(P) 1,682	8	16	5	9	9	7	9	(P) 8
Worker activity:									
Vehicular and transportation	(P) 1,617	-	6	-	-	-	-	-	-

operations									
Using or operating tools, machinery	(P) 375	-	-	-	-	-	-	-	-
Constructing, repairing, cleaning	(P) 901	10	19	6	11	13	9	15	(P) 11
Protective service activities	(P) 61	-	-	-	-	-	-	-	-
Materials handling operations	(P) 284	-	5	-	-	-	-	-	-
Physical activities	(P) 247	-	-	-	4	-	-	-	-
Other activities	(P) 391	-	-	-	-	-	-	-	-
Tending a retail establishment	(P) 186	-	-	-	-	-	-	-	-
Not reported	(P) 194	-	-	-	-	-	-	-	-
Location:									
Private residence	(P) 400	-	-	-	-	-	-	-	-
Farm	(P) 470	-	-	-	-	-	-	-	-
Mine, quarry	(P) 70	-	-	-	-	-	-	-	-
Industrial place and premises	(P) 903	8	25	6	14	13	10	14	(P) 10
Place for recreation or sports	(P) 60	-	-	-	-	-	-	-	-
Street and highway	(P) 1,136	-	6	-	-	-	-	-	-
Public building	(P) 490	5	-	4	-	3	3	-	-
Residential institutions	(P) 20	-	-	-	-	-	-	-	-
Other or not reported	(P) 521	-	-	-	-	-	-	-	-
Occupation (2) :									
Management occupations	(P) 518	-	-	-	-	-	-	-	-
Business and financial operations occupations	(P) 20	-	-	-	-	-	-	-	-
Computer and mathematical occupations	(P) 10	-	-	-	-	-	-	-	-
Architecture and Engineering occupations	(P) 46	-	-	-	-	-	-	-	-
Life, physical, and social science occupations	(P) 12	-	-	-	-	-	-	-	-
Community and social services occupations	(P) 20	-	-	-	-	-	-	-	-
Legal occupations	(P) 8	-	-	-	-	-	-	-	-
Education, training, and library occupations	(P) 8	-	-	-	-	-	-	-	-
Arts, design, entertainment, sports, and media occupations	(P) 47	-	-	-	-	-	-	-	-
Healthcare practitioners and technical occupations	(P) 59	-	-	-	-	-	-	-	-
Healthcare support occupations	(P) 16	-	-	-	-	-	-	-	-
Protective service occupations	(P) 64	-	-	-	-	-	-	-	-
Food preparation and serving related occupations	(P) 59	-	-	-	-	-	-	-	-
Building and grounds cleaning and maintenance occupations	(P) 204	-	-	-	-	-	-	-	-
Personal care and service occupations	(P) 63	-	-	-	-	-	-	-	-
Sales and related occupations	(P) 273	-	-	-	-	-	-	-	-
Office and administrative support occupations	(P) 45	-	-	-	-	-	-	-	-
Farming, fishing, and forestry occupations	(P) 257	-	-	-	-	-	-	-	-
Construction and extraction occupations	(P) 727	11	31	9	15	16	13	16	(P) 13
Installation, maintenance, and repair occupations	(P) 324	-	-	-	-	-	-	-	-
Production occupations	(P) 213	-	-	-	-	-	-	-	-
Transportation and material moving occupations	(P) 1,077	-	-	-	-	-	-	-	-
Military specific occupations (5)	-	-	-	-	-	-	-	-	-

Footnotes

(1) Persons identified as Hispanic or Latino may be of any race. The race categories shown exclude data for Hispanics and Latinos.
(2) The primary source of injury identifies the object, substance, or exposure that directly produced or inflicted the injury. For most transportation incidents, the primary source identifies the vehicle in which the deceased was an occupant. For most falls, the primary source identifies the surface or object contacted.
(3) The secondary source of injury, if any, identifies the object, substance, or person that generated the source of injury or that contributed to the event or exposure. For vehicle collisions, the deceased's vehicle is the primary source and the other object (truck, road divider, etc.) is the secondary source. For most homicides, the "bullet" is the primary source and the "perpetrator" is the secondary source. For most falls, the secondary source identifies the equipment or surface from which the worker fell.
(4) Mining includes fatalities at all establishments categorized as Mining (Sector 21) in the North American Industry Classification System, 2002, including establishments not governed by the Mine Safety and Health Administration (MSHA) rules and reporting, such as those in Oil and Gas Extraction.
(5) Military specific occupations include fatalities to persons identified as resident armed forces regardless of individual occupation listed.
(6) May include volunteers and workers receiving other types of compensation.
(7) Includes self-employed workers, owners of unincorporated businesses and farms, members of partnerships, paid and unpaid family workers, and may include owners of incorporated businesses.
(8) Based on the 1992 BLS Occupational Injury and Illness Classification Manual.
(9) Based on the 2000 Standard Occupational Classification System.
(10) Industry data from 2003 to 2008 are classified using the 2002 North American Industry Classification System (NAICS). Industry data after 2008 are classified using the 2007 NAICS.
(11) Includes fatalities to workers employed by governmental organizations regardless of industry.
(P) Preliminary

NOTE: Dashes indicate no data or data that do not meet publication criteria. Totals for major categories may include subcategories not shown separately. Data for all years are final unless footnoted by "P" for preliminary data.
SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with State, New York City, District of Columbia, and Federal agencies, Census of Fatal Occupational Injuries, Oct 24, 2011

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www.bls.gov/IIF/ | Telephone: 1-202-691-6170 | Contact IIF

[Additional submissions of Ms. Woolsey follow:]

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Building and Construction Trades Department

AMERICAN FEDERATION OF LABOR – CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 SIXTEENTH ST., N.W., SUITE 600 • WASHINGTON, D.C. 20006-4104

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September 15, 2011

SENT ELECTRONICALLY
Via Fax to (202) 693-1659

Assistant Secretary David Michaels, PhD
Assistant Secretary of Labor
Occupational Safety and Health Administration
200 Constitution Ave., NW
Washington DC 20210

Dear Dr. Michaels:

On behalf of the Building and Construction Trades Department, AFL-CIO, which represents thirteen international/national construction unions and more than two million workers, I am writing to express strong support to OSHA's decision to rescind STD 03-00-001, the Agency's interim enforcement policy on fall protection for specified residential construction activities in December 2010. By rescinding this out of date enforcement policy and requiring employers to implement feasible and available fall protection systems for residential workers, lives will be saved.

This decision was long overdue, and has been supported by OSHA's Advisory Committee for Construction Safety and Health (ACCSH), which is comprised of worker and employer representatives, including employers in the residential sector. This construction industry group recognized the interim policy, adopted shortly after the promulgation of the construction fall protection regulations in 1994, did not provide adequate protection to workers in the residential sector. We are pleased that OSHA proceeded with the support of ACCSH, which we believe is the appropriate mechanism for OSHA to engage construction industry stakeholders for guidance on regulations and other matters of policy impacting our industry.

By rescinding the interim enforcement policy, workers in the residential sector will be afforded a safer workplace. National data show that there are more fall-related fatalities in the residential sector than any other construction industry sector. By rescinding the old, out-dated directive, employers in the residential sector will be required, where possible, to implement safeguards that are in place for workers in other sectors to prevent fall-related injuries and deaths. Not only will these workers be protected to a similar level as other construction workers, there is a provision in the

OSHA fall protection regulations allow the employer, where necessary, to develop alternative fall protection methods where traditional methods are impossible. In this case, the employer continues to have the option of developing a fall protection plan to describe what alternative methods will be employed to protect the workforce. It's time for workers in the residential sector to be afforded the same fall protections as workers in other industry sectors.

In closing, I wish to thank you for your efforts to protect worker safety and health by rescinding STD 03-00-001.

Sincerely,

Mark H. Ayers

Mark H. Ayers
President

LYNN WOOLSEY
1ST DISTRICT, CALIFORNIA

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EDUCATION AND THE WORKFORCE:
RANKING MEMBER, SUBCOMMITTEE ON WORKFORCE PROTECTIONS
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Congress of the United States
House of Representatives
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October 17, 2011

The Honorable Tim Walberg
Chairman, Workforce Protections Subcommittee
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Walberg:

I am submitting a letter from the American Cancer Society regarding the hearing that was held on October 5, 2011 entitled "*Ensuring a Responsible Regulatory Environment*", and ask that it be inserted into the Committee's official hearing record.

Sincerely,

Lynn C. Woolsey
Member of Congress

PRINTED ON RECYCLED PAPER

AMERICAN CANCER SOCIETY CANCER ACTION NETWORK,
555 11TH STREET NW, SUITE 300,
Washington, DC 20004, October 14, 2011.

Hon. TIM WALBERG, *Chairman;* Hon. LYNN WOOLSEY, *Ranking Member, Subcommittee on Workforce Protections, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC 20515.*

DEAR CHAIRMAN WALBERG AND RANKING MEMBER WOOLSEY: Recently, on October 5, 2011, the Subcommittee on Workforce Protections conducted a hearing entitled Ensuring a Responsible Regulatory Environment in which a member of the subcommittee referred to an American Cancer Society (Society) position on the subject of silica exposure and cancer.

The Society looks to the research of the National Institutes of Health's National Toxicology Program and the International Agency for Research on Cancer for determinations regarding carcinogenicity. Based on the evidence, certain forms of silica

present in the workplace are carcinogenic, and this position is stated on the Society's website at the following address:

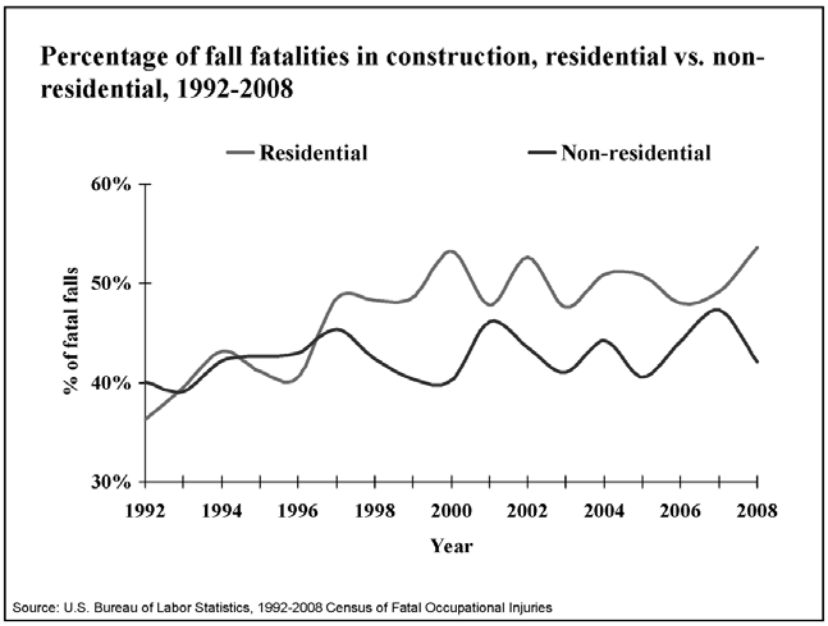
http://www.cancer.org/acs/groups/content/@nho/documents/document/occupationandcancerpdf.pdf.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN works to encourage elected officials and candidates to make cancer a top national priority.

If I may be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

CHRISTOPHER W. HANSEN,
President.



Chairman WALBERG. We have two distinguished panels today. And I would like to begin first by introducing the first panel. One, Assistant Secretary of Occupational Safety and Health Administration, Dr. David Michaels. Before I recognize Dr. Michaels, let me just cut to the chase about the hearing. You know how the lights work. I don't have to go through that. But also, in appreciation for you being here, I am not going to be hard and fast about it. But let's do it all within reason of the 5 minutes. But it is greatly appreciated that you are here to give direct testimony to us. So having said that, I recognize Dr. Michaels for his testimony.

STATEMENT OF HON. DAVID MICHAELS, ASSISTANT SECRETARY, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. MICHAELS. Chairman Walberg, Chairman Kline, Ranking Member Woolsey, members of the committee, thank you for inviting me to testify today. This year marks OSHA's 40th anniversary. And I think that by any measure, the agency has been one of the true successes of our government's worker protection efforts. OSHA has proven that we can have both jobs and job safety.

The evidence is unambiguous: OSHA's commonsense standards save lives. For example, in the late 1980s, OSHA enacted a rule to protect workers in grain-handling facilities from dust explosions. Since then, explosions in the industry have declined 42 percent, worker injuries have dropped 60 percent, and deaths have fallen 70 percent. And the industry continues to thrive.

In fact, impeding OSHA from doing its job can destroy both the fabric of American families and our fragile economy. A workplace

accident can shake a family's tenuous hold on their middle-class status. With so many American families struggling to make ends meet, few can afford the devastating impact of a workplace injury, illness, or fatality. In addition, these tragedies take an enormous toll on the Nation's economy in the form of higher workers compensation costs, lost productivity, and property damage. This is a toll that is intolerable any time, but particularly in the difficult economic times that we are experiencing today. That is why the primary purpose of OSHA's enforcement program is deterrence.

We recognize that most employers want to keep their employees safe, and they make great efforts to protect them from hazards. Our strategic targeting, focusing on the most dangerous workplaces and most recalcitrant employers, results in the most efficient and effective use of the taxpayers' money. Strong and fair enforcement of the law has particular importance during this difficult economic period. Responsible employers who invest in the health and safety of their employees are at a disadvantage competing with irresponsible employers who cut corners on safety. Enforcement, accompanied by meaningful penalties, levels the playing field.

Our enforcement program is built upon the foundation of commonsense standards. For 40 years, OSHA has been carefully crafting safeguards that have made working conditions safer, without slowing the growth of American business. Our standards are the product of a complex process that encourages the input of our stakeholders and includes the active participation by economists, scientists, technological experts, employers, trade associations, labor, and the public. OSHA holds stakeholder meetings, solicits written comments, and conducts informal hearings in a way that I don't think is paralleled in any other regulatory agency. All participants in OSHA's standard-setting hearings have the opportunity to question, to cross-examine any other participants when that second participant presents. OSHA welcomes public participation in the rulemakings, which as you can imagine, can be both lively and lengthy affairs. But we do that to ensure that OSHA's legal safeguards make sense.

The length and complexity of the process, along with the multiple levels of public participation, mean that OSHA issues few new standards. For example, over the past 2 years, OSHA has issued only two major standards: cranes and derricks; and shipyard safety. While we may not issue many standards, I feel strongly that the standards on our current regulatory agenda are vitally important. I am committed to moving them forward as expeditiously as possible, and I hope this Congress will support our thoughtful efforts.

Finally, I would like to share with you OSHA's strong commitment to compliance assistance. The centerpiece of our compliance assistance program is our On-Site Consultation Program, which provides professional, high-quality, and individualized assistance to small business at no cost. We understand that most small businesses want to protect their employees, but often cannot afford to hire a health and safety professional. Right now, our consultation program is giving the highest priority to residential construction contractors to help them get up to speed on our new fall protection policy. We strategically use our compliance assistance resources where they will matter the most. That is why we are committed

to increasing our outreach to hard-to-reach vulnerable workers, who often have the most dangerous jobs. And through our VPP and SHARP programs, we hold up as role models employers who have developed outstanding injury and illness prevention programs. These programs work, and these employers have greatly reduced worker injury rates, and they experience higher productivity and significant cost savings by lowering their workers compensation premiums.

Thank you for inviting me today. I am happy to answer your questions.

Chairman WALBERG. Thank you, Dr. Michaels.

[The statement of Mr. Michaels follows:]

Prepared Statement of David Michaels, Ph.D., MPH Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor

Thank you very much for inviting me to testify here today. I appreciate the opportunity to come before you to describe the important work of the Occupational Safety and Health Administration (OSHA), and to listen to your comments and suggestions about how we can best fulfill the important mission given to us by the Congress to protect America's workers while on the job.

This year marks the 40th anniversary of the establishment of OSHA and I think by any measure, this agency has been one of the true successes of government efforts to protect workers and promote the public welfare.

It is difficult to believe that only 40 years ago most American workers did not enjoy the basic human right to work in a safe workplace. Instead, they were told they had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job. Passage of the Occupational Safety and Health Act (OSH Act) laid the foundation for the great progress we have made in worker safety and health since those days.

The promise of a safe and healthful workplace is as important today as it was 40 years ago when the OSH Act first passed. We understand and share your concern and the concern of all Americans that protecting workers' health and lives on the job not interfere with the efforts we are making to ensure that businesses and jobs in this country grow and thrive on a level playing field. But neither should we let an economic crisis leave workers more at risk. As the President recently reminded us in his address to the Joint Session of Congress:

"what we can't do * * * is let this economic crisis be used as an excuse to wipe out the basic protections that Americans have counted on for decades. I reject the idea that we need to ask people to choose between their jobs and their safety."

OSHA has proven over the past 40 years that we can have both jobs and job safety. Employers, unions, academia, and private safety and health organizations pay a great deal more attention to worker protection today than they did prior to enactment of this landmark legislation. Indeed, the results of this law speak for themselves. In 1971, the National Safety Council estimated that 38 workers died on the job every day of the year. Today, the number is 12 per day, with a workforce that is almost twice as large. Injuries and illnesses also are down dramatically—from 10.9 per 100 workers per year in 1972 to less than 4 per 100 workers in 2009.

Some of this decline in injuries, illnesses and fatalities is due to the shift of our economy from manufacturing to service industries. However, it is also clear that much of this progress can be attributed to improved employer safety and health practices encouraged by the existence of a government regulatory agency focused on identifying and eliminating workplace hazards and assisting employers in implementing the best practices to eliminate those hazards.

The evidence is unambiguous—OSHA's common sense standards save lives:

- In the late 1980s, OSHA enacted a standard to protect workers in grain handling facilities from dust explosions. Since then, explosions in these industries have declined 42 percent, worker injuries have dropped 60 percent, and worker deaths have fallen 70 percent.
- OSHA's 1978 Cotton Dust standard drove down rates of brown lung disease among textile workers from 12 percent to 1 percent.
- OSHA efforts in promulgating the asbestos and benzene standards are responsible for dramatic reductions in workplace exposure to asbestos, a mineral that causes asbestosis, lung cancer and mesothelioma (a cancer of the lining of the lungs

and stomach) and to benzene, a solvent that causes leukemia. These two standards alone have prevented many thousands of cases of cancer.

• OSHA standards have helped shield healthcare workers from needlestick hazards and bloodborne pathogens. According to the Centers for Disease Control and Prevention, new cases of workplace-acquired Hepatitis B among healthcare workers decreased 95%, as a result of the widespread hepatitis B immunization and the use of universal precautions and other measures required by OSHA's bloodborne pathogens standard.[1]

Although these are notable successes, there is still much work to do. Every week I sign a stack of letters, telling the mother, or husband, or child of a worker killed on the job that OSHA is opening an investigation into the events that led to the death of their loved one.

Each of the twelve workers who die on the job every single day in this country could well leave behind grieving children, spouses and parents. Unfortunately, most of these fatalities never make the national headlines or even the front pages of local papers.

And these 12 workers killed on the job today and every day do not account for the tens of thousands of workers estimated to die every year from work-related disease.

Too often overlooked are the over 3 million workers who are seriously injured each year. Far too many of these injuries end up destroying a family's middle class security.

Workplace injuries, illnesses and fatalities take an enormous toll on this nation's economy—a toll that is barely affordable in good times, but is intolerable in difficult economic times such as we are experiencing today. A March 2010 Liberty Mutual Insurance company report showed that the most disabling injuries (those involving 6 or more days away from work) cost American employers more than $53 billion a year—over $1 billion a week—in workers' compensation costs alone. Indirect costs to employers, such as costs of down time for other employees as a result of the accident, investigations, claims adjustment, legal fees, and associated property damage can be up to double these costs. Costs to employees and their families through wage losses uncompensated by workers' compensation, household responsibilities, and family care for the workers further increase the total costs to the economy, even without considering pain and suffering.[2]

We recently saw the real economic impact of neglecting job safety when Con Agra announced that it would close down the Slim Jim plant in Garner, North Carolina after a violent gas explosion in the plant killed four workers. Not only did four workers never come home that day, but now their community is devastated with over 400 employees laid off.

Almost the same thing happened in Jacksonville Florida a few years ago. Just before the 2007 holiday season, a similar explosion at T2 Laboratories killed four workers and hospitalized 14. The explosion's force was equivalent to detonating about a ton of TNT and it spread debris up to a mile from the plant. The blaze required every hazardous material unit in Jacksonville and over 100 firefighters to respond. In the following months, T2 permanently shut down its facilities, and laid off all the workers.

Clearly it's not only good business to prevent workplace injuries and illnesses, but the small amount of money that goes to fund this agency is a worthwhile investment for the general welfare of the American people.

I want to review with you briefly how OSHA approaches these challenges.

Deterrence Through Fair Enforcement

The primary purpose of OSHA's enforcement program is deterrence. OSHA's enforcement program specifically targets the most dangerous workplaces and the most recalcitrant employers. We recognize that most employers want to keep their employees safe and make great efforts to protect them from workplace hazards. We are committed to being good stewards of the taxpayers' funds entrusted to us by using our resources as efficiently and effectively as possible to protect those workers most at risk.

Strong and fair enforcement of the law has particular importance during this difficult economic period. In the short term, responsible employers who invest in the health and safety of their employees are at a disadvantage competing with irrespon-

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[1] *http://www.cdc.gov/niosh/docs/2000-108/pdfs/2000-108.pdf*

[2] Liberty Mutual Research Institute for Safety, 2010 Liberty Mutual Workplace Safety Index, available at *http://www.libertymutualgroup.com/omapps/ContentServer?c=cms—document&pagename=LMGResearchI nstitute/cms—document/ShowDoc&cid=1138365240689.*

sible employers who cut corners on worker protection and hazard abatement. Strong and fair enforcement, accompanied by meaningful penalties, levels the playing field.

Let me give you a current example. Just last week a reporter called to relate a conversation he had just had with a very unhappy small residential building contractor who complained that while he readily provided fall protection to ensure the safety of his employees, many of his competitors did not, giving them an unfair advantage when bidding contracts. How was that fair?

Well the fact is, it wasn't fair. He was right. Falls are the number one cause of fatalities in construction, killing almost 1900 workers from 2005-2009 and injuring thousands. And 548 of these fatalities occurred in residential construction. Yet some residential construction operations (for example, on less steep roofs) had received a temporary exemption in 1995 while a few remaining feasibility issues were resolved. (Note that many states, including California and Washington, never adopted our exemption, and have required residential construction to protect workers with fall protection since 1994.) Seventeen years later, those issues have been resolved and OSHA received requests from business—including the National Association of Home Builders, the organization representing 22 state OSHA programs and labor organizations—to remove the confusing exemption. So last December, OSHA announced that it would fully enforce its 1994 fall protection standard for all residential construction operations

And, by issuing our new residential fall protection policy, OSHA leveled the playing field for that unhappy small employer and for thousands of other responsible contractors who are trying to compete with those who are trying to cut corners and costs on worker safety.

Over the longer term, of course, safety pays: good safety and health management tends to translate into profitability and a stronger national economy by preventing worker injuries, saving on a host of costs, spurring worker engagement, and enhancing the company's reputation.

The core purpose of OSHA's enforcement program is prevention, not punishment. Just as it makes sense for the police to pull over a drunk driver before he causes death or injury, it is OSHA's objective to encourage employers to abate hazards before workers are hurt or killed, rather than afterwards, when it's too late. In fact, 97% of OSHA's citations are issued without a worker being killed or injured first. This is the essence of prevention.

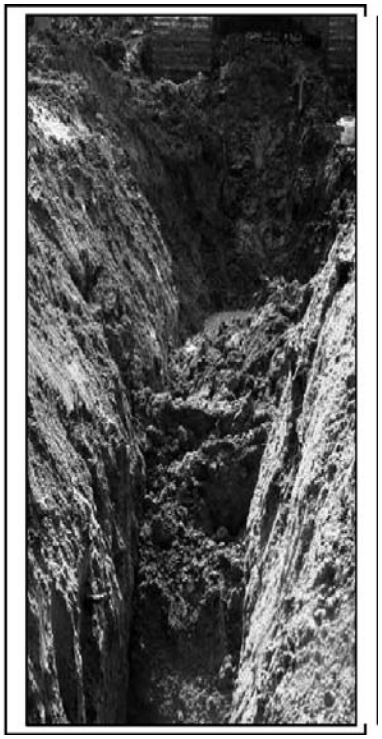
The fact is that OSHA saves lives. It is sometimes difficult to illustrate individual cases of where OSHA enforcement has saved a life because, in general, it is statistics that show that injuries have been prevented and that lives have been saved by our efforts. In general, we cannot identify the particular life saved or the tragic accident that never happened because of hazard abatement.

But occasionally a series of events occurs in which the time between the hazard abatement and injury prevented is so short, and the relationship so obvious, that the impact of OSHA enforcement is illuminated.

Just a few weeks ago, OSHA cited a small residential construction employer, German Terrazas, for not using fall protection. He got the message, purchased fall protection equipment and signed up for an OSHA safety class. Two weeks later, German Terrazas himself fell while working on a residential roof—but he didn't fall to the ground and he didn't fall to his death. The fall restraint equipment that he purchased and used after the OSHA citation very likely saved his life.

Another such series of events occurred earlier this year, in Mercerville, Ohio. Our inspectors were called to investigate a report of a worker in a deep construction trench. Upon arrival, OSHA inspector Rick Burns identified a worker in a 10-foot deep unprotected trench. OSHA regulations require trenches greater than 5 feet deep to be shored, sloped or protected in some way.

Burns immediately directed the worker to leave the trench. The worker exited the trench and five minutes later, the walls of the trench collapsed right where the worker had been standing. There is little doubt that he would have been seriously injured or killed absent the intervention of the OSHA inspector. These two photographs, taken only minutes apart at this site, illustrate the value of OSHA enforcement.



This may seem like a rare series of events, but a similar sequence occurred a few short weeks later in Auburn, Alabama. OSHA inspectors ordered workers out of a trench minutes before it collapsed. A photograph taken minutes later is below; before they exited the trench, the workers had been situated just below the excavator in the photo.

Unfortunately, it doesn't always end this way. Last year, for example, OSHA fined a Butler County, PA construction company $539,000 following the investigation of the death of Carl Beck Jr., a roofing worker who fell 40 feet at a Washington, PA worksite. Fall protection equipment was available on site but Christopher Franc, the contractor, did not require his workers to use it. Mr. Beck was 29 years old and is survived by his wife and two small children. Mr. Franc entered a guilty plea in federal court to a criminal violation of the Occupational Safety and Health Act and was sentenced to three years probation, six months home detention, and payment of funeral expenses on his conviction of a willful violation of an OSHA regulation causing the death of an employee.

. Federal OSHA and the 27 OSHA state plans together have approximately 2,200 inspectors charged with protecting more than 130 million workers in more than 8 million workplaces across the country. And the ratio of OSHA compliance officers to covered workers has fallen substantially over the past three decades. In 1977, for example, OSHA had 37 inspectors for every million covered workers, while today OSHA has just over 22 inspectors for every million covered workers.

OSHA conducts inspections of those workplaces where there has been a fatality, multiple hospitalizations, where a worker files a formal complaint or where there is an imminent danger of a worker's death. Beyond those inspections, we have put great thought and strategic planning into prioritizing the rest of our enforcement program in order to ensure that we are being as efficient and effective as possible. For example, through our Site Specific Targeting Program, OSHA focuses on those employers with the most injuries and illnesses in their workplaces. OSHA also has a variety of National Emphasis Programs (NEPs) and Local Emphasis Programs (LEPs) that target major hazards or hazardous industries. For example, following the British Petroleum (BP) Texas City explosion that killed 15 workers in 2005, OSHA implemented an NEP to inspect this nation's refineries. We have NEPs for combustible dust and LEPs focusing on grain engulfments where we've seen a large number of fatalities, many of which were of very young workers, over the past year.

OSHA's Severe Violator Enforcement Program (SVEP) is another example of our strategic investments in enforcement. SVEP concentrates resources on inspecting employers who have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations.

SVEP is intended to ensure that OSHA is more able to efficiently identify and focus our resources on the most recalcitrant employers who disregard the law and endanger the lives of their employees.

OSHA Penalties

OSHA proposes penalties to employers when we find hazards that threaten the health and safety of workers. As discussed earlier, the purpose of the penalties is deterrence. OSHA penalties are set by law. Maximum OSHA penalty amounts have been unchanged since 1990. The maximum penalty for a serious violation remains at $7000. OSHA is statutorily mandated to take into account a business's size, history and evidence of good faith when calculating a penalty. Moreover, OSHA penalties do not rise with inflation, which means that the real dollar value of OSHA penalties has been reduced by 39% since 1998.

For example, last year a 47 year-old roofing employee, with seven years experience, stepped off the back of a roof and fell 15 feet onto a concrete slab below. He died two days later. He had not been provided fall protection. The total proposed penalty for his employer was only $4,200 for not providing fall protection. After the incident, the employer provided fall protection equipment including harnesses, lanyards and roof anchors to employees.

While OSHA recently modified its administrative penalty policy reduction factors to provide a modest increase in average penalties, the average OSHA penalty remains very low. In 2010, OSHA's average penalty for a serious violation (capable of causing death or serious physical harm), was only $1,000 and for small employers, only $763. Right now the average penalty for all employers is closer to $2,000, still low, but an improvement. OSHA continues to closely monitor the effect of our penalties on small businesses.

While OSHA is working within the parameters set in existing law, the Administration continues to support the Protecting America's Workers Act in order to give OSHA the tools to impose appropriate penalties to increase deterrence and save lives. OSHA must be empowered to send a stronger message in the most egregious cases.

Compliance Assistance: Help for Small Businesses and Vulnerable Workers

The second major component of OSHA's strategy is compliance assistance, which includes outreach, consultation, training, grant programs and cooperative programs. Our commitment to compliance assistance is strong and growing.

There are several principles under which our compliance assistance program operates:

• We believe that no employer, large or small, should fail to provide a safe workplace simply because it can't get accurate and timely information about how to address workplace safety or health problems or how to implement OSHA standards.

• All workers, no matter what language they speak or who their employer is, should be knowledgeable about the hazards they face, the protections they need and their rights under the OSH Act.

• Employers that achieve excellence in their health and safety programs should receive recognition.

Too many workers still do not understand their rights under the law or are too intimidated to exercise those rights. Too many workers and employers still do not have basic information about workplace hazards and what to do about them. And too many employers still find it far too easy to cut corners on safety, and even when cited, consider low OSHA penalties to be just an acceptable cost of doing business.

OSHA's primary compliance assistance program is its On-site Consultation Program. We understand that most small businesses want to protect their employees, but often cannot afford to hire a health and safety professional. This help for small businesses is critical both for the health of these businesses and for the safety and health of the millions of workers employed by small businesses. OSHA's data shows that 70% of all fatality cases investigated by the Agency occur in businesses that employ 50 or fewer employees. Our compliance assistance focus on small businesses is good for the economy and for workers.

OSHA's On-site Consultation Program is designed to provide professional, high-quality, individualized assistance to small businesses at no cost. This service provides free and confidential workplace safety and health evaluations and advice to small businesses with 250 or fewer employees, and is separate and independent from OSHA's enforcement program. Last year, the On-Site Consultation Program conducted over 30,000 visits to small businesses.

In these difficult budgetary times, the high priority that we put on this support for small businesses is manifest in the President's budget requests. In FY 2011, the President requested a $1 million increase in this program, and this request was repeated in the FY 2012 budget.

In addition, OSHA has over 70 compliance assistance specialists located in OSHA's area offices who are dedicated to assisting employers and workers in understanding hazards and how to control them. Last year alone, this staff conducted almost 7,000 outreach activities reaching employers and workers across the country.

OSHA continues its strong support for recognizing and holding up those employers who "get safety". We continue to support OSHA's landmark Voluntary Protection Program. For small employers, the OSHA On-site Consultation Programs Safety and Health Achievement Recognition Program or SHARP, also recognizes small businesses that have achieved excellence. In order to participate in these programs, employers commit to implement model injury and illness prevention programs that go far beyond OSHA's requirements. These employers demonstrate that "safety pays" and serve as a model to all businesses.

The experience that ALMACO, a manufacturing company in Iowa, had through working with On-site Consultation and being recognized in SHARP is a good example of the positive impact these programs have on workplace safety and health. Prior to working with the Iowa Bureau of Consultation and Education (Iowa Consultation) ALMACO's injury and illness rate was over three times the national average for companies in its industry. By 2010 approximately 10 years after initiating a relationship with Iowa consultation, ALMACO had lowered its incident rate to less than half the industry average. Further, since 2005, it has experienced a 37% reduction in its workers compensation insurance employer modification rate, and a 79% reduction in its employee turnover rate.

For the vast majority of employers who want to do the right thing, we want to put the right tools in their hands to maintain a safe and healthful workplace. That is why we invest in our compliance assistance materials and why our website is so

popular. New OSHA standards and enforcement initiatives are always accompanied by web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, our compliance assistance specialists supplement this with a robust outreach and education program for employers and workers.

A major new initiative of this administration has been increased outreach to hard-to-reach vulnerable workers, including those who have limited English proficiency. These employees are often employed in the most hazardous jobs, and may not have the same employer from one week to the next.

We have particularly focused on Latino workers. Among the most vulnerable workers in America are those who work in high-risk industries, particularly construction. Latino workers suffer higher work related fatality and injury rates on the job because they are often in the most dangerous jobs and do not receive proper training.

Another critical piece of our strategic effort to prevent workplace fatalities, injuries and illnesses is training workers about job hazards and protections. OSHA's Susan Harwood Training grant program provides funding for valuable training and technical assistance to non-profit organizations—employer associations, universities, community colleges, unions, and community and faith based organizations. This program focuses on providing training to workers in high risk industries and is also increasing its focus on organizations involved in training vulnerable, limited English speaking and other hard-toreach workers to assure they receive the training they need to be safe and healthy in the workplace. For example, just last week, Purdue University in West Lafayette, Indiana was awarded a Susan Harwood grant to provide training to farm owners, farm operators, and farm workers (including youth) on safety and health hazards related to grain storage and handling. This training is critical as we have seen a recent increase in grain engulfment fatalities. Tragically, several of these incidents have involved teenagers. We are pleased that business associations, unions and community groups have joined us in this effort.

Whistleblower Protection

The creators of the OSH Act understood that OSHA inspectors would not be able to be at every workplace every day, so the Act was constructed to encourage worker participation and to rely heavily on workers to act as OSHA's "eyes and ears" in identifying hazards at their workplaces. If employees fear that they will lose their jobs or be otherwise retaliated against for actively participating in safety and health activities, they are not likely to do so. Achieving the Secretary of Labor's goal of "Good Jobs for Everyone" includes strengthening workers' voices in their workplaces. Without robust job protections, these voices may be silenced.

It is notable that since the OSH Act was passed in 1970, Congress has passed, and added to OSHA's enforcement responsibilities, 20 additional whistleblower laws to protect employees who report violations of various trucking, airline, nuclear power, pipeline, environmental, rail, mass transit, maritime safety, consumer product safety, and securities laws. In just the past year, four additional whistleblower laws were added to OSHA's enforcement responsibilities. Despite this increase in OSHA's statutory load, the staff charged with enforcing those laws did not grow significantly until FY 2010 when 25 whistleblower investigators were authorized. In just the past year, however, four additional whistleblower laws were added to OSHA's enforcement responsibility. These new responsibilities are stretching OSHA's whistleblower resources to the breaking point. We are committed to doing the most that we can with our strained whistleblower resources. That is why I directed a top-to-bottom review of the program to ensure that we are as efficient and effective as possible and that we address the criticism of the whistleblower program raised in reports by the Government Accountability Office and the Department's Inspector General. We are happy to report to you that OSHA has made great strides in improving the performance of this critical program.

As a result, we will be moving our whistleblower protection program from our Directorate of Enforcement Programs, to report directly to my office. We are also considering several reorganization plans in the field. We have recently revised the whistleblower protection manual. Just two weeks ago, we conducted a national whistleblower conference that included whistleblower investigators from federal as well as state plan states, along with regional and national office attorneys who work on this issue.

Regulatory Process and the Costs of Regulation

OSHA's mission is to ensure that everyone who goes to work is able to return home safely at the end of their shift. One of the primary means Congress has given to OSHA to accomplish this task is to issue common sense standards and regula-

tions to protect workers from workplace hazards. OSHA's common sense standards have made working conditions in America today far safer than 40 years ago when the agency was created, without slowing the growth of American business.

Developing OSHA regulations is a complex process that often involves sophisticated risk assessments as well as detailed economic and technological feasibility analyses. These complicated analyses are critical to ensuring that OSHA's regulations effectively protect workers and at the same time make sense for the regulated community that will be charged with implementing the regulations.

The regulatory process also includes multiple points where the agency receives comments from stakeholders such as large and small businesses, professional organizations, trade associations as well as workers and labor representatives. OSHA issues very few standards and all are the product of years of careful work and consultation with all stakeholders. Over the past 15 years, OSHA has, on average, issued only a few major standards each year, with some periods in which no major standards have been issued.

In fact, over the past year, OSHA has issued only two major standards: one protecting workers from hazards associated with cranes and derricks, and another standard to protect shipyard workers. Both took years to develop. Implementation of these standards is proceeding very smoothly with great cooperation from workers and the regulated communities.

Our commitment to the Administration's initiative to ensure smart regulations is already evident. OSHA recently announced a final rule that will remove over 1.9 million annual hours of paperwork burdens on employers and save more than $40 million in annual costs. Businesses will no longer be saddled with the obligation to fill out unnecessary government forms, meaning that their employees will have more time to be productive and do their real work.

One of the next standards that OSHA will issue is a revision of our Hazard Communication Standard to align with the Globally Harmonized System (GHS) of Classification and Labeling of Chemicals. Aligning OSHA's Hazard Communication Standard with the GHS will not only improve chemical hazard information provided to workers, but also make it much easier for American chemical manufacturers to sell their products around the world. In addition, over time, employers, especially in small businesses, will find it easier to train their employees using a uniform system of labeling, saving them both time and money.

I am confident that our lengthy, careful and methodical regulatory process, with its robust opportunities for stakeholder input and comment, will produce a common sense and successful Injury and Illness Prevention Program proposal and standard. I have this confidence because that is what the history of OSHA's regulatory process demonstrates. This Subcommittee and our regulated community should look to our past to see how OSHA standards can enhance American economic competitiveness, not hinder it. OSHA standards don't just prevent worker injuries and illnesses, but they also drive technological innovation, making industries more competitive.

In fact, there is also clear evidence that both regulated industries and the agency itself generally overestimate the cost of new OSHA standards. Congress' Office of Technology Assessment (OTA), comparing the predicted and actual costs of eight OSHA regulations, found that in almost all cases, "industries that were most affected achieved compliance straightforwardly, and largely avoided the destructive economic effects" that they had predicted.[3]

For example:

• In 1974, OSHA issued a regulation to reduce worker exposure to vinyl chloride, a chemical used in making plastic for hundreds of products. Vinyl Chloride was proven to cause a rare liver cancer among exposed workers. Plastics manufacturers told OSHA that a new standard would kill as many as 2.2 million jobs.[4] Two years after the 1974 vinyl chloride regulation went into effect, Chemical Week described manufacturers rushing to "improve existing operations and build new units" to meet increased market demand.[5] The Congressional study looked at the data and confirmed not only that the vinyl industry spent only a quarter of OSHA's original estimate to comply with the standard, but that the new technology designed to meet the standard actually increased productivity.

• In 1984, OSHA implemented its ethylene oxide standard to reduce workers' exposure to this cancer-causing gas used for sterilizing equipment in hospitals and other health care facilities. OSHA's new rule required employers to ventilate work

[3] Office of Technology Assessment, Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health: An Appraisal of OSHA's Analytic Approach September 1995.

[4] Brody, J Vinyl Chloride Exposure Limit Is Opposed by Plastics Industry. New York Times June 6, 1974.

[5] PVC rolls out of jeopardy, into jubilation. Chemical Week. September 15, 1976:34.

areas and monitor workers' exposure levels—changes predicted to add modest costs while ensuring enormous protections for workers. Complying with the ethylene oxide rule also led U.S. equipment manufacturers to produce innovative technology and hasten hospital modernization.

We have heard from many employer groups and labor organizations, including the U.S. Chamber of Commerce and the American Chemistry Council, that OSHA must update its chemical Permissible Exposure Limits (PELs). These are standards adopted at OSHA's birth, many of which are based on science from the 1950's and 1960's, and do not reflect updated scientific research on cancer and other chronic health effects. I would like to join hands with business and labor and tackle this project, but our complicated regulatory process makes progress difficult. I would like to work with this Subcommittee, as well as the regulated community, to find creative ways to address the PELs challenge.

Outreach to Stakeholders

One of the most important parts of the regulatory process is OSHA's extensive consultation with all affected parties, including large and small business, workers and labor organizations and professional workplace safety associations. Although the Occupational Safety and Health Act, the Administrative Procedures Act, and other laws such as the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) require a certain level of public input, OSHA routinely goes above and beyond these requirements.

We enthusiastically welcome public input. OSHA's first priority is to issue standards that protect workers. But it makes absolutely no sense to issue standards that don't work or that don't make sense to businesses and workers in a real workplace. Getting input from workers and businesses, based on their experience, about what works and what doesn't work is not only essential to issuing good, common sense rules, but also welcomed by this agency.

Our efforts are consistent with the Administration's commitment in E.O. 13563 to have as transparent and inclusive a regulatory process as possible. I began this commitment even prior to the issuance of the Executive Order. The genesis of our current regulatory agenda is the extensive public outreach I did when I first came on the job. In fact, one of the first actions I implemented when becoming Assistant Secretary was to hold an all day stakeholder event, OSHA Listens, to obtain information from the public on key issues facing the agency. We heard from small and large businesses, trade associations, unions and workers, victims' families, advocacy organizations and safety and health professionals. We learned a lot from this session and many of our Regions are holding similar sessions. We will continue all of these outreach efforts and add more as appropriate.

OSHA has continued to go far beyond the required steps of the rulemaking process. Beyond the comment periods and hearings required by law, OSHA generally adds a number of other options to receive public input including stakeholder meetings and webchats. In addition, OSHA leadership and OSHA technical experts travel to numerous meetings of business associations, unions and public health organizations to discuss our regulatory activities and gather input. For example, OSHA has held five stakeholder meetings around the country on its Injury and Illness Prevention Programs initiative. OSHA has also held three stakeholder meetings, including its first ever virtual stakeholder meeting by a webinar, and convened an expert panel on a potential combustible dust standard. OSHA held a stakeholder meeting on a potential infectious disease standard and regularly holds webinars on its regulatory agenda. We have also done public outreach on better ways to protect workers against hearing loss and we are planning a stakeholder meeting on this subject next month.

OSHA also uses a variety of other mechanisms such as its four formal advisory committees and various informal meetings with groups such as its Alliance Program Construction Roundtable meetings to constantly seek input from labor and industry on a variety of safety and health issues.

Conclusion

Our nation has a long history of treating workplace safety as a bipartisan issue. The OSH Act was the product of a bipartisan compromise. It was signed into law by President Richard Nixon on December 29, 1970, who called it "probably one of the most important pieces of legislation, from the standpoint of the 55 million people who will be covered by it ever passed by the Congress of the United States, because it involves their lives." Bearing witness at that bill signing were both Democratic and Republican Congressional leaders, as well as the Presidents of the National Association of Manufacturers and the Chamber of Commerce and labor leaders.

Now covering 107 million workers, the Act is no less important today, 40 years later. I am very excited about the initiatives that this Administration has taken to fulfill the goals of this law and to protect our most valuable national resource—our workers.

I want to thank you again for inviting me to this hearing to describe to you the efforts we are taking to protect American workers and to get your input about how we can do this even more effectively. I look forward to your questions at this hearing and I am also willing to come to meet with you or your staff personally to discuss any of our initiatives in more detail.

Chairman WALBERG. I now recognize myself for 5 minutes of questioning. I want to thank you, first, for your responses to congressional letters, that have been bipartisan in nature, coming to you concerning the roofing directive. It is a bipartisan issue, with contractors all across the Nation expressing some concerns and reservations. OSHA has delayed the effective date of the directive, and recently issued a memorandum suggesting that the directive will not fully be in place until March 2012. What OSHA has not done is change the substance of the directive. Stakeholders have met with OSHA personnel to express concern that the directive is not protective of worker safety and health.

Our second panel will have a witness who is concerned that the new policy is less protective of worker safety and health. So Dr. Michaels, will you commit to holding a broad stakeholder meeting in order to really hear the concerns being expressed and seriously take into consideration making changes to that directive?

Mr. MICHAELS. Mr. Chairman, we very much value the input of stakeholders, and we meet regularly with the stakeholders. Some stakeholders are particularly effective. We have met with representatives of the National Association of Home Builders numerous times over the last few weeks. And we have done that for a long period of time because we think it is very important to get their input. What we did was actually not put out a new directive, we rescinded a directive essentially that went into effect—a policy that went into effect in 1995, a temporary policy that exempted certain operations from fall protection. And this fall protection, which was the new standard that went into effect in 1994, covers all commercial roofing, and it covers much residential roofing, roofings with steep pitched roofs, anything 9 and 12 or above. So much of the industry is already covered by our old standard. What this does is this just makes it uniform across the board. Many States never changed their policy. And we heard, as Ms. Woolsey said, the home builders actually asked us to rescind this directive. We have a labor-management advisory committee which asked us to rescind this directive. So we have listened to our stakeholders. We will continue to work with them to deal with issues of clarification, to ensure that information is getting out.

Chairman WALBERG. But it doesn't seem to be getting out to the ones most intimately acquainted with and affected by it. And the concerns that we receive are saying that, number one, their concerns aren't being addressed. They are not being heard. And they would like the opportunity for more and lengthy input into the process, with best practices.

Mr. MICHAELS. We are eager to work with them. As you know, we have given—through our Harwood program, we have provided

over a million dollars in funding to the National Association of Home Builders, to the Roofing Contractors Association, to other groups, to get information out about safe work practices. And we will continue to do that. And we think that will get the information out. Whenever there is a change in policy, it always takes some time. So we have delayed this, and we have changed the enforcement policy. So we think we have done plenty to get there.

Chairman WALBERG. Well, I would hope that there would be further opportunity, due to the delay, to listen more fully to stakeholders, because I am not hearing that they are satisfied, that they feel that the Department has truly heard the best case practices. And I tend to think that as we see ourselves as partners, understanding that they are in the field desiring the safety, but also in the economic situation, that we address those concerns as well.

Let me jump on, in the limited time I have here. Many members of the subcommittee sent you a letter asking that OSHA issue an advanced notice of proposed rulemaking addressing the changes envisioned to the silica standard. Have you taken this under consideration? How is the Agency going to proceed on it?

Mr. MICHAELS. Well, we have been working on preparing a silica standard for 10 years, as you noted. Actually, the Labor Department has been looking at this issue for quite a long time, because our silica standard is dreadfully obsolete.

Chairman WALBERG. But it seems to be working. Silicosis has gone down. You can be hit by lightning far more opportune than you can with silicosis.

Mr. MICHAELS. I am not sure that is the case. There is plenty of silicosis, but more importantly, far more deaths occur from silica-related lung cancer than from silicosis. So we feel it is an important issue to address.

We have heard your concerns, though, about getting the information, the scientific data on which any proposal is based, out to the public. And when we issue a proposal, we will ensure that all the information, all the scientific information that we use in our risk assessment, et cetera, is out there so we can have a really robust discussion with experts from all different industries to ensure we are using the best science.

Chairman WALBERG. I appreciate that. And in our letter we did request listing of the standards that you are using to make this proposal, make the standard. When can we expect to receive that?

Mr. MICHAELS. You know, as I said, we have a very lengthy standard-setting process. So we go through a tremendous amount of internal work evaluating all the information that has been gathered before we send it out. And so I hope soon to get that out. When we do get it out, though, it will contain all these studies that you have asked for, or access to them, so that can be looked at by experts.

Chairman WALBERG. That will certainly be a help to us so we are talking on the same page.

Mr. MICHAELS. Yes.

Chairman WALBERG. My time has expired. I recognize the gentlelady from California, Ranking Member Woolsey.

Ms. WOOLSEY. Thank you. Thank you, Mr. Secretary, for being here. The House Appropriations Committee, as you know, released

a draft bill. And you know the release of that draft bill means that this might be the only hearing on these issues right here before us today. Because that draft could become final, could come to the floor, boom, with this, today, being all the attention we pay to it. So that makes asking you these questions so important.

So now, because the bill would block funding for the development of an injury or illness prevention rule, preclude funding for the guidance of roof falls, and obstruct OSHA from modifying, by just adding a box to check on an injury and illness log, which would identify cumulative trauma injuries, your opinion—does OSHA support these riders? Who will benefit, and who will pay the price if these provisions are enacted?

Mr. MICHAELS. Look, OSHA is very much committed to finishing those standards. So we would obviously not like to see any provision that stops us from moving forward on developing an injury and illness prevention program, which I think is something that is important. It has been embraced by thousands of employers across the country, and shown very clearly to not just reduce injury rates and fatality rates, but in fact save employers money by reducing workers compensation costs and increasing productivity.

You know, there is a toy maker in Massachusetts who is in our VPP program that talks about their program. And they said if it weren't for our program, we would be in China now. So I recently spoke at a meeting of 3,000 participants in the VPP program, all of whom have very robust illness and injury prevention programs. These were representatives of these companies. I said, how many people here think this is a job killer? And not a single person raised their hand. I said, how many people think this has saved jobs in the United States? Virtually every one of them raised their hands. So we think this is a very important program, and we hope to move it forward.

Ms. WOOLSEY. Jobs and lives, right?

Mr. MICHAELS. Exactly. It saves jobs and it saves lives.

Ms. WOOLSEY. So one of the successes OSHA has had is the crane and derricks standard. I think we all remember, I mean it is actually in our lifetime, while we were Members of Congress, when the cranes and derricks, in New York City were just collapsing and causing so much havoc and damage to the workers, to the people who were around them, and also in Las Vegas because of employer negligence.

Can you give us some good news about the difference that that standard is making? Because I don't read about that now.

Mr. MICHAELS. You know, OSHA takes our lookbacks very seriously. We want to evaluate the impact of our standards. I think there is anecdotal evidence that that standard is doing well, but I certainly wouldn't go to the bank on that, because we haven't really looked at it. I see the same things you do, which is we haven't seen some of the big accidents. But that doesn't mean it is working. We have done lookbacks on numerous other standards. You know, the cranes and derricks standard just has gone into effect. It is too early to evaluate it. But when we have gone back and looked at the cotton dust standard, for example, it virtually eliminated byssinosis. I talked about the grain explosion standards. I used to work in a hospital. For 13 years I worked in a hospital when hepatitis

B was the scourge of hospital workers. As a result of the OSHA standard and the work that is done in hospitals around protecting workers from sharps, there are a handful of new cases of hepatitis B in hospital workers in the United States every year. There were 19,000 a year before OSHA did this. So we know our standards are effective.

I can't tell you cranes and derricks is effective. I hope to be able to come back to you in a couple years and say we have evaluated it. And we will evaluate it. We take this stuff very seriously.

Ms. WOOLSEY. Thank you for not making an assumption. But you know, just as a person in this country, you used to read almost every other week about some huge accident, serious accident. And just by bringing to the attention of the owners that they had to protect their operators, it has made a big difference—from my opinion, not scientifically. Okay, the Susan Harwood Safety Training Program, which would be zeroed out, how important is that training program?

Mr. MICHAELS. That is a very important program because it doesn't duplicate any other work that we do. That gets funding out to employers, to unions, to community groups that train front-line workers, not supervisors or officials in labor unions or anything. It trains workers about how to work safely, especially hard-to-reach workers. That is why we have given money out to all sorts of organizations, including the home builders, to say let's get information out to workers who need it.

Ms. WOOLSEY. So how does it get out there? On paper, or does somebody go out and actually show them how to lift?

Mr. MICHAELS. Yeah. And we have training programs that develop materials, and a lot of train the trainer programs, so the impact is really magnified.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentlelady. I turn now to recognize the chairman of the full committee, the gentleman from Minnesota, Mr. Kline.

Chairman KLINE. Thank you, Mr. Chairman. Thanks for holding the hearing. Thank you, Dr. Michaels, Director Michaels, Assistant Secretary Michaels. We really are very pleased that you could find the time to come here today and give your testimony and respond to our questions. We are very appreciative.

In our oversight role and in maintaining contact with what you are doing, as the chairman said, we frequently write letters. We ask for information. I understand that you have been, and your organization, OSHA, has been pretty responsive, sometimes a month or two late, but it is mostly coming.

In August, Mrs. Noem from this committee and I wrote you a letter asking for clarification to the interim inspection procedures during communication tower construction activities. And we wrote you that letter because there is some confusion out there, because the directive provides standards for hoisting workers while towers are under construction, but doesn't address the issue when they are doing maintenance. So there is confusion out there. We would like to get a response from you. And so have you got the letter? Are you going to respond? Where does that stand?

Mr. MICHAELS. Yes. Let me apologize for not getting that back to you. It is a complex issue. We have gotten the letter. We recognize the issues you have raised. We have actually two directorates. It is both an issue of construction and enforcement programs that are working on pulling this together. And we will get back to you and Congresswoman Noem very soon.

Chairman KLINE. Well, I would appreciate that. But you can see the—I mean as you said, it is a complex issue, but this is causing confusion when we need to be clarifying, simplifying, and streamlining, and making it easier, not making it more complicated, not putting more uncertainty in. So I am sure that wasn't your intent, but I would say that it would be worth somebody's effort inside your Agency to look at how that comes out, so you don't have that sort of conflicting message going out.

Speaking of conflicting messages, of the OSH Act's 13 objectives, three are focused on compliance assistance programs such as the Voluntary Protection Program. And so here again we have some confusion. On February 14th of this year, you stated that OSHA is, quote, no longer proposing alternative funding for the Voluntary Protection Program, and that, quote, OSHA will continue to fund VPP out of the Federal compliance assistance budget activity. Yet in June, Deputy Assistant Secretary of Labor Jordan Barab, with us here also today, stated that a fee-based program for VPP is still on the table. Once again, you have got inconsistency and some concern that we are hearing from stakeholders. Is OSHA still considering alternative funding?

Mr. MICHAELS. No. I suspect that was a misquote. We thought that given the difficulties of the Federal budget and the obvious—the future of Federal spending in all areas, which we all know is going to be lessened, that a program as important as VPP should have an independent funding stream so it doesn't have to worry about the exigencies of Federal budgeting and the competition within the OSHA budget of giving money to enforcement and focusing on the worst employers versus helping out the best employers.

So one of the issues that had been on the table was this idea of essentially an independent funding source, similar to the Prescription Drug User Fee Act, for example, where participants support the program, because they see terrific savings as a result of that program. You know, we have other fee-based programs within OSHA. We have a nationally recognized technical laboratory program that is supported that way. But we have heard from the VPP members. They don't want to see that. They want us to continue to run the program and to fund it within our constraints, and we will continue to do that. I have committed to that, and they know that I strongly support the program.

Chairman KLINE. Okay. Thank you for the clarification. And again, I think it is really important, particularly in these economic times, we have so many people out of work, historic levels of unemployment, and confusion and uncertainty out there. And we would like employers to have some certainty and some confidence so they can take risks and take steps and get people back to work. When we add more uncertainty and more complexity and more confusion, it makes that more difficult.

So I am quite confident that you understand that. Just when you are administering large bureaucracies, sometimes things, as you say, you get misquoted, or one side of the bureaucracy is not talking to the other. It just seems really important in these times that we—that you in OSHA make every effort to be as consistent as possible, and frankly, to put as few new pieces of regulation in place as possible. We want to keep people safe. But things like voluntary efforts and your people working with employers so that they can improve their safety, and not, frankly, be in terror when OSHA comes. I would hope that OSHA will really step up to try to work with employers, reduce the uncertainty that is out there, and help them have confidence and make decisions going forward.

Again, thank you very much for your time and being with us today. Mr. Chairman, my time has expired.

Chairman WALBERG. I thank the gentleman. I now recognize the gentleman from New York, Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman. Thank you for holding this hearing. And to Secretary Michaels, thank you for being here.

I want to sort of broaden the scope of this a bit. We all recognize that we have a jobs crisis in this country. And we have conflicting visions on how to address that crisis. It is very clear to me that our friends on the other side of the aisle have determined that one of the root causes of that crisis and one of the reasons that our recovery has been anemic, as it has been, is that we are overregulated. I think one of the best ways to solve a problem is to make sure you understand it. And the best way to make sure you understand it is to have actual data.

I read a piece yesterday that was written by a man named Bruce Bartlett, former senior economic adviser to President Reagan, former senior economic adviser to President George H.W. Bush, served on the staff of Jack Kemp, served on the staff of Ron Paul, obviously an unabashed liberal. He cited statistics from the Bureau of Labor Statistics in which employers were queried as to why they laid people off. In 2008, out of 1.5 million layoffs, 5,500 of them were attributed to government regulation. This is in the last year of the Bush administration. That number represents four-tenths of 1 percent of all layoffs. By the way, lack of demand, 516,000 layoffs. In 2009, out of 2,100 layoffs, 48,800 of them were attributed to government regulation. This is by the employers themselves. Two-tenths of 1 percent of all layoffs related to excessive regulation. Lack of demand, 824,000 layoffs. 2010, two-tenths of 1 percent attributed to a lack of regulation. 2011, first half of the year, two-tenths of 1 percent.

So do we have an overregulatory problem? I think it is debatable at best. And I think what we really need to do is focus on the core issue of our economy, which is clearly lack of demand.

Let me go on. Small Business Majority surveyed 1,257 business owners to name the two biggest problems they faced. Only 13 percent listed government regulation as one of them. Almost half said their biggest problem was lack of customers and sales. Wall Street Journal survey of business economists found, quote, the main reason U.S. companies are reluctant to step-up hiring is scant demand rather than uncertainty over government policies, according to a

majority of economists, close quote. That is the Wall Street Journal.

In August, McClatchy Newspapers canvassed small businesses, asking them if regulation was a big problem. They could find no evidence that this was the case. None of the business owners—this is a quote—complained about regulation in particular industries, and most seemed to welcome it. That is a quote.

So we have a jobs problem. No reasonable person would argue with that. Our friends on the other side of the aisle say that we should confront that problem with three remedies: one, reduce government spending; the second, cut corporate and personal income taxes; and the third, reduce regulation.

This hearing is part of the majority's thesis that regulation is the problem. Majority Leader Cantor has issued a memorandum in which he has outlined the 10 most egregious job-killing regulations, and has outlined a legislative agenda that will deal with those job-killing regulations. And I think we have to ask ourselves the very real question, is this a solution in search of a problem? Are there cases in this economy where we are overregulated? Absolutely. But we could solve every regulatory problem we have today, and unless we increase demand tomorrow, we are going to have a serious jobs problem.

So I would ask—I know that we are the Committee on Workforce Protections, and I know that we should be focusing on workforce protections, and OSHA is an element of our ability to do that—but I would hope that in the big picture, the 30,000-foot view, we will be much more focused on increasing demand than we are on these issues that are important, but peripheral to the central case.

With that, I yield back the balance of my time. I am sorry, Mr. Chairman. I ask unanimous consent to enter into the record the article by Mr. Bartlett that I cited.

Chairman WALBERG. Without objection, it will be entered.

Mr. BISHOP. Thank you very much.

[The information follows:]

The New York Times
Economix
Explaining the Science of Everyday Life

OCTOBER 4, 2011, 6:00 AM

Misrepresentations, Regulations and Jobs

By BRUCE BARTLETT

Bruce Bartlett held senior policy roles in the Reagan and George H.W. Bush administrations and served on the staffs of Representatives Jack Kemp and Ron Paul.

Republicans have a problem. People are increasingly concerned about unemployment, but Republicans have nothing to offer them. The G.O.P. opposes additional government spending for jobs programs and, in fact, favors big cuts in spending that would be likely to lead to further layoffs at all levels of government.

Today's Economist
Perspectives from expert contributors.

Republicans favor tax cuts for the wealthy and corporations, but these had no stimulative effect during the George W. Bush administration and there is no reason to believe that more of them will have any today. And the Republicans' oft-stated concern for the deficit makes tax cuts a hard sell.

These constraints have led Republicans to embrace the idea that government regulation is the principal factor holding back employment. They assert that Barack Obama has unleashed a tidal wave of new regulations, which has created uncertainty among businesses and prevents them from investing and hiring.

No hard evidence is offered for this claim; it is simply asserted as self-evident and repeated endlessly throughout the conservative echo chamber.

On Aug. 29, the House majority leader, Eric Cantor of Virginia, sent a memorandum to members of the House Republican Conference, telling

them to make the repeal of job-destroying regulations the key point in the Republican jobs agenda.

"By pursuing a steady repeal of job-destroying regulations, we can help lift the cloud of uncertainty hanging over small and large employers alike, empowering them to hire more workers," Mr. Cantor said.

Evidence supporting Mr. Cantor's contention that deregulation would increase unemployment is very weak. For some years, the Bureau of Labor Statistics has had a program that tracks mass layoffs. In 2007, the program was expanded, and businesses were asked their reasons for laying off workers. Among the reasons offered was "government regulations/intervention." There is only partial data for 2007, but we have data since then through the second quarter of this year.

The table below presents the bureau's data. As one can see, the number of layoffs nationwide caused by government regulation is minuscule and shows no evidence of getting worse during the Obama administration. Lack of demand for business products and services is vastly more important.

Bureau of Labor Statistics

These results are supported by surveys. During June and July, Small Business Majority asked 1,257 small-business owners to name the two biggest problems they face. Only 13 percent listed government regulation as one of them. Almost half said their biggest problem was uncertainty about the future course of the economy — another way of saying a lack of customers and sales.

The Wall Street Journal's July survey of business economists found, "The main reason U.S. companies are reluctant to step up hiring is scant demand, rather than uncertainty over government policies, according to a majority of economists."

In August, McClatchy Newspapers canvassed small businesses, asking them if regulation was a big problem. It could find no evidence that this was the case.

"None of the business owners complained about regulation in their particular industries, and most seemed to welcome it," McClatchy reported.

"Some pointed to the lack of regulation in mortgage lending as a principal cause of the financial crisis that brought about the Great Recession of 2007-9 and its grim aftermath."

The latest monthly survey of its members by the National Federation of Independent Business shows that poor sales are far and away their biggest problem. While concerns about regulation have risen during the Obama administration, they are about the same now as they were during Ronald Reagan's administration, according to an analysis of the federation's data by the Economic Policy Institute.

Academic research has also failed to find evidence that regulation is a significant factor in unemployment. In a blog post on Sept. 5, Jay Livingston, a sociologist at Montclair State University, hypothesized that if regulation were a major problem it would show up in the unemployment rates of industries where regulation has been increasing: the financial sector, medical care and mining/fuel extraction. He found that unemployment rates in these sectors were actually well below the national average. Unemployment is much higher in those industries that one would expect to suffer most from a lack of aggregate demand: construction, leisure and hospitality, business services, wholesale and retail trade, and durable goods.

Gary Burtless, an economist at the Brookings Institution, asserts that if businesses were really concerned about rising regulations, they would be investing now to avoid them. But there is no indication that this is the case. "The real reason for anemic investment and hiring is that businesses are not confident there will be enough potential customers to justify expansion or even routine capital replacement right now," he says.

In my opinion, regulatory uncertainty is a canard invented by Republicans that allows them to use current economic problems to pursue an agenda supported by the business community year in and year out. In other words, it is a simple case of political opportunism, not a serious effort to deal with high unemployment.

Chairman WALBERG. Hearing none. I thank the gentleman, and I think I would state that we are certainly committed to increasing demand, increasing the economy, building jobs in the process. It is just getting to that common consensus. And we look forward to working that out.

At this point I recognize the gentleman from Indiana, Dr. Bucshon.

Mr. BUCSHON. Thank you, Mr. Chairman. I am a thoracic surgeon, so I want to focus a little bit on what you said earlier about as it relates to silica dust. I was curious with your comment about the silica dust-related lung cancer, because I have been a thoracic

surgeon for 15 years, and done a lot of lung cancer surgery, and I haven't seen one patient that has got it from silica dust. According to the American Cancer Society, the number one causes are cigarette smoking, second-hand exposure, asbestos exposure as it relates to mesothelioma, which is actually not lung cancer. And occupational exposure is not on the top of that list that I am aware of. And I could be wrong. But silica dust isn't one of the top things.

So I don't like it when people use buzz words to try to get people's attention, and cancer is one of those. So I would like—do you have scientific data to show that the increase of lung cancer is, first of all, caused by silica dust exposure; second of all, that it is increasing? Because I think that is not correct.

Mr. MICHAELS. Dr. Bucshon, I am glad you asked me that question. I am an epidemiologist. And as you know, and I know it, if you look at any individual case of cancer, of lung cancer, you can't identify the specific cause of that. You see lung cancer among smokers and nonsmokers.

Mr. BUCSHON. There is second-hand exposure. And as you probably know, maybe 5 to 10 percent of lung cancer is unrelated to cigarette exposure; that is correct.

Mr. MICHAELS. So from any individual case you can't actually make the conclusion what caused that. And so you have to look at epidemiology. And there are a number of studies that have been done all over the world that have concluded that exposure to silica dust increases the risk of lung cancer, irrespective of exposure to tobacco.

Mr. BUCSHON. Excuse me. Can you submit the best study that you know to the committee so that I can review that?

Mr. MICHAELS. Certainly.

Mr. BUCSHON. Because I would be interested to see that. Because again, if you look at the American Cancer Society, it is not on the top of their list.

Mr. MICHAELS. But that is the function of the number of people who are exposed as well as the relative risk. The studies that are done on silica are really at this point dispositive. In fact, the International Agency for Research on Cancer put together a panel of experts from around the world. They reviewed the data and said there is an affirmative relationship between silica exposure and lung cancer. And they recently pulled together another group and reaffirmed that finding.

Mr. BUCSHON. So I would ask you, if you are aware of those studies then, are those groups singled out to people that have no cigarette exposure, have no second-hand smoke exposure? Because as you know, I mean as a scientist, especially as an epidemiologist, it can be difficult to single out particular things.

But my point is this, is that if we are going to use language like cancer—because the American people hear that and they think oh, my goodness, cancer—then I would like to see the data released, and I would like the American people to know that, yeah, you know, silica dust exposure, you know, could be in the mix. But according to the American Cancer Society, it is not even on the list. And as a thoracic surgeon in 15 years of practice, I never saw one person that I did lung cancer surgery on that the cause of cancer was silica dust exposure.

I am not disputing, no one is disputing exposure to this type of dust is bad for your lungs. That is not the question. The question is if you are going to come out with regulations and you are going to base it on something like the increased incidence of cancer, then I want to see the data and the facts, because I don't think they are correct.

Mr. MICHAELS. I will provide them. But getting back to Chairman Walberg's question, we will also, obviously, provide those—when we issue a proposal, we will provide them publicly as well. You know, they are in the public scientific literature.

Mr. BUCSHON. Now, when you come up with a proposed rule, with a rule, I see other areas here where you have been asked for scientific data and haven't provided that. There was another area in my briefing here. But the question is, when do you provide the data? After you have released—after you have done the rule? Or when you do these type of things, do you normally show the science up ahead of time and let third parties review that and assess what that shows, or are you just going to, when you release it, are you going to say here is the science and not give anybody a chance to dispute it?

Mr. MICHAELS. Oh, no, we welcome that discussion. In fact, the way the process is, we will propose something with extensive—you know, thousands of pages of attached material available on the Web, and then hold a series of public meetings. And we have committed to one on silica specifically with the scientific experts to discuss this in public. So there is real debate and cross-examination across the board to really get that science under discussion and illuminated to the whole public.

At that point, we will move forward and determine what should be in a final rule. So it is a very robust, open process to get that out.

Mr. BUCSHON. My time has expired, but I would like to see the studies that show that in isolation, silica dust exposure causes lung cancer.

Mr. MICHAELS. I will be happy to provide you with all the studies that we have used.

Mr. BUCSHON. Thank you.

Chairman WALBERG. We look forward to that. Thank you for the questioning.

Now we turn to the gentleman from New Jersey, the State that now knows their Governor is not running for anything else, Mr. Payne.

Mr. PAYNE. That is right. We are very lucky.

Chairman WALBERG. I assumed you would agree with me, right?

Mr. PAYNE. As a matter of fact, you know, I hear about all of these job-killing movements. Believe it or not, New Jersey is one of the only States in the Union that requires extra caution when we deal with silica particles. As a matter of fact, in New Jersey a spray must go over the process to prevent the toxins from being released. And California is the only other State in the Union. And so I guess if it was so bad, Governor Christie would have moved to abolish it. So I kind of question, and I am certainly not a physician, but I did read somewhere that the IARC classified carcino-

gens as a toxin. And I don't know if, Dr. Michaels, could you confirm that or not?

Mr. MICHAELS. Yes. The International Agency for Research on Cancer, as well as the National Toxicology Program in the United States, have both categorized silica as a carcinogen; in other words, that it causes lung cancer.

Mr. PAYNE. That is what I thought I heard. The question about these job-killing proposals, I have really not heard so much in the past year or so about any regulation that goes to protect the individual, the person. And I thought that a philosophy was individuals were important. But everything I have seen and heard is that let's expose the individual to more dangers. I think that the business schools are missing something. I didn't go to business school. But I have never heard so much about a lack of confidence than I have heard in the last year. I mean, businesses are doing bad because of a lack of confidence.

Well, you know, I used to punch a clock. I wasn't innovative, I wasn't creative, I wasn't bold, so I punched a clock. I didn't like the job, but I did it. I got there on time, left when I was supposed to. You know, the business guy was the bold guy. You know, kids in my class who were most likely to succeed, they went into business. Evidently, something is happening in business schools, because I have not heard anyone say, "Don't you know I don't have a guarantee that my business is going to be successful?"

I don't know, I watched football, the NFL, they have these drop-back uniforms. You know, they will put out a uniform from the 1950s or 1930s, and even the colleges are doing it to just kind of spur interest, I guess. But I guess we need to coin a phrase called the drop-back regulations. I mean let's go back to the robber barons. Let's go when they used to make sausage, and if someone fell in it, well, just keep the grinder going. It might even change the taste.

The fact that people are so committed to saying that anything that government does and anything that is a regulation is a job killer. And I think that we are really going down a wrong trend if we are going to go back to the days when there were no regulations. Once they said that government is best which governs least. And that is good if everybody was honest and good by nature. But I am just amazed at how many regulations are being questioned when we have made this country great by virtue of having safety protections for our workers.

Now, there are probably some things that shouldn't be—that should be eliminated. But if we start increasing the amount of mercury allowed in water, we don't worry about the ozone layer, we aren't concerned about food safety, I mean who ever thought a cantaloupe could kill dozens of people? These are things that I get concerned about as we continually hammer home the fact that it is regulations that are killing our job incentives.

So I guess my time has expired. I am sure I am not going to get any more. So I yield back.

Chairman WALBERG. You are right. But not anything personal. Now I recognize the member from Indiana, Mr. Rokita.

Mr. ROKITA. Thank you, Mr. Chairman. And thank you, Mr. Michaels, for being here today.

I know it has been discussed already, but I too am very interested to get responses to the letters that I have written, that we have written as a group. And even if it is a courtesy response, which would be too late at this point, okay, a courtesy response to say, hey, we are looking at it. We understand the issue, and we are understaffed, we don't have enough hundred thousand dollar employees a year to get to this.

But, you know, we do represent 600,000 people or more apiece. And if this is to be the free Republic that Congressman Payne talks about, with due respect, I say the reason this country is great, however, is because entrepreneurs have been allowed to take risks for profit, that has been allowed to hire people, and a free enterprise system that has raised the condition, the best system, albeit with flaws, but the system that has been proven throughout history to be the best one to raise the condition of all men, not regulations about cantaloupes.

But that respect issue that I have, putting that aside for just a minute, I read your testimony last night, and you cited several examples—you may have repeated them here, and I apologize for not hearing them in person—but you cited several examples of successful regulations.

I used to run a bureaucracy. We promulgated regulations, too. And we always made it a point to take in stakeholder input before we put any pen to paper. We would have groups come in and—from the industry. Because not everyone in my agency had experience in the industry over which they regulated. But we made sure that we got that input at the beginning, before the regulation was even put to paper, the proposed one, and throughout the process. And I would say that in your testimony, that regulations you cite as being successful had that same kind of stakeholder input. Push back on me if you don't think that happened, but I think it did. And I think the regulations that we are talking about today were not written in a vacuum. But I sense that OSHA has appeared to circle the wagons on several key issues, some of them that have been brought up here today, and not taken in the broader input on the many directives it has initiated.

And I just wondered if you would respond to that. Or if you think there was robust stakeholder input, I would like to know how, specific examples.

Mr. MICHAELS. We certainly had stakeholder input on many of the issues that we are moving forward on regulation. We greatly value stakeholder input. In fact, one of the first things I did after I was confirmed by the Senate and was sworn in was to announce a full-day meeting called OSHA Listens, which was open to everybody. And everybody from, you know, the unions, to the Chamber of Commerce, National Association of Manufacturers, community groups, professors, came, and I spent a whole day listening just to their input to say, what should we do?

Mr. ROKITA. How many of those days have you had?

Mr. MICHAELS. I have had one of those.

Mr. ROKITA. How long have you been the appointed head of this Agency?

Mr. MICHAELS. About 18 months, 19 months. But no, let me say when we move to injury and illness prevention programs, we held

five stakeholder meetings, and not just in Washington. We took them around the country. California already has an injury and illness prevention program standard. So we went out to California and had a public meeting there. When we think about doing new standards, we obviously choose the ways to get stakeholder input based on many different things: various stakeholders involved, how important it is, the economic cost of it. So we——

Mr. ROKITA. With respect, how do you weight stakeholder opinion? Is every stakeholder treated equally? What is the formula you use to decide what weight you give a stakeholder's input?

Mr. MICHAELS. Obviously, this isn't a voting to say what standard we like.

Mr. ROKITA. No, because a voting would be absolutely equal.

Mr. MICHAELS. Right. We can't do that.

Mr. ROKITA. So it is not that. So you weight it.

Mr. MICHAELS. We weight it. And what we try to do is say, well, what have we learned from this? When we get to the actually written processes—as I said, we have a very long, complex process. When we get to written comments, we have to examine every single comment and respond to it in our Federal Register notice. So we give them tremendous weight. We decide whether or not to accept them.

Mr. ROKITA. But I read some of these responses. I have written some of the responses in my career. And I said—it could go along the lines of, well, the Agency doesn't think—the Agency doesn't think that this has any merit, period.

Mr. MICHAELS. By law we can do that. We tend not to do that. We actually try to take it very seriously and say, well, does this make sense? But you know, what we find is stakeholders tell us opposite things.

I mean Indiana is great example. The Indiana State OSHA program, part of your State government, immediately implemented the same program that OSHA did. They looked at this and said this makes a lots of sense. So one of our stakeholders is the State OSHA programs. There are more than 20 of them around the country. And they looked at what we have done around fall protection, and they said yes, we want do that, too. Michigan just did that. Your State government said this makes a lot of sense, we are going to implement that same program.

Mr. ROKITA. So in the universe of State stakeholders, how many States have to agree with your program before you validate your own program?

Mr. MICHAELS. We don't have a formula like that. We have input from them. But we don't say there is a certain number.

Mr. ROKITA. So what if, you know—so you weight Indiana heavily if it agrees with you.

Mr. MICHAELS. In this case, all of them agreed with us. One is not there yet. But that is not the way things work, obviously.

Mr. ROKITA. I am just asking. You see if you can learn something.

Mr. MICHAELS. Yeah.

Mr. ROKITA. I wrote that down.

Mr. MICHAELS. We talk to experts.

Mr. ROKITA. What determines if you learn something?

Mr. MICHAELS. Well, we give more weight to experts, obviously. We give more weight to experts.

Mr. ROKITA. My time is up, sir. Thank you very much.

Mr. MICHAELS. Thank you, sir.

Chairman WALBERG. The gentleman's time has expired.

We turn now, recognize Mr. Kucinich from Ohio.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

I think it is important that this subcommittee reflect on the purpose of OSHA, by definition safety and health in the workplace. And we are all concerned about jobs and any impediments to jobs. But I think it is also important that we monetize the impact of health and safety regulations which create an environment that doesn't off-load on to the worker, their families, and society the costs of injuries to the person or to their debilitating conditions that might lead to a decline of their long-term health. Because that is a factor. In effect, what workers do, if there is not a safe workplace, they end up subsidizing the profits of the business through adverse conditions that they absorb with respect to declining health.

Now, I am looking at that picture over there, and I would like to ask Mr. Michaels the following question.

The Roofing Contractors Association wants to keep the exemption which allows them to use slide guards instead of conventional fall protection. Now, the testimony that was given to this committee by Mr. Korellis said that it would create a greater hazard to use conventional fall protection on residential roofs. But when I look at the picture of the slide guard, I wonder what happens to workers who trip or fall over the slide guard. Will this really stop a fall?

Mr. MICHAELS. That is absolutely right. What slide guards do is they stop slides. They don't stop trips. And we heard earlier actually of a contractor who sent us a letter about a worker who was wearing conventional fall protection who tripped and went over the slide guard, and his life was only saved, we believe, or from injury, by his conventional fall protection.

Mr. KUCINICH. Who pays, though? If the worker is injured or is killed—I mean, let's talk about the injury. Talk about the impact on society of that injury.

Mr. MICHAELS. Well, beyond workers' compensation payments, which are generally limited, they are often not adequate, what we have seen—there are a number of studies that show that the costs of worker injuries are borne by, first, the employer through workers' compensation, but a tremendous portion are borne by the worker and their family because they aren't made whole in terms of their income and their abilities after they have been hurt.

And, finally, there is very clear evidence in fact the taxpayer picks up a tremendous amount for those costs through various disability programs, through Medicare. The SSDI trust fund, which is in some financial difficulty, picks up a tremendous amount of costs from people who are injured.

Mr. KUCINICH. So what you are saying is that these safety protections that are put in place by OSHA regulations actually end up saving money for everyone, and not to mention the fact that it is protecting the workers and, by reference, their families.

Mr. MICHAELS. Yes, sir.

Mr. KUCINICH. And then has OSHA evaluated the costs and benefits of its workplace safety regulations? Have you monetized those?

Mr. MICHAELS. Well, we can't do them all, but we have looked at very specific ones. We don't look at the monetary value of it. We look at the lives saved. And we see over and over and over again that OSHA regulations save lives.

The other thing that other people, independent people have looked at is what is the cost of the regulations? And the Office of Technology Assessment of Congress looked at eight OSHA regulations, and they found that in fact they had very little impact. They weren't burdensome. They didn't lose jobs.

There is always an accusation that a new OSHA regulation is going to cost jobs. And the one I talked about in my testimony is probably the most well-known one, where the plastics industry announced that the vinyl chloride standard, a carcinogen in this case, if OSHA implemented the standard it would cost 2.2 million jobs. It didn't cost a single job. In fact, the industry was able to improve their production processes, keep the feedstock in the factories without losing it into the air.

Mr. KUCINICH. So there are scare tactics that try to knock down a regulatory environment. But the regulatory environment actually enhances the position of businesses so it makes it less likely there would be claims or lawsuits against them.

Mr. MICHAELS. We know that OSHA regulations don't kill jobs. They stop jobs from killing workers. And they don't hurt the economy at all.

Mr. KUCINICH. The way that you just put it—they don't kill jobs, they stop jobs from killing workers—that is the purpose of OSHA, correct?

Mr. MICHAELS. Exactly, sir.

Mr. KUCINICH. Okay. Thank you.

Yield back.

Chairman WALBERG. I thank the gentleman.

Let me welcome to our subcommittee our distinguished colleague from Wisconsin, Representative Ribble. We certainly are open to Members from both sides of the aisle who have specific interests in a committee hearing or legislation that we are dealing with to ask to be involved in the committee hearing, and that was the case here. So, without objection, Representative Ribble will be permitted to join and participate in our hearing today.

I hear no objection. Welcome. You are recognized for your 5 minutes of questioning.

Mr. RIBBLE. Thank you, Mr. Chairman; and thank you, Ranking Member Woolsey, for allowing me to come this morning.

The reason this is such an interesting topic for me, Dr. Michaels, is I am a professional roofing contractor, with 35 years of experience, having put on tens of thousands of roofs just like the one pictured here that you show on your slide.

In 1995, when the exemption was put in place, I was sitting on that side of the table, along with your colleagues from OSHA, giving testimony on why the exemption should continue. Apparently, my testimony was compelling, because it was extended.

And I am going to ask you a few questions today, because I have heard a lot about regulations don't cause jobs, it is lack of demand, and all this kind of stuff. But I have discovered very quickly as a former business owner that a lot of times we connect dots, but we don't collect the right ones. In this case, let me give an example.

Let's take a family of three or four people. We have got a mother and a father and three children, relatively low-income Americans. Maybe the husband or wife is unemployed. And they have a leak in their roof in their bathroom because the bathroom vent has a flashing problem. They call the local roofing contractor, and it is a low slope roof, about 3 in 12. Today, or prior to this, the roofing contractor could go up onto that roof, and it would cost about $50, 15 to 20 minutes of work to solve that problem.

This is an OSHA fact sheet provided by your department, and on the back of it I circled the example that you have depicted here of appropriate fall protection. Can you tell us how long it takes to install that anchor that you are showing there, that tripod for the retractable lifeline?

Mr. MICHAELS. Well, first, you know, my understanding of our regulation here is that a 3-12 roof, we wouldn't require any conventional fall protection, that a monitor would be sufficient.

Mr. RIBBLE. Oh. That is an interesting statement. I would like you to keep that in the record.

Mr. MICHAELS. I have my roofing experts right here.

Mr. RIBBLE. Okay. Let's make it a 6-12. Still walkable. Will that help you?

Mr. MICHAELS. I have to tell you, you know, OSHA covers 130 million workplaces. I have a number of people here who are——

Mr. RIBBLE. Let me tell you as a professional roofing contractor how long that takes. Okay. It takes about 3½ hours. Because, you know, you can't just go up there and pound nails into there because it has to support the weight of an adult falling for 6 feet, which has a tremendous amount of force. That actually has to be bolted down to the roof. Okay. So now a $50 repair is now $300 or $400 to do the same amount of work. And in fact the exposure of the worker unprotected while attaching this is longer than the time of the repair.

Mr. MICHAELS. But is he get going to be putting on a slide guard instead?

Mr. RIBBLE. That takes about 15 to 16 minutes to put that slide guard on there.

Mr. MICHAELS. He is not going to use those same sorts of bolts?

Mr. RIBBLE. That is what a slide guard is. It takes about 15 to 16 minutes to put up. So that is all included in the cost here.

And, you see, here is the problem. As the price goes up—and it has to go up, and it does—that family now can't afford it. So demand goes down. And as rules and regulations are piled on and prices continue to go up, a necessary segment of the population can no longer afford it.

Let's take our same low-income family now. That roof continues to leak because they weren't able to afford it. Now that family has a new exposure. They have exposure to additional structural damage, they have exposure to mold and mildew and sickness themselves. Is their safety less or more important, do you believe, than

the safety of that worker, who might have been able do it without a fall?

And, in fact, the letter that you sent to me said that only three falls, three fatalities have occurred when slide guards were used. From 2005 to 2007, roofers in residential construction, there were three fatalities when slide guards were used.

Mr. MICHAELS. There were three in our records.

Mr. RIBBLE. Aren't your records the ones that you use to promulgate rules?

Mr. MICHAELS. Of the serious injuries in residential construction, thousands are reported through the BLS system. So, obviously, we have to, you know, weigh these things out. But when we look at these situations, if your roofer went out and it was a 9-12 roof——

Mr. RIBBLE. Yes.

Mr. MICHAELS [continuing]. Then by law they would have to do it.

Mr. RIBBLE. That is correct.

Mr. MICHAELS. And they are at risk there. Are they at much less risk because it is a 6-12?

Mr. RIBBLE. Oh, absolutely.

Mr. MICHAELS. But they are still at risk. He may fall.

Mr. RIBBLE. So you would like zero risk.

Mr. MICHAELS. No, not zero risk. Because the 3-12 roof we are saying he doesn't need to do that. And people have died off of 3-12 roofs. But we have weighed this. Our stakeholders have weighed this. The National Association of Home Builders asked us to do it this way. We think it can be done this way reasonably. Obviously, it is going to raise some costs, but it is going to save some lives. And that is what OSHA is about. And it is not at zero cost, but we think this is a reasonable cost.

Mr. RIBBLE. I am just watching my time.

Chairman WALBERG. The gentleman's time has expired.

Mr. RIBBLE. Okay. I yield back. Thank you.

Mr. KUCINICH. I ask unanimous consent to give the gentleman another minute, and I would like him to yield for a question.

Mr. RIBBLE. Yes, I will yield.

Mr. KUCINICH. Do we have unanimous consent?

Chairman WALBERG. Unanimous consent? Yes.

Mr. KUCINICH. Okay. We all admire my friend's expertise in roofing. I just have a question. Have you ever fallen off a roof?

Mr. RIBBLE. No, sir.

Mr. KUCINICH. Okay. That is my only question. Thank you. I am glad for that.

Mr. RIBBLE. And in my 35 years of running my company, I have never had a fatality in my company. Because an injured worker I cannot make a profit on. So, therefore, worker safety, there is a compelling profit interest for American employers to keep their workers safe. And I did so because I have a conscience, and I didn't do so because the government told me I must.

Mr. KUCINICH. I thank the gentleman. Thank you.

Ms. WOOLSEY. Would the gentleman yield a little bit of that minute to me?

Chairman WALBERG. We have 30 seconds left.

Ms. WOOLSEY. Okay. And maybe I am a cynic. I cannot imagine any project where a roofing company packs up, goes to somebody's home, and takes care of a problem for $50.

Mr. RIBBLE. I would invite you to move to Wisconsin.

Ms. WOOLSEY. Well, I do live in California. I give you that.

Chairman WALBERG. This brings back memories of having an HR person out there asking your rates.

Thank you. Dr. Michaels, I appreciate the time you spent. I am sure there will be other letters coming and responses with that. But we do sincerely appreciate the responsibility you have and the desire to have a safe workplace, with that creative tension of also having a workplace that continues on and the differing opinions that come from various practitioners in the construction industry as well with what they do. Thank you for your time. I appreciate that.

We will ask now for the second panel of witnesses to join us at the table, and we will continue on with our hearing.

We will resume our hearing and thank the witnesses for being here. I will begin the introductions. I am delighted to have our member from Indiana, the former regulator, Secretary of State, Mr. Rokita, to introduce our first witness.

Mr. ROKITA. Thank you, Mr. Chairman.

I am happy to be able to introduce a great Hoosier, Mr. Pete Korellis. Pete and I come from the same home county. It is a great county that contributes a lot culturally and economically to the State of Indiana, and Pete is an excellent citizen of that county. He is president and owner of Korellis Roofing in Hammond, Indiana. It was founded in 1960.

Mr. Chairman, I used to be a roofer myself in Lake County, Indiana. I did not work for Mr. Korellis or his company. I worked for one of his competitors. And he was an excellent competitor, Mr. Korellis and Korellis Roofing. And they were always the company to beat because of what Congressman Ribble had said, how they have a conscience and take care of their workers and also are entrepreneurs who intend to make a profit and because of that have made the county, the State, and this country great. I very much appreciate his willingness to testify before us today, and I am happy to welcome him here, Mr. Chairman.

Chairman WALBERG. I thank the gentleman.

And joining Mr. Korellis will be Peg Seminario—I hope I got that close—director of the Health and Safety Department, AFL-CIO, as well as David Sarvadi, a partner at Keller and Heckman. Thank you as well to each of you for being here, and we look forward to your testimony.

Again, just as a reminder, the lights in front of you are for a purpose; and I appreciate the fact that the last witness kept to that well, as well as my colleagues today. So we will try to do that, green giving you 5 minutes, yellow means that you have 1 minute left, and red cut it off as soon as possible—not necessarily the next sentence, but let's keep it close.

So, having said all of that, let's move to our first witness. And I will ask Mr. Pete Korellis.

STATEMENT OF PETE KORELLIS, PRESIDENT, KORELLIS ROOFING, INC.

Mr. KORELLIS. Thank you, Mr. Chairman, and members of the committee. My name is Pete Korellis. I am president of Korellis Roofing Company in Hammond, Indiana. I am testifying on behalf of the National Roofing Contractors Association.

I am here because I have deep concerns that the new rules issued by the Occupational Safety and Health Administration will put my workers at greater risk of injury and also make it more difficult for me to operate my business.

I am well aware that one fall from a roof is one too many, and my company is committed to providing a safe workplace for my employees. For the last 15 years, we have been following a rule negotiated by OSHA and roofing industry representatives that gave us several options of fall protection on residential dwellings based on what we felt was the best solution for a given project. This included slide guards on moderately sloped roofs.

My company has worked on thousands of homes under the old rules. We have not had a single serious accident or injury resulting from a fall.

OSHA's new rules require us to use what are called conventional fall protection methods and effectively eliminate the option of using slide guards. The problem is that these alternative options are often infeasible or will create greater hazards. The most practical of options, the personal fall arrest systems, do not take into account that most dwellings are not designed to accept an anchor point that can withstand a 5,000-pound load. My company works on all kinds of residential structures, and we are not qualified to determine if the rafters will bear 5,000 pounds of weight.

Also, my employees move around the roof a lot. That is the nature of the reroofing and service work industry. With ropes or safety lines all over the roof, they are more likely to trip and fall. And falling off a roof, even with a harness on, is something we want to avoid.

Importantly, there is a big difference between new construction and the repair or replacement of an existing roof. New construction activities can make effective use of guardrails, safety nets, personal fall arrest systems, and even scaffolding because of the ease of access around a building that is under new construction. These options are usually not feasible in typical repair and reroofing activities. Here is an example.

We recently completed a roof replacement on a ranch-style home where the only access for our dump truck was in the driveway, which is quite common. We had to carry the shingle tear-off, literally thousands of pounds of tear-off, from the rear of the dwelling up and over the peak, all the way to the front of the home where the driveway is located, where our dump truck was.

With a five-man crew, which is again very common for a roofing tear-off, the ropes became tangled up. We were catching on the roofing materials. We were catching it on the individual roofers. Plus the excess traveling slack in those ropes needed to travel from the back of the home all the way up and over means it would not have restrained my workers from falling on all different sides of the home as they are traveling from point A to point B.

The point is, for this type of work, slide guards are both safer for our workers and are more efficient. OSHA officials will tell you that if the use of conventional fall protection methods is either infeasible or creates a greater hazard, then I can still use slide guards by developing a site-specific protection plan. But the process for developing such a plan is virtually impossible to use in most circumstances.

Here is what the new rule means in the real world. Repairing a small roof leak under the old rules could be done safely with one employee using a slide guard. OSHA's new rules, for reasons outlined in my written statement, turn a simple roof repair into a slow and costly ordeal that may involve putting two or three of my employees at greater risk.

It is also important to note that OSHA has presented no evidence to demonstrate that slide guards are a less effective form of fall protection than the alternatives. We know that OSHA has reports of fatal falls—I am sorry, they have more reports of fatal falls when personal fall arrest systems are used than when slide guards were used. I fully support the idea of roofing companies taking positive steps to prevent falls. When it comes to roofing and repair work, it is better to assess the hazards and choose the fall protection system best suited for each unique job.

A fall due to my negligence could not only result in OSHA fines, business disruptions, it could put me out of business. But, more importantly, it could cause a life-changing incident for one of my employees and his or her family.

Another important point is that OSHA statistics show that approximately 90 percent of fatal falls—90 percent of fatal falls happen when there is no fall protection being used. It doesn't make sense to eliminate any effective form of fall protection.

On behalf of the NRCA, I respectfully ask the committee to consider a legislative remedy to this problem if OSHA will not work with our industry to resolve this issue. We stand ready to work with Congress and agency officials to find the best possible solution for improving worker safety.

On behalf of myself and the National Roofing Contractors Association, I would like to thank you for this opportunity.

[The statement of Mr. Korellis follows:]

Prepared Statement of Pete Korellis, President, Korellis Roofing, Hammond, IN, on Behalf of the National Roofing Contractors Association

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: My name is Pete Korellis and I am president of Korellis Roofing Company in Hammond, Indiana. I am testifying on behalf of the National Roofing Contractors Association, which was founded in 1886 and is the voice of professional roofing contractors nationwide. NRCA has approximately 4,000 members in all 50 states that are typically small businesses, with our average member having 45 employees and annual sales of $4.5 million. Our company was founded in 1960 and employs approximately 120 people. Even with a severe downturn in the housing industry, our company has managed to grow our residential business and employ additional craftsmen. We are successful because we thoroughly understand our industry; we are committed to the people who work for us; and our #1 goal is to send all of them home safely every day. No job is so important that we cannot take the time to do it safely.

I am here today, Mr. Chairman, because I have deep concerns that new rules issued by the Occupational Safety and Health Administration—OSHA—will put my workers at much greater risk of injury and also make it much more difficult for me to operate my company.

The issue in question is fall protection for people working on roofs. We are all too aware that one fall from a roof is one too many, and my company is committed to providing a safe workplace for my employees. For the last 15 years, we have been following a rule that was negotiated by OSHA and roofing industry representatives. The rule allowed us to use a variety of options for fall protection on residential dwellings, based on what we believed was the best solution for a given project. For example, on metal and tile roofs, we could use individuals as safety monitors for fall protection, because tile and metal is usually stacked in multiple piles all over the roof before the work is begun, and introducing ropes on the roof would make it extremely difficult to maneuver around the roof to complete the work.

Also, we were allowed to use what OSHA calls "slide guards" on moderately sloped roofs; usually these are 2x6 wooden boards (figure 1) that are secured upright around the perimeter of the roof utilizing metal roof brackets (figure 2) anchored to the roof joists, and then spaced up the roof a maximum of 8' apart so that if a worker slips, the slide guard will catch him. Moderately sloped roofs, for the purpose of the old directive, are those with slopes greater than 4:12 up to 8:12, meaning the roofs rise more than 4 vertical inches for every 12 horizontal inches (figure 3) up to those rising 8 vertical inches for every 12 horizontal inches.

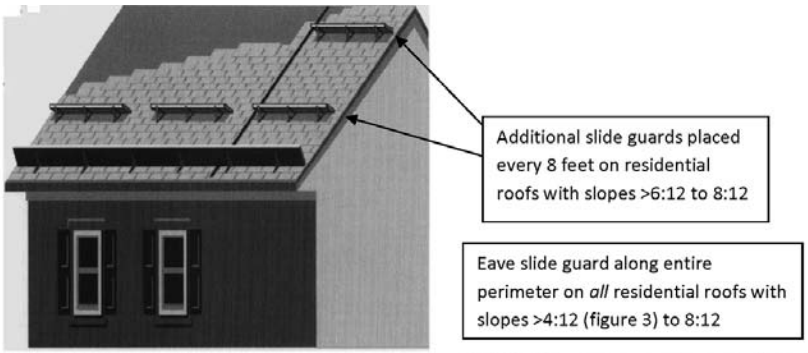


Figure 1: Slide guard installation

Figure 2. Typical slide guard bracket.

Figure 3. Garage with 4:12 pitched roof.

We acknowledge, Mr. Chairman, that like all things in life, safety monitors and slide guards are not fool-proof. But in those 15 years, my company has worked on thousands of homes and we have not had a single serious accident or injury resulting from a fall.

The new OSHA rules, which were issued last December and became effective on Sept. 16, require us to use what OSHA calls "conventional fall protection" methods. Mr. Chairman, there is nothing conventional about them. My choices are to install scaffolding and/or guardrails around every home my workers are on, or to install a safety net around the perimeter of the house, or to put my workers in harnesses with lanyards—what OSHA calls "personal fall arrest systems"—that have to be secured to an anchor point, usually at the roof's ridge. Of the three options we have to choose from, the first two, guardrails or safety nets, are completely impractical to use on an existing dwelling for a number of reasons. Necessary structural attachment points, readily accessible on a home under construction, are covered by fin-

ished trim details like soffit, fascia and gutters on an existing dwelling. Guardrails and safety nets also obstruct the tear off procedure as debris has to be lifted over them for disposal. In addition, most of this equipment is required to be secured directly through the roofing materials we will be removing during the course of the project. This safety equipment will need to be removed and reinstalled at several phases of roof tear-off, dry-in and new material application, increasing worker fall exposures during the numerous times we will need to set up and break down this equipment.

In my company, I want to minimize the time my employees spend in dangerous situations. That means, among other things, I don't want them working near the edge of the roof unless and until they have to in order to finish the job. Now, if I am supposed to install guardrails or a safety net around the perimeter of a home, my first question is: How am I supposed to protect the people installing the guardrails and safety nets? And would OSHA really want me to expose even more of my workers, for an even longer period of time, to the hazards associated with working near the roof's edge?

The most practical of the three options, personal fall arrest systems, do not take into account that most dwellings were not designed to accept an anchor point that can withstand a 5,000 pound load. Personal fall arrest systems are not fool-proof either. My company works on all kinds of existing residential structures, and we are not qualified to determine if the rafters we're attaching the anchor to will bear 5,000 pounds of weight. Also, my employees move around on the roof a lot while they are working—that's the nature of reroofing and service work. With ropes all over the roof, they are much more likely to trip and fall. And falling off a roof, even with a harness properly secured to resist a 5,000 pound load, is something we really want to avoid.

We also know that OSHA has more reports of fatal falls when personal fall arrest systems are used than when slide guards are used. And we know that the use of personal fall arrest systems introduces a whole host of greater hazards, most notably those resulting from tripping over ropes on the roof. On roofs 4:12 to 8:12 the ropes lay on the roof under your feet and are practically out of sight—especially if the workers are carrying materials. However, once workers are on a roof with a slope greater than 8:12 the ropes now lay in front of the workers because of the roof's pitch (figure 5). So the slope is an important variable and why we agree that on these very steep roofs tying off is appropriate.

Figure 5. Workers in PFAs on a 10:12 pitched roof.

Importantly, there is a big difference in new construction roofing activities and the repair, maintenance or replacement of an existing residential roof. New construction activities are coordinated with many other trades' activities and can make effective use of guardrails, safety nets and personal fall arrest systems and even scaffolding because of ease of access (Figure 6) versus typical repair, reroof and maintenance activities in established neighborhoods (Figure 7).

Figure 6. A typical new, residential construction work site.

Figure 7. Site issues on a typical residential reroofing project.

Here's an example: We recently completed a very common type roof replacement on a ranch style house. Due to the existing landscaping, the only access for our dump truck was in the driveway, which is common when we are replacing a roof. We had to carry the shingle tear-off from the rear of the home up over the roof peak to the front of the home where our dump truck was located. As you can probably

imagine with a five man crew, the ropes became tangled and were catching on everything on the roof including the workers; not to mention the fact that we still weren't compliant due to the amount of slack needed in the ropes to travel the long distance to our dump truck from the rear of the home to the front of the home. The excess "traveling slack" needed in the ropes would not have restrained my employees from falling off the roof. In order to comply, we would have had to screw anchors points (that resist a 5,000 pound load) to the roof deck at intervals in the direction of our dump truck, and then hire someone to constantly switch the ropes from anchor point to anchor point. This is unreasonable and just one example of problems that we have run across so far.

In addition, my employees think personal fall arrest systems are cumbersome and I'm concerned they will not use them properly if they think they are either creating greater dangers or merely providing a false sense of security. The reports of fatal falls in OSHA's files—when personal fall protection was used—indicate that either the anchor points failed to resist 5,000 pounds of resistance, the anchors weren't attached, or the ropes weren't attached to the employee's harness. The point is: We can provide equipment to our employees, we can train them, but we can't always make sure they follow our instructions. I'd much prefer to be able to assess each job we do, and find the fall protection solution that makes the most sense for that job. In fact, Mr. Chairman, that is exactly the kind of approach OSHA is advocating in its Injury and Illness Prevention Program.

Now, OSHA officials will tell you that if I think the use of "conventional fall protection" methods is either infeasible or creates a greater hazard, then I can choose to use another method, such as slide guards or safety monitors by developing a site-specific fall protection plan. Let me describe this option for you. The requirements found in 29 CFR §1926.502(k) are as follows:

1. The plan must be prepared by a qualified person,[1] kept up to date and developed specifically for the site.
2. Changes to the plan must be approved by a qualified person.
3. A copy of the plan with all changes must be maintained at the job site.
4. Implementation of the plan must be under the supervision of a competent person.[2]
5. The plan must document the reasons conventional fall protection is infeasible or creates a greater hazard.
6. The plan must discuss other measures that will be taken to reduce or eliminate fall hazards to workers not protected by conventional fall-protection methods.
7. Locations where conventional fall protection cannot be used must be identified and classified as controlled access zones; compliance with provisions of 29 CFR 1926.502(g) relating to controlled access zones is required.
8. If no other fall-protection measure has been put in place, the employer must implement a safety monitoring system as described in 29 CFR 1926.502(h).
9. Employees designated to work in the controlled access zone established under the plan must be identified by name or other manner in the plan—no other workers may enter the controlled access zone.
10. The employer must investigate any serious falls or incidents at the site to determine whether the fall-protection plan must be revised to prevent future incidents.

Adding to the site-specific requirement, OSHA states in the new instruction: "A written plan developed for repetitive use for a particular style/model home will be considered site-specific with respect to a particular site only if it fully addresses all issues related to fall protection at that site." This differs from the regulation's strict requirement that the written fall-protection plan be "developed specifically for the site" and authorizes repetitive-use plans that apparently could be based on similar characteristics of a job site such as single-story; multi-story; multi-level; low-slope; steep-slope; or tile, metal, slate or cedar shake installations. A determination of infeasibility or greater hazard in the use of a conventional fall-protection method still would be required.

If a structure does not meet OSHA's definition of "residential construction,"[3] even this option may not be used to implement fall protection methods other than the

[1] "Qualified person" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

[2] "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

[3] "The Agency's interpretation of 'residential construction' for purposes of 1926.500(b)(13) combines two elements—both of which must be satisfied for a project to fall under that provision: (1) the end-use of the structure being built must be as a home, i.e., a dwelling; and (2) the struc-

three conventional methods. OSHA revised its definition of "residential construction" in the new instruction to allow exterior wall structures of solid masonry and framing materials of cold-formed metal studs to be included in the definition.

A greater number of structures conceivably may qualify as residential because of that change, but, the agency also limited the definition to include an "end-use" requirement, meaning the building must be used as a dwelling. For example, work on a home that has been converted exclusively to an office, though it retains its original wood framing, is not considered residential construction under the new instruction, and a roofing contractor would not be permitted to develop a fall-protection plan to use as a means of fall protection other than the three conventional methods at that job site.

Mr. Chairman, here is what the option for determining personal fall arrest systems are either infeasible or create a greater hazard means in the real world. Suppose you discover you have a roof leak, and you call my company to fix it. When my company gets a call like that, our practice is to send one person to the home to investigate the leak and to try to fix it on the spot. Before the new rule was issued, if my employee found the source of the leak and was going to repair it, he would install slide guards at the roof eave in the area where he would be working. If the roof was steeper than 8-in-12, he would use a personal fall arrest system before he went on the roof.

Let's suppose that your leak is from deteriorated flashing around your chimney, and the chimney is near the roof eave. Let's also suppose my employee determines he could fix it fairly easily, and is concerned about attaching a harness to himself and climbing up to the ridge of the roof, where he is unsure that there is an anchor point that would hold 5,000 pounds. OSHA says that the personal fall arrest systems have to be anchored[4] to support a load of 5,000 pounds or have a safety factor of two, which would need to be determined again by a qualified person. I'm not sure how many of my small business counterparts have engineers on staff to do these calculations, but I suspect it is close to none, so we have to rely on manufacturer installation requirements that come with the anchors. The liability of even attempting to assume a safety factor of two is frankly foolish for anyone without a structural engineer on the company's payroll.

If he wanted to repair the leak quickly by installing slide guards near the eave just like we have for the past 15 years, here is what my employee would have to do under the new rule: He would have to return to the office to have a qualified person write a site-specific fall protection plan for the project stating why the new conventional fall protection methods are not feasible or create a greater hazard. Since the "qualified person" might not be familiar with the project, he would probably have to visit the job site. Then I would have to arrange for a "competent person" to accompany my employee to your home to oversee the work.

Mr. Chairman, what would have been a simple roof repair has now turned into a very slow and costly ordeal. By the time the leak is fixed, your house would be pretty wet. A simple roof repair would have cost you a lot of money. And I would have put perhaps three of my employees at needless risk.

I fully support the idea of having roofing companies take positive steps to prevent falls. I know it appears that using personal fall arrest systems seems like the best way to prevent falls. But when it comes to residential reroofing and repair I honestly feel it is much better to assess the hazards and choose the fall protection system best suited for each unique job. Often, we have no way of knowing that the residential structure was designed to resist a 5,000 pound load. A fall due to my negligence could not only result in OSHA fines and business disruption, it could in fact put me out of business. But most importantly it could cause a life-changing incident that could not only affect my employee but also his or her family. My company has spent the last 15 years training our employees about what we believe are the very best methods for preventing falls.

This is a dangerous industry even when all safety measures are being used. I have to be able to look myself in the mirror and know without question that I have provided the proper training to minimize the chance of an accident. It is an important investment that is well worth the expense. Now I am faced with the prospect

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ture being built must be constructed using traditional wood frame construction materials and methods (although the limited use of structural steel in a predominantly wood-framed home, such as a steel I-beam to help support the wood framing, does not disqualify a structure from being considered residential construction.)"

[4] 1926.502(d)(15) Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least 5, 000 pounds per employee attached, or shall be designed, installed, and used as follows; (i) as part of complete personal fall arrest system which maintains a safety factor of at least two; and (ii) under the supervision of a qualified person.

of re-training all of my employees to use equipment they don't have confidence in, equipment that provides only a false sense of security and has been proven to be riskier to use in many circumstances.

Mr. Chairman, OSHA has told us they would provide us with all sorts of training materials to help us comply with this new rule. I remind you that it was issued almost 10 months ago. Until very recently, we had seen only a PowerPoint presentation on the OSHA web site that is focused almost entirely on new home construction, which again is completely different from repair and replacement, which accounts for 80% of the work done in the roofing industry. OSHA has promised for months that it would be developing a booklet specific to roof repair and replacement. The enforcement date for the new rule has come and gone, and there is no booklet. I recently learned there is a new Fact Sheet on OSHA's website that discusses roof replacement and repair, but it is virtually useless to me.

It talks, for example, about using scaffolds or aerial lifts to perform repair work at a roof's edge. So for that roof repair described earlier, I suppose I could rent an aerial lift and transport it to the home (probably destroying some landscaping in the process) in order to fix that leak near the chimney. Or I could erect a scaffold system on the side of the house, but of course the new Fact Sheet doesn't address the exposure to falls that workers have when erecting scaffolding or the damage it may do to the home.

Additionally, the new rule is full of ambiguities that have not been addressed by OSHA. Representatives from my industry have tried, without success, to be heard before the new rule was issued. I hope you can understand how frustrating this is for me and my roofing industry colleagues.

It is also important to note that OSHA has presented absolutely no evidence to demonstrate that slide guards are a less effective form of fall protection than the alternatives. In fact, a review of OSHA data indicates that between 2004 and 2008 there were 14 fatalities from roof falls when personal fall arrest systems were in use, compared to only two or three involving slide guards. Government agencies should be required to justify regulatory actions such as this directive with credible, scientifically-based evidence and data. OSHA has not done so in this case, and, we believe, cannot do so.

Another important point is that OSHA's data show clearly that approximately 90% of fatal falls from roofs happen when no form of fall protection is in use. Why would OSHA want to eliminate or limit slide guards, which are proven to be an effective form of fall protection? Moreover, in order to truly improve workplace safety and prevent falls in our industry, OSHA should target its enforcement efforts at contractors that use no fall protection.

Interestingly, there are some OSHA state plans that have worked with the roofing industry to promulgate safety standards that have taken into account many of these concerns. For example in California, CAL-OSHA has a unique set of roofing-related requirements that have, among other choices, slide guards available as an option closely reflecting the former federal provisions. So there is evidence that others are not only working with the affected industry but developing smart safety rules as a result.

Meanwhile, Mr. Chairman, I will be returning to Indiana tomorrow and requiring my employees to follow practices that I believe are not always the best ways to prevent them from falling. I find that incredibly difficult to do.

On behalf of the National Roofing Contractors Association, I respectfully ask the committee to consider a legislative remedy to this problem, which threatens workplace safety in our industry, if OSHA is not willing to work with industry representatives to address our concerns. NRCA wishes to commend Rep. Denny Rehberg for including language in the FY 2012 Labor/HHS/Education Appropriations bill introduced Sept. 29 that would restrict OSHA from enforcing this directive with respect to roof repair and replacement activities. NRCA urges Congress to approve this legislation that will prevent injuries to workers that may result from OSHA's directive and minimize disruption in the roofing industry while we continue working to develop a policy that makes sense for our industry.

We stand ready to continue working with Congress and agency officials to resolve this problem and to find the best possible solutions for improving worker safety. Thank you for your careful consideration of our views on this important issue.

Chairman WALBERG. Thank you, Mr. Korellis.

Now I recognize Ms. Seminario for her testimony.

STATEMENT OF PEG SEMINARIO, DIRECTOR, HEALTH AND SAFETY DEPARTMENT, AFL–CIO

Ms. SEMINARIO. Thank you very much. Thank you, Chairman Walberg, Ranking Member Woolsey, and members of the committee. I do appreciate the opportunity to testify today.

I have worked at the AFL-CIO for 34 years now, and during that time I have been involved in rulemakings on dozens of workplace safety and health hazards. I have been around long enough to see that the regulations that have been promulgated have made a real difference in the lives of workers. I have also seen the failure of the regulatory process and the lack of government action to address serious hazards result in unnecessary deaths, injuries, and illnesses to workers.

The title of today's hearing is Workplace Safety: Ensuring a Responsible Regulatory Environment. I think we should ask the question, a regulatory environment that is responsible for whom and to what end? Is it an environment that is concerned primarily, solely about the costs and impacts on business? Or is it a regulatory environment that is concerned with ensuring the protection of worker safety and health?

It is the AFL-CIO's position that, first and foremost, any examination of safety and health regulations should be based on the premise that protection of workers from harm is our shared priority and goal; and that is in fact what the OSHA law requires.

We have seen in the last 40 years, since the OSHA Act was enacted, that safety regulations and health regulations have saved lives. There has been a tremendous, significant drop in workplace fatalities, both in numbers and rate. And we have seen that decrease in worker deaths not only in the less hazardous industries but significant reductions in industries like construction and manufacturing. We have seen OSHA standards and enforcement on hazards like asbestos, lead, trenching, lockout of hazardous equipment reduce exposure to hazards and to reduce illnesses, injuries, and deaths.

But our work is far from done. Unfortunately, last year we saw a series of workplace catastrophes that claimed dozens of workers' lives: the Upper Big Branch mining disaster that killed 29 miners, the BP Gulf Coast oil rig explosion that killed 11, the Kleen Energy plant explosion in Connecticut that claimed 6 workers' lives. None of these catastrophes was the result of too much government regulation or too much enforcement.

Despite the long record of accomplishment in protecting workers through a proven system of regulation enforcement, today we are seeing a number of people in the business community and some in Congress demanding that we abandon this path and instead return to a time when there was little or no regulation and little or no enforcement. They claim that employers have been buried by useless, burdensome regulations, and that under the Obama administration they are facing a tsunami of new, unnecessary rules, and that regulations are responsible for the current jobs crisis and economic situation.

And as Ranking Member Woolsey has pointed out, last week we saw the House Labor-HHS Appropriations Subcommittee chair unveil a draft bill that would stop important workplace safety and

health rules, a number of rules and actions at OSHA, and also an action at MSHA to protect coal miners from black lung.

The AFL-CIO has been the leading advocate for strong national action to create jobs in this country. We want to put people back to work. But we reject the proposition that to address our current economic situation that we must roll back our system of government safeguards to protect workers and the public.

Contrary to the claims of some in the business community, there really is no tsunami of workplace safety and health regulations. In fact, over the last decade, there has been barely a ripple. Under the Bush administration, OSHA rulemaking virtually ground to a halt.

Under the Obama administration, there has been some movement, with two new rules issued. What the Obama administration has been doing most recently is to resuscitate and move forward on rules that the Bush administration abandoned.

One of those rules is a standard on silica that was initiated back in 1997, declared a priority by the Bush administration but unfortunately languished. Unfortunately, that rule is now stalled at the White House under OMB review behind closed doors. Business groups are meeting with the government. We agree with you that we need to get this information out into the public, out into the record, and so we are encouraging and urging that this OSHA rule move forward with a proposed rule so the public process can begin.

I would like to say that, in looking at what we are facing right now and this call to roll back and block regulations, I think we have to ask ourselves, in the absence of these protections, what kind of country we are or what kind of country we will be. I urge the committee to reject efforts to block needed safeguards to protect workers. We should not abandon the progress made over the last four decades and turn back the clock. Taking that path will lead to more workers being injured, diseased, and killed on the job.

Thank you.

[The statement of Ms. Seminario follows:]

Prepared Statement of Peg Seminario, Director, Safety and Health, AFL–CIO

CHAIRMAN WALBERG, RANKING MEMBER WOOLSEY: I appreciate the opportunity to testify today to discuss workplace safety regulations.

My name is Peg Seminario. I am Director of Safety and Health for the AFL-CIO, where I have worked for more than three decades on a wide range of regulatory and policy issues related to worker safety and health. During that time, I have participated in the development of many worker safety and health standards and regulations through the Occupational Safety and Health Administration's (OSHA) rulemaking process. I have seen regulations that have been promulgated make a real difference in the lives of workers. And I have also seen the failure of the regulatory process and the lack of government action to address serious well-recognized hazards result in unnecessary deaths, injuries and illnesses to workers and hardship and loss for their families.

The title of today's hearing is "Workplace Safety: Ensuring a Responsible Regulatory Environment." I must ask the question—A regulatory environment that is responsible for whom and to what end? Is it a regulatory environment that is primarily or solely concerned about costs and impacts on businesses and regulated entities? Or is it a regulatory environment that is concerned with ensuring the protection of workers' safety and health through regulations that are sound and effective.

It is the AFL-CIO's position that first and foremost, any examination of worker safety and health and related regulations should be based on the premise that protection of workers from harm is our shared priority and goal. Indeed, in the Occupational Safety and Health Act, the primary law that governs worker safety in this country, the Congress declared as its purpose and policy "to assure as far as possible

every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." Congress also declared that this purpose and policy was to be pursued through the exercise of its powers to regulate commerce, and mandated the Secretary of Labor to develop, promulgate and enforce safety and health standards that are reasonably necessary and appropriate to protect workers from harm.

Under the Act, OSHA standards are required to provide a high level of protection. For toxic substances and harmful physical agents the Secretary of Labor is required to set standards that provide workers protection from material impairment of health or loss of functional capacity even if exposed over a working lifetime, to the extent technologically and economically feasible. The Supreme Court has ruled that the OSH Act prohibits OSHA from basing health standards on a cost-benefit determination, since protection of health, subject to feasibility constraints, is required to be the primary consideration.

Workplace Safety Laws and Regulations Have Saved Lives, But There is Much Work to Be Done

Over its 40 year history the Occupational Safety and Health Administration (OSHA) has issued standards on major workplace hazards including asbestos, benzene, lead, arsenic, confined spaces, trenching, lock-out of hazardous equipment, scaffolding and fall protection. These standards and their enforcement have changed industry practice, reduced exposure to serious health and safety hazards and the resultant injuries, illnesses and deaths.

Since the OSH Act was passed, workplace fatalities due to injuries have been reduced from 13,800 a year in 1970 to 4,547 deaths in 2010. The fatality rate has dropped by 81%, with significant drops in fatality rates in hazardous industries like construction (86% reduction) and manufacturing (76% reduction).

Over 400,000 lives have been saved from traumatic injury deaths since the passage of the OSH Act due to improved workplace protections and the efforts of employers, unions, workers, safety and health professionals and the government.

But our work is far from done. In 2010, we saw a series of workplace catastrophes that claimed dozens of workers lives—the Upper Big Branch mining disaster that killed 29 miners in and explosion, the BP Gulf Coast oil rig explosion that killed 11 workers and caused an environmental disaster, the Tesoro Refinery explosion in Washington State that killed 11 workers and Kleen Energy Plant explosion that claimed the lives of 6 workers. Not all of these investigations have been finalized, but from what has been documented in all these cases the lack of safety rules, the failure to comply with existing rules, the push for production and inadequate government oversight and enforcement were all major factors. None of these catastrophes was the result of too much government regulation or too much enforcement.

The deaths from these catastrophes were among the 4,547 workplace deaths due to job injuries reported in 2010 by BLS. Last year on average 12 workers died each day because of job injuries—women and men who went to work, never to return home to their families and loved ones. This does not include those workers who die from occupational diseases, estimated to be 50,000 each year—an average of 137 deaths each day.

In 2009, the most recent year for which data is available, more than 4.1 million workers across all industries, including state and local government, had work-related injuries and illnesses that were reported by employers, with 3.3 million injuries and illnesses reported in private industry. Due to limitations in the injury reporting system and underreporting of workplace injuries, this number understates the problem. The true toll is estimated to be two to three times greater—or 8 million to 12 million injuries and illnesses a year. The cost of these injuries and illnesses is enormous—estimated at $159 billion to $318 billion a year for direct and indirect costs of disabling injuries alone.

For many groups of workers, workplace conditions remain particularly dangerous. Fatalities and injuries among Latino workers are much greater than among other groups of workers. Construction workers continue to be at especially high risk. Hazards to young and inexperienced workers are a significant problem and there are growing concerns about safety and health challenges for older workers as more workers are staying on the job to an older age. Long recognized hazards such as silica, noise, and confined space hazards in construction remain serious problems, and ergonomic hazards, infectious diseases and most toxic chemicals have not been adequately addressed.

Current Attacks on Regulations Are Based on False Claims—Rolling Back Protections Will Not Create Jobs, But it Will Cost Workers Their Lives

Despite the decades long record of accomplishments in protecting workers through a proven system of regulation and enforcement under the OSH Act, many in the business community and some in Congress are demanding that we abandon this path and instead return to the days when there were no regulations and enforcement and employers were free to do whatever they chose. They claim that employers have been buried by useless, burdensome regulations and that under the Obama Administration they are facing a tsunami of new unnecessary rules. They further claim that regulations are responsible for the current jobs crisis and economic situation and that they and the country simply can't afford any additional regulations, particularly if we are to be competitive in today's global economy.

To this end, business groups have been attacking any and all regulations being developed or considered by OSHA and other agencies and are pushing to roll back or block enforcement of existing rules. In Congress, particularly in the House of Representatives, there have been countless hearings on regulations and bills introduced to stop individual rules and to "reform" the regulatory process for all agencies in ways that would make it difficult if not impossible for agencies to issue new rules. Efforts are also being made to use the appropriations process to block rules or their enforcement by prohibiting funds for this purpose.

Just last week, the Chair of the House Subcommittee on Labor-HHS Appropriations unveiled a draft bill that would block much of the rulemaking activity at the Department of Labor. In the area of worker safety, the bill would stop OSHA rules on workplace injury and illness prevention programs, a recordkeeping rule reinstating a requirement that employers identify musculoskeletal injuries on the OSHA 300 injury log and prohibit OSHA from enforcing basic fall protection requirements in residential home construction. The Mine Safety and Health Administration would be prohibited from taking action on new coal dust rules to protect coal miners from black lung. Prohibiting action on these safeguards will cost workers their lives and their health.

The AFL-CIO has been the leading advocate for strong national action to create jobs in this country. Addressing the jobs crisis and the 14 million workers who are unemployed, the millions who are underemployed, and the lack of economic opportunity for our young people must be our highest priority.

But the AFL-CIO firmly rejects the proposition that to address our current economic situation the United States must roll back our system of government safeguards to protect workers and the public. We should all remember that it was the lack of regulations and government oversight that led to the collapse of the financial sector in 2008 and the loss of 8 million jobs that is the major cause of the current situation. Our system of laws and regulations has made workplaces safer, our environment cleaner and our country fairer and more secure.

We reject the suggestion that current levels of protection are sufficient, and no further action is required. We do not accept that as a country we should not or cannot take action to reduce the still high toll of workplace injuries, illnesses and deaths. We do not agree that the government should roll back enforcement efforts and sit on its hands and do nothing to protect workers from serious harm and corporate neglect or abuse.

The claims that regulations have caused massive job loss are not supported by evidence. A comprehensive review of the literature on the impact of regulation on jobs conducted by the Economic Policy Institute found that most regulations result in modest job growth or have no effect.[1] Even researchers at the Mercatus Institute, a conservative regulatory policy center, acknowledged earlier this year in written comments to House Oversight and Government Reform Committee Chair Darryl Issa and in testimony before that committee that there little if any evidence available to support the contention that at a macro level regulations have caused massive job loss in the United States.[2] There is no evidence that any occupational safety and health regulation issued by OSHA has had negative job impacts.

Many business trade associations and others in Washington are also claiming that regulations under development by the Obama Administration are creating "regulatory uncertainty" and this is the major reason why businesses are reluctant to in-

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[1] [Shapiro, Isaac and Irons, John, Regulation, Employment and the Economy: Fears of Job Loss are Overblown, Economic Policy Institute, 2011]

[2] Williams, Richard, The Impact of Regulations on Investment and the U.S. Economy, Attachment to Letter Submitted to Darryl Issa, Chaiman, House Committee on Oversight and Government reform, January 5, 2011; Ellig, Jerry, Regulatory Analysis: Understanding Regulation's Effects, Written Testimony Submitted to the House Committee on Oversight and Government Reform, February 10, 2011.

vest and create jobs. But that is not what business owners themselves are saying. A recent survey by Small Business Majority found that the biggest problem small business faced was uncertainty about the economy, not government regulation.[3] A recent survey conducted by the National Federation of Independent Businesses found that "poor sales" was the biggest problem faced their members,[4] and a survey conducted by the Wall Street Journal of business economists found that it was the lack of demand, not uncertainty about government regulation that was keeping hiring down.[5]

Clearly regulations may have costs. But experience has shown repeatedly that the costs of regulations are often overstated by business groups who oppose these regulations. Moreover, studies have found that the actual cost of many government regulations when implemented are much less than the costs estimated by the government at the time the regulations were promulgated. A 1995 review of major OSHA rules by the Office of Technology Assessment found that for most of the rules examined, overestimated cost, because the agency had not adequately considered advances in technology. The report stated that "the actual compliance response that was observed included advanced or innovative control measures that had not been emphasized in the rulemaking analyses, and the actual cost burden proved to be considerably less than what OSHA estimated."[6] For some standards, such as OSHA's cotton dust standard and vinyl chloride standard, not only were the rules less costly than predicted, the rules led to technological innovations in the covered industries that made them more productive.

Most of the current attacks on government regulations, including attacks on OSHA rules are focused solely on the potential cost of the regulation to businesses. They totally ignore the benefits of the regulations to workers and the public. For the past 14 years, at Congress' direction the Office of Management and Budget (OMB) has produced an annual report on the estimated costs and benefits of government regulations. Every OMB report that has been issued, by Republican and Democratic administrations alike, has found that the benefits of regulations to the public, workers and the country far exceed their costs. The latest OMB report issued in June, 2011, found that the estimated annual benefits of major rules reviewed by OMB over the last 10 years were between $132 billion and $655 billion, compared to the estimated aggregate annual cost of between $44 billion and $62 billion. For the OSHA rules that were examined, the estimated annual benefits ranged from $0.4 to $1.5 billion compared to estimated costs of $ 0.5 billion.[7] These OSHA regulations not only provide a benefit to workers by reducing the burden of injuries and illnesses. They also benefit employers by limiting workers compensation and insurance payments and lost productivity.

There is No Tsunami of Workplace Safety Regulations

The claim that there has been a tidal wave of regulation also is not borne out by the facts. According to historical information available on OMB's Office of Information and Regulatory Affairs' www.reginfo.gov website, during the past two and one half years there have 108 major final rules government wide, compared to 116 major final rules issued during the last two and one half years of the Bush Administration. The number of economically significant proposed rules issued during these time periods is also comparable for both administrations.

And no one who is familiar with regulation at the Occupational Safety and Health Administration can honestly claim that there is a fast moving tsunami of workplace safety and health regulation in recent years.

It is just the opposite. There is barely a ripple.

Over the past decade few OSHA rules have been issued. For eight years, the Bush administration shut down OSHA rulemaking. Only three significant final OSHA rules were issued between 2001 and 2008 (electrical equipment installation, employer payment for personal protective equipment and hexavalent chromium), two

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[3] Small Business Majority, Opinion Survey: Small Business Owners Believe National Standards Supporting Energy Innovation Will Increase Prosperity for Small Firms, September 20, 2011

[4] Dunkelberg, William C. and Wade, Holly, NFIB Small Business Economic Trends, NFIB, September, 2011

[5] Hollander, Catherine, "WSJ survey: Lack of demand, not uncertainty, keeps hiring down." The Wall Street Journal, July 18, 2011.

[6] Office of Technology Assessment, Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health; An Appraisal of OSHA's Analytical Approach, Washington, DC, OTA, 1995.

[7] Office of Management and Budget, Office of Information and Regulatory Affairs, 2011 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities, Washington, DC, 2011.

of them a result of litigation by the unions. Under the Obama administration there has been one significant final OSHA rule issued—the cranes and derricks standard issued in 2010—a rule that was initiated by the Bush administration in 2003 and designated as a high priority, but never completed.

Indeed over its entire 40 year history, OSHA's regulatory activity has been fairly limited. Since 1971, there have been 34 significant health standards issued (some of these updates and revisions for the same hazard), and about 50 significant safety standards put in place by the agency. (Attachment 1).

For many serious hazards there are no regulations or regulations are woefully out of date.

The majority of OSHA regulations that are on the books today come from industry consensus standards that were adopted right after the passage of the Act at Congress' direction. Many of these consensus standards were developed in the 1950's and 1960's and based on science and technology that is outdated and more than 60 years old. These standards do not protect workers.

The regulatory process itself is not working to produce needed regulations in a timely fashion. Layers of additional requirements and regulatory analyses have been added by Congress and through executive orders. These requirements have made the process more complicated and costly and added years to the process. It now takes OSHA 10 years to develop and issue a major rule, once it determines a regulation is needed. These years of delay put workers at continued risk of disease and injury and cost workers their lives.

Even rules that have broad support from employers, unions and workers alike must go through this process, and take years to issue. The OSHA cranes and derricks rule was initiated in 2003 under a negotiated rulemaking committee of employers, unions and government representatives that reached unanimous agreement on a draft standard in 2004. But due to endless analytical and review requirements, a proposed rule was not issued until 2008 and the final rule not promulgated until 2010. During these years of delay a number of serious catastrophic crane accidents occurred in New York, Miami, Las Vegas and other cites causing multiple fatalities to workers and the public. Based on OSHA risk estimates in the final standard, the six year delay in the rule resulted in 132 unnecessary deaths and 1,050 preventable injuries.

Since taking office the Obama administration has moved to resuscitate OSHA's moribund regulatory program. Much of the effort to date has been directed at completing rules that were initiated by the Bush administration or even earlier, and have been under development for years. In addition to the cranes and derricks rule, long overdue rules on global harmonization for hazard communication, confined space entry in construction, protective equipment for electrical power distribution, and silica have been priorities.

The agency's new rulemaking efforts have focused on rules to address serious hazards. These include rules to prevent combustible dust explosions, like the 2008 explosion at the Imperial Sugar Plant in Georgia that killed 14 workers, the food flavoring chemical diacetyl which has caused disabling and fatal lung disease in factory workers, and to protect healthcare workers from infectious diseases, including pandemic influenza. The agency has proposed several rules to improve the usefulness of workplace injury and illness information including reinstating a requirement that employers identify which injuries and illnesses are musculoskeletal disorders (MSDs) by checking a box on the OSHA 300 injury log. And the development of a rule on workplace injury and illness prevention programs has been designated as a top priority by OSHA Assistant Secretary David Michaels. Given the lengthy rulemaking process, except for recordkeeping rules, it is unlikely that any of these new initiatives will even be proposed for a number of years, with final action being years down the road.

Business Groups Want to Stop All New Regulations, Even Rules on Well-Recognized, Deadly Safety and Health Hazards

For eight years the Bush administration implemented a de facto moratorium on Department of Labor rules. The business community welcomed this inaction, and is now seeking to block the Obama administration from issuing any new protections at OSHA and other agencies.

At OSHA business groups have focused their efforts on opposing and stopping the agency's silica standard, injury and illness program prevention rule and recordkeeping rule on MSDs. All of these rules have been under consideration and/or development for years. Nothing about these rules is extreme or radical. All of them address well recognized serious safety and health problems, and seek to do so through the application of long standing safety and health practices and regulatory approaches.

The injury and illness program prevention rule would require employers to put in place a program to identify and correct hazards in the workplace on an ongoing basis. This systematic approach to addressing workplace hazards is the foundation for workplace safety and health efforts. This approach has been the basis of all of OSHA's voluntary programs and is widely advocated by consensus standards organizations and safety and health professionals. Regulations or free standing laws requiring safety and health programs have been adopted by more than 20 states, including the states of Washington, California and Minnesota, which have had requirements for decades. The Reagan administration developed detailed guidelines on safety and health programs in 1989, and the George H.W. Bush administration explored the development of a safety and health program rule. A draft rule was developed during the Clinton administration and underwent SBREFA review in 1998. The development of a safety and health program rule was a priority for OSHA Assistant Secretary John Henshaw during the George W. Bush Administration. But the Chamber of Commerce and other industry groups objected and the rule was pulled from OSHA's regulatory agenda.

The history on the MSD recordkeeping rule is similar. For 30 years under OSHA's injury and illness recordkeeping rule, employers were required to record all work-related injuries and illnesses on the OSHA log. For seven categories of illnesses, including disorders related to cumulative trauma (CTDs), employers were required to check a box identifying the type of illness. This information helped identify particular types of illnesses both in the workplace and in national statistics and was useful in targeting prevention efforts. For CTDs this information identified major growing problems with ergonomic hazards in the 1980's and 1990's industries like meat packing and automobile assembly and led to major prevention efforts in these sectors.

In 2001, OSHA revised and updated its injury and illness recordkeeping rule, largely in response to industry requests that the agency clarify and simplify recording requirements. In that rule OSHA replaced the earlier CTD column with two columns, one for identifying hearing loss cases and another to identify musculoskeletal disorders (MSDs). But at the urging of business groups the Bush administration stayed the rule and in 2003 removed the requirement that MSDs be identified and deleted the MSDS column from the OSHA 300 injury log. This came after the repeal of OSHA's ergonomics standard in 2001, meaning that not only were there no rules to protect workers from MSDs, there was no easy tool for identifying and tracking these injuries.

In January 2010, the Obama administration proposed to reinstate the MSD column on the OSHA 300 log. Business groups have vigorously objected to this simply requirement claiming that it imposes far reaching new recordkeeping burdens that will be impossible to meet. But the proposed rule does not change OSHA recordkeeping requirements or require additional injuries and illnesses to be recorded. It simply requires employers to check a box to identify which injuries and illnesses are MSDs, similar to requirement that existed for 30 years under OSHA's previous recordkeeping rule. Due to business pressure and objections, OSHA withdrew the MSD recordkeeping rule from OMB review in January in order to receive more input from small businesses about their concerns, even though the OSHA recordkeeping rule exempts most small businesses from keeping any injury records due to their small size or inclusion in an industry designated as low hazard. Those special sessions with small business groups were held in April and OSHA has taken additional comments from all interested parties. Hopefully the agency will move forward and issue this simply requirement to help employers and workers identify and take action to prevent MSDs which remain the largest source of workplace injuries and illnesses in the country.

OSHA's efforts to regulate silica are also under attack. Silica is one of the longest recognized occupational health hazards. It causes silicosis, a disabling, sometimes fatal lung disease. It also causes cancer. Public health experts estimate that 280 workers die each year from silicosis in the United States and thousands more develop silicosis due to workplace exposures. Eradicating silicosis has been a priority for the Department of Labor for decades starting with efforts by Frances Perkins in the 1930's. OSHA first initiated rulemaking on silica in 1974 with the publication of an advance notice of proposed rulemaking (ANPR). But due to changes in administration and leadership that rulemaking was not advanced. In 1996 the Department of Labor conducted a major campaign to educate workers and employers about the hazards of silica and to reduce workplace exposures.

The current OSHA rulemaking on silica was initiated in 1997, more than 14 years ago. (See Attachment 2 for timeline on the silica standard). In its 2002 Fall Regulatory Plan, the Bush administration designated a new OSHA silica rule as a regulatory priority. The required small business review on the draft silica rule was com-

pleted in 2003, but years of foot dragging by the Bush Administration stalled progress on the rule. The OSHA silica rule was designated as a regulatory priority by the Obama administration in 2010. OSHA completed the required analyses and peer reviews and submitted the draft silica rule to OMB for review under Executive Order 12866 on February 14, 2011. More than seven months later, it is still under review despite the provisions of the EO limiting reviews to 90 days with one 45 day extension permitted. While the draft rule has been at OMB, there has been a parade of industry groups who have met behind closed doors with OMB seeking to have the rule stopped or weakened. They claim that present standards are adequate and no further action is required.

We strongly disagree. As noted earlier, silica remains a significant occupational health hazard causing hundreds of deaths from silicosis each year, and many more deaths from lung cancer. The current silica standards for construction and general industry were developed in the 1960's and adopted by OSHA in 1972. The OSHA construction silica standard is based on a measurement technique that is obsolete and no longer available. Converting this standard to gravimetric terms which can be measured allows for construction workers to be exposed to silica levels that are more than twice those permitted for general industry. The existing silica standards are limited to a permissible exposure limit; there are no requirements for employers to monitor worker exposures, conduct medical exams for exposed workers or even to train workers on the hazards of silica.

According to OSHA's preliminary risk estimates reducing silica exposures to NIOSH's recommended level of 50 ug/m3 would prevent 60 worker deaths a year—44 from silicosis and 19 from lung cancer, and hundreds of cases of non-fatal silicosis annually. By these estimates, during the 14 years the silica standard has been under development, 800 workers have died due to the lack of a protective silica standard.

We point out that OSHA's silica rule has not yet even been proposed. The proper place for to have the debate over the need for the standard and it merits are in a public rulemaking before the agency with the authority and expertise to issue the rule, where all parties have equal opportunity to comment on the agency's proposal and analyses, express their views and present evidence. In addition the OSH Act provides for public hearings on the rule where all interested parties will have the opportunity to testify and to cross examine the agency and other witnesses, providing extensive opportunity for input and participation in the rulemaking process.

It is time to move forward with the OSHA silica standard, and get on with this rulemaking.

Another OSHA safety initiative that has also recently come under attack is the agency's efforts to protect construction workers from roof falls in the residential construction industry. Fatal falls are a leading cause of workplace deaths. In 2010 BLS reported 598 fatal injuries from falls, with 260 of these deaths in the construction industry, including 84 fatalities due to falls in residential construction.

The 1994 construction fall protection standard put in place requirements for construction employers to utilize fall protection measures such as body harnesses and guardrail systems to protect workers. But due to industry concerns, in 1995 certain residential roofing operations were temporarily exempted from using fall protection equipment and methods set forth in the standard. Since that time, fall protection equipment has become widely available and industry practice has changed. In order to have uniform effective fall protection standards in all construction operations, OSHA's labor- management Advisory Committee on Construction Safety and industry groups, including the National Association of Home Builders asked OSHA to rescind the 1995 exemption and apply the 1994 standard in all operations. After consulting widely with industry, unions and others and receiving public comment, in December 2010 OSHA issued a new compliance directive to fully implement the 1994 fall protection standard and require the use of fall protection in all residential construction operations. This action was also supported by the states. Nine state OSHA plans never adopted the temporary exemption, and now 10 more states have reinstated the residential home building fall protection requirements.

But now, in this current anti-regulatory environment, the home builders have changed course and are taking the position that the fall protection standard is too complex and difficult to follow. They are seeking to block enforcement of the fall protection standard in residential roofing operations. Last week, the Chair of the House Subcommittee on Labor-HHS Appropriations took up their cause by including a prohibition on enforcing the fall protection rule in the draft appropriations bill that covers OSHA.

If we as a country are not willing to protect workers from disabling lung disease from exposure to a well recognized hazard like silica or from being killed by falls from roofs, we should ask what kind of country are we or will we become?

The United States Should Not Turn Back the Clock and Put Workers In Greater Danger. The Country Must Move Forward and Strengthen Worker Safety and Health Protections

For the past forty years as a matter of national law, the country has set as it goal and policy the protection of workers from injuries, illnesses and death on the job. The framework of government regulations and enforcement established by the Occupational Safety and Health Act has been successful in reducing exposures to workplace hazards and reducing the toll of job injuries, diseases and deaths. We should continue on this path and build on this progress.

We should start by moving forward with needed rules on silica, infectious diseases, combustible dust and other major hazards that put workers in danger. We should determine how to update permissible exposure limits for toxic chemicals, on which there is wide agreement that these limits are out of date and need to be modernized. Indeed, in March the U.S. of Commerce called for the update of these limits in comments to the Department of Labor on its regulatory review. We should revive the earlier effort by unions, employers, safety and health professionals and the government to come up with a plan for revising the PELs either though rulemaking, by statute or both.

Given its limited resources, OSHA needs to better target its enforcement and other programs to workplaces and hazards that pose the greatest risks. Better targeting strategies and criteria for inspections are needed as are better metrics for evaluating effectiveness of programs.

OSHA enforcement must be strengthened to provide a greater incentive to comply and to deter violations. Recently OSHA has taken steps in this direction by revamping its enforcement program to focus more effectively on severe and repeated violators and to enhance penalties for high gravity violations. These policies provide stronger enforcement for those employers with significant and severe violations, and should be welcomed by employers who make good faith efforts to comply with the law.

But even with these new policies and actions by OSHA, enforcement remains relatively weak, in large part due to deficiencies in the OSH Act itself. Since the law was enacted in 1970, there have been no significant changes in the statute, except for an increase in the maximum penalties adopted in 1990. OSHA is one of two agencies exempted from the Federal Civil Penalties Inflation Adjustment Act, so unlike for most other agencies, there have not even been inflationary increases in penalties for violations of workplace safety requirements.

Under the OSH Act, the current maximum penalty for a serious violation of the law is $7,000. This maximum penalty applies to all serious violations, even in cases of worker fatalities. In FY 2010, the median initial total penalty for fatality cases was just $7,000, reduced to $5,600 after contest or settlement, surely not a sufficient sanction for violations that are the most grave and result in death, or adequate to change employer behavior and deter future violations.

The OSH Act needs to be updated to strengthen enforcement and to provide workers greater protection. The Protecting America's Workers Act (PAWA) that has been introduced in this and other recent congresses is a good place to start. PAWA would adjust OSHA penalties for inflation and keep them up to date. It would set higher maximum penalties for violations resulting in worker deaths to ensure more adequate enforcement in these cases. It would strengthen criminal penalties to make willful violations that result in death and serious bodily a potential felony, rather than a misdemeanor. The legislation would require employers to abate serious hazards to protect workers during the contest of violations, and bring the anti-discrimination provisions of the OSH Act into line with other safety and whistleblower laws. And the legislation would finally provide coverage for the more than 8 million public sector workers who lack safety and health protection under the OSH Act.

Enactment of the Protecting America's Workers Act would bring our safety and health law into the 21st century and ensure continued progress in reducing job injuries, illnesses and deaths and protecting workers on the job.

In conclusion, I urge the committee and the Congress to reject the efforts by some in the business community and others to block and weaken government safeguards to protect workers from harm. We should not abandon the progress made over the past four decades and turn back the clock on our commitment to safer workplaces. Taking that path will lead to more workers being injured, diseased and killed on the job. That is not the kind of country we are, and it is not the kind of country we should become.

We must maintain the commitment and promise in the OSH Act that every worker in this country has a right to a safe job, and the right to return home from work safe and sound each day. We must work together to make sure that continued progress is made and that promise is fulfilled.

ATTACHMENT 1

Source: Code of Federal Regulations

Timeline on OSHA Silica Standard

1972—OSHA adopts 1968 ACGIH TLV of 10 mg/m3 ÷ (%quartz + 2) as the general industry permissible exposure limit. The ACGIH standard was proposed in 1968.

1972—OSHA adopts ACGIH TLV of 250mppcf ÷ (5quartz + 5) as the permissible exposure limit for silica in the construction industry. The ACGIH standard was originally set in 1962.

1974—NIOSH issues criteria document recommending silica exposure limit of 50ug/m3.

1974—OSHA issues Advance Notice of Proposed Rulemaking on revising and strengthening the silica standard for general industry and construction.

1991—National Toxicology Program (NTP) classifies silica as "reasonably anticipated to be a human carcinogen."

1996—International Agency for Research on Cancer (IARC) classifies silica as "carcinogenic to humans."

1996—Department of Labor launches major campaign on silica to reduce exposures and protect workers from silicosis in general industry, construction and mining. OSHA conducts special emphasis enforcement programs on silica.

1997—OSHA puts silica on the regulatory agenda.

2000—National Toxicology Program (NTP) lists silica as "known to be a human carcinogen."

2002—Bush Administration designates a new OSHA silica standard as a high priority in the Fall 2002 Regulatory Plan and Agenda.

2003—The draft silica standard undergoes review by a small business panel under the Small Business Regulatory Fairness Enforcement Act (SBREFA).

2004—The State of New jersey enacts legislation banning the dry cutting and grinding of masonry to prevent silicosis and mandates the use of engineering and work practice controls to limit dust exposures where wet methods are not feasible.

2004–2008—Work on the silica standard stalls. The required peer reviews are not conducted.

2008—Cal/OSHA adopts regulations requiring the use of a dust reduction system in operations in which power tools or equipment are used to cut, grind, core or drill concrete or masonry materials.

2009—International Agency for Research on Cancer (IARC reaffirms the classification of silica as "carcinogen to humans."

2009—The Obama administration designates the standard silica as a high priority in the Fall 2009 regulatory agenda and conducts the required peer reviews.

2010—The draft proposed standard is prepared and required regulatory analyses completed.

2011—On February 14, 2011, the draft silica proposed standard is submitted for OMB review under Executive Order 12866.

2011—Outside groups meet with OMB to convey their views on the standard.

2011—On May 13, OMB's review of the draft proposed silica rule is extended.

2011—June—August—Industry groups continue to meet with OMB, with many industry groups advocating that the standard be stopped or weakened.

Chairman WALBERG. Thank you, Ms. Seminario.

Now I turn and recognize David Sarvadi.

STATEMENT OF DAVID SARVADI, PARTNER, KELLER AND HECKMAN

Mr. SARVADI. Thank you, Chairman Walberg, Ranking Member Woolsey, members of the subcommittee. Thank you for the opportunity to testify today.

As I said in my written statement, I am an attorney now in Washington, and have been here now for the last 25 years, working on health and safety. But my experience goes far back, further back than that. I started in 1970 at the University of Pittsburgh School of Public Health getting a degree which turned out to be in-

dustrial hygiene. And I was a certified industrial hygienist until last year, for more than 30 years. So I have had a fair amount of experience in this area.

At one time or another, I have actually managed programs on the ground in both large Fortune 500 companies and at small employers in the U.S. Since 1990, though, I have been practicing law here in Washington. What I do now is try to help employers understand the regulations and, when they have a dispute with OSHA, try to resolve them amicably.

We have heard a lot about how many regulations there are or are not. What I can tell you for sure is that in 1972 or 1973, when the initial package of regulations was put together, there were about 700 pages in one volume covering general industry. Since then, we are now up to two volumes. It is about somewhere between 1,000 and 1,200 pages in the first and 300 or 400 in the second. It is not to say that a lot of what is in there is not necessary, but it is obviously a complex set of regulations that people have to deal with, and that is why they come to people like me to help.

One important principle that I learned, though, in teaching classes that I have for the last 20 years on how to comply with these regulations is that people attending the courses tell me that improvement in safety and health comes in very small steps. It comes from diligence and persistence and hard work. It does not come from big public demonstrations and people making large grandiose demonstrations.

It does take a commitment from management to allocate the resources, but it also takes a commitment from the people who actually do the work. They have to begin to understand why they are required to follow the rules and to follow them.

And one of the big deficiencies that I have seen over my 35 years of experience in this area is that we really don't understand why people don't follow the rules when they are left alone. It is an important question. I don't think there has been enough attention given to it, and I think we ought to spend a little bit of the money that we have right now available to us looking into those kinds of questions.

We have heard a lot about fall protection today. I think one of the questions that just struck me in the last couple of comments that have been made is we hear that there have been a lot of fatalities and injuries that occur from falls. I understand that is true. And every single one of them is a tragedy. But the other side of the coin is why have they been declining? What is happening out there in the workplace that is leading to a reduction in the rates of injuries and illnesses? And I am not sure that we have answered that question, nor am I sure that we are spending time and money trying to answer those questions. So that is a place where I would spend some time and effort.

The problem I see today is that OSHA's enforcement policies have diverted our attention from the real task of working on safety and health. My experience with employers is that they see the enforcement and the publicity and the penalties going up, and when they encounter OSHA now it is going back to an adversarial process, an adversarial relationship that existed in the first 25 years of the agency's history.

During the Bush administration, John Henshaw made a specific effort to try to get OSHA attitudinally to change its understanding and relationship with employers. And I think he succeeded. Because I heard from a lot of employers in that period of time telling me that they were getting not only enforcement—that is, citations and compliance—but they also had a much better opportunity to work with OSHA and try to solve the problems. I think that is a good model. I think it is one we ought to go back to.

I think the other problem that we have had to deal with of late, and partly as a result of the enforcement posture that OSHA has taken, is that we have interpretations of OSHA standards that don't make a lot of sense; and I have got a couple of examples in the written testimony I have submitted. I want to just mention one of them, because it is one that has been sort of difficult to deal with, and that has to do with something called emergency eyewashes.

If you are in a chemical plant, no doubt you need an eyewash where you have corrosive materials and you are handling large quantities of chemicals and they are heated or they are pressurized. Lots of different factors involved. But where we see OSHA area offices demanding that fully plumbed, expensive eyewash fountains be installed in places like retail stores around the country, it doesn't make sense from either a safety standpoint, nor is it required to provide an adequate degree of protection to the employees.

In the cases that I have been dealing with, in all of those cases there has been either a washroom or a sink or other source of potable water, which under the current state of the law, that is, the interpretations of the review commission interpreting OSHA's enforcement context and cases over the years, a source of potable water, that is drinkable water that is available within a reasonable period of time, is sufficient to meet the requirements of the standard. And yet we still have area offices who will look at those same situations and decide, on very arbitrary grounds, in my opinion, that they should have these fully plumbed, fancy eyewashes.

I think part of the problem is we don't distinguish between things that are truly serious and things that any normal, reasonable person would agree we don't have to address at the outset. We can leave that for a later time, or we don't have to spend the resources on it.

So in addition to——

Chairman WALBERG. The gentleman's time has expired.

Mr. SARVADI. I am sorry, Mr. Chairman. I wasn't watching the——

[The statement of Mr. Sarvadi follows:]

Prepared Statement of David G. Sarvadi Partner, Keller and Heckman LLP

Chairman Walberg, Ranking Member Woolsey, and members of the Subcommittee, thank you for the opportunity to testify today.

My name is David Sarvadi. As an attorney, I assist employers in complying with Occupational Safety and Health Administration regulations and standards, and in resolving disputes with OSHA as to the interpretation and application of those rules and standards in enforcement cases. My testimony today represents my personal views and not those of my law firm or our clients. I am not being paid to participate in this hearing.

I believe I was asked to testify today because, in part, I have been deeply involved in the health and safety field for more than 35 years, including more than 30 years as a Certified Industrial Hygienist. Before I started practicing law, I directed the industrial hygiene program at a Fortune 500 company, served as a technical staffer for a major trade association representing the chemical industry, and managed the safety and health department in a small construction company. At one time or another, I managed a number of the occupational health programs at the companies, including among others hearing conservation programs, respiratory protection programs, confined space entry programs, programs to control airborne exposure levels to toxic chemicals, and the various compliance programs required under OSHA's health standards.

I have practiced workplace safety and health law for more than 20 years at Keller and Heckman LLP. As part of my practice, I taught week-long seminars on all of OSHA's general industry standards all around the country, covering essentially the same material included in OSHA's 30hour training course. We have probably had more than 1000 people participate in those classes over the years. The attendees were mostly the people who had to translate OSHA standards into actions, practices, and procedures in their companies, ranging in size from employers with fewer than 10 employees to those with hundreds of thousands of employees.

One important principle I learned from the participants attending those courses is that the improvement in safety occurs in small steps. It comes from diligence and persistence, not grandiose public demonstrations. Certainly, it takes a commitment from management to allocate the resources to the effort and to support the people who carry out the day-to-day tasks of building a safety and health program. But in the end, it is the responsibility of everyone involved, including the people on the front lines in the businesses—whether it be a manufacturing plant, retail store, or office—to take personal responsibility for making sure they follow the rules. And most of us do, most of the time.

As OSHA turns 40, I think it is time to re-evaluate the current system and take a new approach to advance employee safety. In OSHA's early days and into the 1990s, OSHA was among the most mistrusted federal agencies. A 1999 University of Michigan Business School study placed OSHA last among federal agencies in customer satisfaction. That year marked the culmination of its misguided effort to regulate workplaces through an all-encompassing ergonomics standard. That effort reinforced the highly adversarial atmosphere that had abated somewhat during the years between the Carter and Clinton administrations.

During the Bush Administration, OSHA Administrator John Henshaw made a concerted effort to put the ergonomics rulemaking behind us and help OSHA staff understand that they were not on the front lines, but that the people responsible for making sure workplaces are safe are on the front lines. As a result, I believe, I heard many business people—especially small business people—remark that the OSHA field personnel were helping employers and employees to solve problems and not just looking for citations to issue. The changes in the last few years have been highly detrimental to the relationship between OSHA and private sector employers.

Heavy-handed Enforcement Is Not The Answer

My experience is that when OSHA enforcement personnel raise legitimate safety and health concerns during an OSHA inspection, employers respond in a prompt and responsible manner to take remedial measures before any citations are issued, even though it is likely to be viewed as an admission of some shortcoming in existing practices. The overwhelming majority of employers do not wait for OSHA to issue citations before taking those steps, much less seek to delay those measures by filing a citation contest. The remedy for the very small minority of employers who abuse the current system in that manner is for OSHA to use its existing tools to prove that strategy is no longer viable. The answer is not to adopt legislation that would subject the entire employer community to the collective punishment of an immediate abatement requirement that tramples due process rights of employers. That approach of developing laws, regulations, and enforcement policy based on the assumption that all employers are bad actors has a huge price. Rather than advancing workplace safety and health, we achieve gridlock.

Similarly, the changes in OSHA's approach to enforcement made over the past 2½ years have created an atmosphere of antagonism and distrust that undermines the willingness of many employers to settle rather than contest citations. When OSHA arbitrarily announces that the reference period for a repeat citation has been increased from 3 years to five years, every large, multi-site employer recognizes that the likelihood of an endless string of repeat citations has now become a likely reality.

Employer resentment of OSHA is, in my view, at an all-time high. Employers recognize the new focus on increased penalties, but it has caught the attention of employers in a way that has been counterproductive. OSHA's enforcement zeal has forced even conscientious employers to be defensive. Many feel that this new-found OSHA aggressiveness results solely in increased penalty numbers and diverts attention from actually correcting real problems.

If OSHA's new approach to enforcement was effective in improving workplace safety and health, we should see that reflected in the BLS statistics on work-related injuries, illnesses, and deaths in the workplace. The most recent set of data to be published were the data on fatalities for the 2010 calendar year. The latest data gives us the ability to compare fatality rate data for two full years prior to OSHA's heightened enforcement efforts with fatality rate data for two full years after OSHA's heightened enforcement efforts. If these enforcement activities and policies were as effective as proponents assert, I believe we should have seen some positive impact on the reported rates. Instead what the data show, at least for fatalities, is a leveling off of the rate in 2010, at a time when the number of people working has declined significantly. See Figure 1.

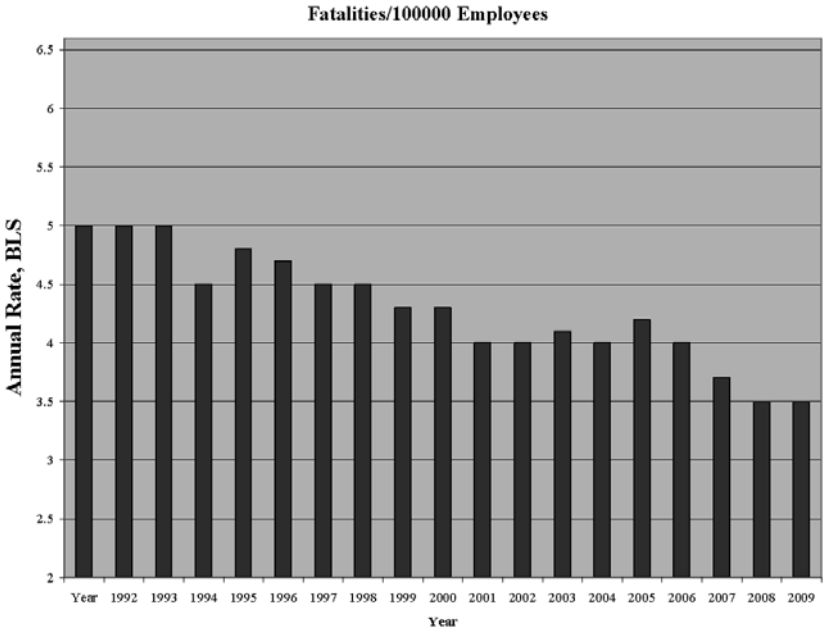

Figure 1

Source, Bureau of Labor Statistics

More emphasis on safety rather than compliance is needed. I think we need to reexamine the entire approach to OSHA enforcement. As noted above, OSHA's recent aggressive, and, in my view, frequently unreasonable actions, have created an disincentive for many companies, who are now resisting settlement discussions and contesting OSHA citations. This has two unhappy and unhelpful effects. First, it diverts management attention away from the actual needs of workplace safety because management resources are tied up in legal battles. Second, to the extent resources are available, they are directed toward compliance for the sake of compliance rather than advancing workplace safety in the most cost-effective manner. Within the last several weeks, the safety director for a large retail company commented that he is spending all his time on a spate of OSHA inspections while his responsibilities for managing and improving the workplace safety and health programs are suffering from lack of attention. Is the result of OSHA's more aggressive enforcement efforts improved safety? I suggest not.

I suspect there are bad apples in the employment world, just as there are bad apples in every institution in the country. However, every company I have ever

dealt with has been serious about safety. The employers we work with do not contest OSHA citations simply to delay abatement. If a problem is brought to their attention, and there seems to be a reasonable way to eliminate the problem, they will fix it, often right on the spot. . In many instances, employers with whom I have worked have driven innovation to push the bounds of feasibility forward for themselves and others in their industry.

Citations are generally contested because the employer disagrees with OSHA's frequently overly broad or inapposite interpretation of the cited standard, OSHA's classification of the alleged violation. The size of the proposed fine is not a factor because the legal costs almost always outweigh the total penalties.

I have heard that the prevailing employer perception is that "OSHA is about the fine, not the fix." This push for heavier enforcement is particularly burdensome for small companies, many of which are caught between the "rock" of aggressive OSHA enforcement tactics resulting in high penalties and abatement costs, and the "hard place" of admittedly expensive litigation costs.

I handled several recent cases where OSHA pursued enforcement actions—inappropriately in my view—when the alleged violations were trivial. For example, one of my clients made a minor mistake regarding one case on a site injury and illness log. They corrected the mistake before the OSHA inspection, but within the six month time period within which OSHA has the authority to issue a citation. Demonstrating an incredible lack of good judgment, OSHA issued a citation for that item. It seemed clear to us that the only reason the area office issued the citation was that OSHA headquarters wanted a "take no prisoners" approach to try to support its misinformed view that there was a pervasive under-recording of work-related injuries. The company contested the frivolous citation. The ALJ in his decision acknowledged the technical violation, but classified it as de minimis, and expressly stated in his opinion that OSHA should never have issued the citation in the first place. The ALJ noted that these are not the type of issues that OSHA should be litigating but OSHA does not seem to care how trivial a perceived issue is. The law should not deal with trifles as no one benefits from these instances of OSHA's over aggressive enforcement.

OSHA Is Aiming At The Wrong Problems and Using Inappropriate Methods to Address Them

I also have several clients that have been caught in a dispute over the need for emergency eyewash stations. Many establishments use cleaning chemicals to sanitize their facilities. The concentrated form of these chemicals is surely hazardous to eyes, and having a good source of clean water is important if eye contact occurs. Under current case law, a potable water source, such as a sink or hose, is generally sufficient to meet the current standard where the potential contact involves limited quantities and work practices with a low probability of occurrence. However, OSHA area offices are issuing citations claiming that the employers must install expensive eyewash stations wherever any such materials are used, without a corresponding improvement in safety or—to use a word presently out of favor—benefit. What makes this situation worse is that OSHA is trying to make changes in its rules via a "re-interpretation" rather than following the statutorily required rulemaking procedures.

I believe the courts have abandoned their responsibility to oversee the executive branch in this regard, and have allowed the agency to blur the line between enforcing the existing laws and amending them through the issuance of guidance materials and the enforcement process. Agencies are making changes to existing rules, which have significant economic consequences and impose significant compliance costs without giving the public adequate notice, or informing them of the unintended consequences of the changes. A recent example is the unilateral "reinterpretation" of the OSHA noise standard that OSHA announced and then revoked in response to the strong adverse reaction from the Congress and the business community.

As with many occupational hazards, there are many ways to protect employees from noise. Based on dogma, OSHA has a long-stated preference for engineering controls, as opposed to personal protective equipment. Since 1983, OSHA has interpreted its regulation to require employers to install engineering controls when noise levels are extraordinarily high, and to allow use of a hearing conservation program using periodic testing of employees hearing and ear muffs and plugs below a certain level. While there have been proponents of changing this policy for many years, the scientific data on whether such programs work and what makes them successful has been missing; meanwhile, technology has changed. We now have noise-cancelling ear muffs, and, I suppose, ear plugs. We have the capability to test the effectiveness of each individual's hearing protection to make sure that the reduction in noise lev-

els is sufficient based on current knowledge. And we surely have the techniques to determine if the use of such programs of the last nearly 30 years has been effective. All we have to do is look.

OSHA did not take any of this into account when it announced that it would change its interpretation of the noise standard and henceforth require that employers spend money on engineering and administrative controls without regard to whether they were sufficiently effective to eliminate the need for ear muffs and plugs and all the other aspects of hearing conservation programs. OSHA would have required employers all over the country to spend resources without considering whether the people whom OSHA claims it is protecting would receive any benefit.

Does OSHA Need a New Approach?

I believe it is time to consider changing our approach to occupational safety and health. No one can doubt that, while significant progress has been made, we still have a way to go to achieve the still greater gains in safe and healthful workplaces throughout the U.S. But no one can doubt either, that the present system seems to be running out of steam. We are at very contentious juncture where it appears that there is only a choice between one of two approaches. I do not believe that is the case. So I have some recommendations for the Subcommittee to consider.

Recommendations:

• Change the present definition of a "serious violation" under the OSH Act to accept the use of risk assessment to prioritize safety issues. In other words, rather than assuming an accident will occur, we should take into account the likelihood that an accident will occur.

Under OSHA's current interpretation of the law, if there is any possibility of an accident, regardless of how remote, resulting in an injury that is defined as serious, the violation will be classified as serious. In reality, people make choices that balance the severity of the outcome with the probability that it will occur. Highly improbable outcomes, or outcomes of lesser severity should not be treated as having the same priority as conditions that can lead to death or serious injuries to a large number of people. A condition in which an intentional act can lead to death should not be treated the same as circumstances where inadvertent contact could occur without proper protection. I believe the Congress needs to create another category of violation to capture those of lesser severity or lesser probability, and am hopeful that this would be considered in any reform bill.

A specific example might illuminate the issue. Every adult knows that a missing cover plate on an electrical outlet is hazardous, but no one really expects that an adult will actually stick a finger in an open socket. So while OSHA will issue a "serious" violation for a broken cover plate, even when it is in an inaccessible location, it should not be characterized as the same kind of problem as bare electrical conductors in near proximity to a work station where it is reasonably foreseeable that a person could inadvertently contact them. In its interpretation of the term "serious" as applied to citations, OSHA has completely disregarded the probability of an event in determining the severity of the violation.

• Intentional acts and those based on an employee's disregard for safety and health rules should not be automatically attributed to a failure of management.

The present state of the law with regard to what is known as the employee misconduct defense is weighted so heavily against the employer that employers are almost never excused from liability even when it is apparent that an employee disregarded his or her own safety or the safety of others. Worse, even if OSHA determines that an employee knowingly failed to follow OSHA requirements, the employee is never subjected to any government sanction. I have long suggested that employees should receive tickets during OSHA inspections for things like failing to wear protective equipment and the like where the equipment is required and supplied by the employer and the employee knew he/she was required to wear it. And the issuance of those tickets should be publicly available information and publicized in OSHA press releases just as OSHA now sees fit to publicize information on OSHA citations.

Failing to take such action sends a message to the employee that there are no consequences for their bad behavior and that they are free to ignore the requirement in Section 5(b) of the OSH Act that employees are to follow safety rules in their workplaces. This approach is inconsistent with how OSHA believes employers respond. If employers will behave better by having bigger and more frequent punishment, why not try it with employees?

Some will say this is blaming the victim. However, I have had bargaining unit safety representatives from union organized employers who have bemoaned the fact that the system protects people who flout the rules. The employee who breaks a safety rule is not clearly or not always the victim. We have worked with employers

in countless cases where one employee's disregard for safety rules harmed one or many co-employees. OSHA's approach of overlooking a employee's responsibility to comply is a grave disservice to employees at large. Our common experience of collective punishment in grade school where the teacher punishes everyone because she or he cannot catch the disruptive student is not an effective approach to enforcing our laws.

Under the present system, all employers are deemed guilty until proven innocent. Early in her tenure, the Secretary placed employers in 3 categories: (1) the overwhelming number of responsible employers who substantially comply with the applicable legal requirements; (2) the category of employers who try to comply, but need some technical assistance; and (3) the very small category of employers who ignore their legal responsibilities. OSHA's current practices suggest that there are few employers in the first category and a small number in the second. After stating that OSHA will provide assistance to the second, and go after the third category of employers, OSHA then asserts that all employers have a catch me if you can attitude that somehow justifies the ill-conceived, universally applicable Injury and Illness Prevention Program initiative.

We definitely need to change the enforcement standard in the statute. Some interpret current law as requiring OSHA to always issue a citation if they see a violation, but I believe this leads to a "gotcha" attitude that is counterproductive. There have been various proposals to raise OSHA's penalty structure. I have generally been opposed to them because I do not see the penalties as an effective motivator for all but the most recalcitrant employers. However, if OSHA's penalties are to be increased, there needs to be a trade-off. I suggest an appropriate trade off for raising penalties would be first, to direct OSHA to waive first instance citations where the employer makes a good faith effort to comply, and second, to expand the present voluntary protection program by making it part of the statute. Right now the three-legged stool of enforcement, standards, and education is falling over because the education leg is too short.

• Create standards to hire compliance officers who are familiar with the real world.

Look at the Mine Safety and Health Administration approach where inspectors must have a certain amount of experience in mining before they can become inspectors. This will help create an enforcement staff with a more sound understanding of effective safety and health principles. The experience of working gives people perspective on what is important and what is a lesser priority.

The bottom line is that the present path OSHA is on is not advancing us to the original goal—to ensure safe and healthful working conditions. Instead, this renewed aggressive focus on citations and penalties has made employers increasingly wary of OSHA and has reduced cooperation, distorted incentives to promote safety and health, and diverted resources to unproductive legal battles. Now is the right time to talk about a paradigm shift. As OSHA turns 40, I believe we need to reflect on what has worked and what can be done going forward to enhance effectiveness in protecting our families, friends and neighbors in America's workplaces.

Thank you for your time today.

Chairman WALBERG. That is what they all say. Thank you. Thank you.

I now recognize myself for 5 minutes of questioning and will try to keep to that time as well.

Mr. Korellis, I had the privilege of doing roofing near Hammond, Indiana, in Calumet City, 1542 Burnham Avenue, where I grew up, 23 years spent there, and I worked for the roofing company of Father Walberg and Twin Sons and did a garage and house on two occasions there. But I don't play a roofer or claim to be a roofer. But I appreciate your testimony.

But, in your testimony, you discussed the need for alternative safety measures other than what OSHA is now mandating, and you detail in many steps the necessary planning to put these other safety protocols in place. Let me ask you, how much time and effort does it take to enact these specific plans?

Mr. KORELLIS. It takes an incredible amount of time, Congressman. The 10-step process we are talking for a residential dwelling,

a dwelling that—you know, an average dwelling might cost $5,000 to $10,000 to roof, and each individual dwelling has to have its own documents. And it is just a gauntlet of paperwork and entirely too cumbersome to attempt, if we can even get it approved.

Chairman WALBERG. Any average of what you would say the costs or the time?

Mr. KORELLIS. No. This is so—I apologize. This is so new. We are learning this—we are learning some of this now, trying to move forward. But it certainly is not worth the value of that type of doing it on a residential dwelling.

Chairman WALBERG. Okay. Since the delay of enforcement dates, has OSHA reached out to your company to work with you in order to assist in complying with these safety standards?

Mr. KORELLIS. No, they have not.

Chairman WALBERG. No effort at all?

Mr. KORELLIS. No.

Chairman WALBERG. Okay.

Mr. Sarvadi, companies regularly enlist the services of third parties, I understand, to conduct and report on workplace safety audits. Historically, these reports have been considered privileged material and thus protected from disclosure. However, OSHA has begun to attempt to subpoena these records as parts of workplace investigations, as I understand it. In fact, a Federal district court in Illinois recently enforced such a subpoena, requiring a third-party auditor to hand over an on-site inspection report. Could you elaborate for us on the nature of these reports, why it is inappropriate for OSHA to issue these subpoenas? And, as a part of your answer, if you would be so good as to explain why we should be encouraging, not discouraging employers to use these third-party audits?

Mr. SARVADI. Yes. Thank you, Mr. Chairman.

Chairman WALBERG. And you have got 2 minutes.

Mr. SARVADI. Thank you.

The audits that you are talking about generally fall into two categories, internal audits that are performed by safety and health experts to determine whether the company is complying with its rules and with the OSHA standards, and then the third-party audits where you hire somebody from the outside.

I think they are important for two reasons, one, to bring fresh eyes to the individual facility. It is always helpful for somebody who is not familiar with the way things are routinely done to look at things and see how they should be done.

For a number of years OSHA has had a policy of not requesting these audits in the normal course of events. I think what has happened in the last couple of years is that that policy has slipped a bit. I actually have a case right now that I am working on where we have got an accident investigation—it was a very serious accident. The OSHA inspector issued a subpoena that has about 30 requests, 30 separate requests in it, including routine safety inspections and audits. And, frankly, we are not going to give those up very easily. Because if we do, we are expecting that they will be used against the company.

And that is really the problem with asking for the audits on a routine basis. Certainly there are circumstances where other evi-

dence can show that a company is not being responsible in doing these things. But if a company is doing the audits for purposes of checking its own checklist, as it were, we shouldn't be having those audits become public or become part of the documents that are used against it in an enforcement context. It will discourage them completely.

And we saw this in the 1990s when this first came up. We are seeing it again today as it comes up again.

Chairman WALBERG. So, in other words, it discourages efforts to promote safety?

Mr. SARVADI. Correct.

Chairman WALBERG. And, rather, just simply hide, take your best shot, and hope it works.

Mr. SARVADI. I think what will happen and what happened before is people stopped doing them entirely, which takes away an important tool from management in attempting to make sure things are done appropriately in each of the workplaces under their control.

Chairman WALBERG. Thank you.

My time has expired; and I recognize the ranking member, Ms. Woolsey, for her questioning.

Ms. WOOLSEY. Thank you, Mr. Chairman.

In response to Mr. Korellis, I have two pieces of information that I would like to submit to the record.

One is a letter to Congressman Ribble from the Department of Labor, from Dr. Michaels. And one part of it says something that I believe corrects something you said, sir; and I will quote just a piece of it.

IMIS, the Integrated Management Information System records from 2005 to 2007 across two sectors, roofing contractors, residential home construction, show that there were no fatalities when conventional fall protection was used, as required in OSHA standards subpart M. A few fatalities—this is in parentheses—did occur to individuals who were wearing harnesses but were not connected to an anchor point or who had unhooked from their lanyard and fell off the roof.

So I would like to enter that into the record.

Chairman WALBERG. Without objection.

[The information follows:]

Paul / [illegible]

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

AUG 25 2011

The Honorable Reid J. Ribble
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Ribble:

Thank you for your May 17, 2011, letter regarding the Occupational Safety and Health Administration's (OSHA) new directive, STD 03-11-002, *Compliance Guidance for Residential Construction.* This new directive replaces STD 03-00-001, *Plain Language Revision of OSHA Instruction STD 3.1, Interim Fall Protection Compliance Guidelines for Residential Construction.*

OSHA first announced its intent to revoke STD 03-00-001 more than a year and a half ago at the December 10, 2009, meeting of the Advisory Committee on Construction Safety and Health (ACCSH) (of which the National Association of Home Builders (NAHB) and National Roofing Contractors Association are members). In December 2010, OSHA published a notice of the new enforcement policy, STD 03-11-002, in the *Federal Register.* The notice stated that the new directive would not go into effect until June 16, 2011. As discussed in the new directive, ACCSH, NAHB, and the Occupational Safety and Health State Plan Association (OSHSPA) all recommended rescinding STD 03-00-001.

In your letter, you express several concerns regarding this new directive and asked a number of questions. Responses to your questions are provided below.

Does OSHA have information with respect to residential roofing which indicates:

The number of falls/fatalities that have occurred when personal fall arrest systems and other "conventional" fall protection systems were being used.

> According to data from the U.S. Department of Labor's Bureau of Labor Statistics, there were a total of 78 fatal falls in residential construction in 2009. In order to determine how many fatalities occurred while using conventional fall protection, OSHA used its Integrated Management Information System (IMIS). IMIS records from 2005 to 2007 across two sectors (roofing contractors and residential home construction) show that there were no fatalities when conventional fall protection was used as required in OSHA's standard, Subpart M. (A few fatalities did occur to individuals who were wearing harnesses, but were not connected to an anchor point or who had unhooked from their lanyards and fell off the roof.)

The number of falls/fatalities that have occurred when slide guards were being used.

For the same search parameters noted above (IMIS fatality reports, years 2005 to 2007, roofers and residential construction), there were three fatalities when slide guards were used. Some abstracts do not provide enough information to determine if slide guards were being used, so there may be more such incidents.

The number of falls/fatalities that have occurred when no fall protection system was employed.

For the same search parameters noted above (IMIS fatality reports, years 2005 to 2007, roofers and residential construction), there were approximately 50 fatalities that occurred when no fall protection at all was noted in the IMIS records' abstracts.

Does OSHA's new enforcement policy apply only to new construction or also to roof repair and replacement projects? If it applies to roof repair and replacement projects, did OSHA consider the significant differences in working conditions between new construction and roof repair and replacement before issuing the directive? If so, please provide a description of this analysis.

The new directive applies to both new construction and roof repair and replacement work. The policy change in the directive applies to all residential construction work, including new construction, remodeling, and re-roofing. OSHA considered both new and replacement roofing operations when writing the new directive. The Agency concluded that conventional fall protection or non-Subpart M work methods (e.g., aerial lifts or scaffolds) can virtually always be used successfully in residential construction work, including for roof repair and replacement. The new directive describes the evidence OSHA relied on in reaching this conclusion.

Has OSHA done any analysis of how this regulatory action will impact economic growth and job creation in the construction industry?

OSHA estimated the costs and economic impact of requiring conventional fall protection in residential construction when it promulgated Subpart M (including the relevant fall protection requirement at §1926.501(b)(13)) in 1994. A summary of that analysis can be found at 59 Fed. Reg. 40672, 40724-28 (Aug. 9, 1994). The Agency determined that Subpart M was economically feasible and would not produce any significant adverse economic impacts. See 59 Fed. Reg. at 40725 which states, "The costs that are imposed by the regulation should be a minimal burden on construction establishments. The estimated compliance costs represent less than 0.01 percent of total construction revenues and less than 0.5 percent of revenues for each individual construction sector."

Please explain how OSHA's issuance of directive STD 03-11-002 is consistent with President Obama's Executive Order of January 18, 2011, which states that the regulatory system must "protect public welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation."

In promulgating §1926.501(b)(13) in 1994, OSHA complied with Executive Order 12866 (See 59 Fed. Reg. at 40724-28). Executive Order 13563 did not exist in 1994, when OSHA

promulgated the relevant standard, but the new Executive Order provides that it largely "reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866." Therefore, even though the new Executive Order is inapplicable to the regulatory action in question, OSHA believes that Subpart M – including §1926.501(b)(13) – was promulgated in a manner that is consistent with the purpose and intent of Executive Order 13563.

The new directive eliminates a complex and cumbersome interpretive policy in favor of a cleaner, simplified enforcement approach. The new directive requires an employer to use conventional fall protection, unless it can demonstrate that doing so is infeasible or would create a greater hazard. Construction employers performing non-residential building have been complying with similar requirements for many years. In fact, many contractors do both residential and non-residential work. The new directive creates more consistency in the regulatory requirements for these contractors, and also provides better protection for construction workers. Moreover, as discussed above, OSHA determined that the costs of complying with §1926.501(b)(13) in accordance with the directive will pose only a minimal burden on the construction industry.

OSHA's residential fall protection policy provides employers with enormous flexibility to address individual workplace situations and use a variety of options to protect workers from falls. Employers must use conventional fall protection – guardrail systems, safety net systems, or personal fall arrest systems – or methods such as ladders, scaffolds, or aerial lifts, to protect workers from falls. Further, if the employer demonstrates that the options for using conventional fall protection are infeasible or create a greater hazard, the employer can develop a fall protection plan explaining how it will use alternative methods of fall protection.

Can OSHA provide guidance on when and how alternative fall protection plans can be used?

OSHA is engaged in extensive outreach. Our efforts include posting numerous compliance aids on our webpage. Materials available on the website include a Residential Fall Protection PowerPoint presentation for employers and workers, a guidance document that demonstrates the effective use of conventional fall protection systems on residential construction sites, several anticipated Questions and Answers, and a Fact Sheet. Local OSHA offices have hosted seminars for employers and employees in their immediate areas. Nationally, OSHA has conducted presentations and Q&A sessions at the International Builders Show in Florida, the Texas Safety Summit, and an Insulation Contractors Association of America Committee Meeting. OSHA also conducted an internal Webinar and trained 1,150 safety and health inspectors, from both Federal and State Plan states. Additional planned outreach efforts include a booklet dedicated solely to reroofing activities, as well as a narrated PowerPoint presentation for the public. All relevant guidance materials are available at: https://www.osha.gov/doc/residential_fall_protection.html.

In addition, in every state OSHA offers a free On-Site Consultation service through which compliance assistance is provided free of charge to small employers. This program is separate from OSHA enforcement activity. There is also a Compliance Assistance Specialist in most OSHA Area Offices who can provide information and answer questions.

Will OSHA delay enforcement of the new policy for an additional six months?

OSHA recognizes that there is industry concern about enforcement of the Agency's residential fall protection standard (29 CFR 1926.501(b)(13)), particularly insofar as that provision requires an employer to use conventional fall protection unless it can demonstrate that doing so is infeasible or would create a greater safety hazard. In response to these concerns, OSHA is implementing a three-month enforcement phase-in period. For the three months from June 16, 2011 to September 15, 2011, OSHA field staff have been instructed to refrain from issuing fall protection citations to employers who are using the protective measures described in the old directive (03-00-001). Instead, during this period, field staff will focus on helping employers come into compliance with §1926.501(b)(13) and the new directive. I am confident that this three-month enforcement phase-in policy will provide residential construction employers the additional time and flexibility they need to alter their work practices in accordance with the requirements of the new directive. Please note, however, that OSHA will continue to cite residential construction employers that are not, at a minimum, adhering to the alternative protective measures that were set forth in the old fall protection directive, STD 03-00-001.

Therefore, from June 16, 2011, through September 15, 2011, if an employer engaged in residential construction is not using conventional fall protection, or other fall protection allowed by an OSHA standard, and the employer claims that such fall protection is infeasible, the OSHA Compliance Safety and Health Officer (CSHO) will take the following actions:

- If conventional fall protection is feasible, the CSHO shall evaluate whether the employer is using the minimum protective measures described in the former directive, STD 03-00-001. If the employer is complying fully with the old directive, the CSHO shall not issue citations, but will instead work with his or her Area Director to issue a hazard alert letter informing the employer of the feasible methods he or she may use to comply with OSHA's fall protection standard. If the employer's practices do not adhere to even the old directive, the CSHO shall issue appropriate citations per the OSHA Field Operations Manual.

- If conventional fall protection is infeasible, the CSHO shall evaluate whether the employer has either: (1) developed a written, site-specific fall protection plan, and used alternative protective measures, in accordance with 29 CFR 1926.501(b)(13) and 1926.502(k); or (2) implemented alternative measures that, at a minimum, comply with OSHA's prior enforcement policy for residential construction (STD 03-00-001). If the employer has complied with one of these options, no citations shall be issued. However, if the employer has not developed a written fall protection plan in accordance with §§1926.501(b)(13) and 1926.502(k), the CSHO shall work with his or her Area Director to issue a hazard alert letter informing the employer that a compliant fall protection plan must be developed. Moreover, if the employer has neither developed a compliant fall protection plan nor adhered to the minimum measures in STD 03-00-001, the CSHO shall issue appropriate citations.

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- If an employer fails to implement the fall protection measures outlined in a hazard alert letter issued in accordance with these instructions, and a subsequent inspection of one of the employer's workplaces finds violations involving the same hazards, the Area Office shall issue appropriate citations.

Thank you again for your letter. Please be assured that your concerns are important to us. If you have additional questions, please contact Sharon Block in the Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

David Michaels, PhD, MPH

Ms. WOOLSEY. And a second piece of information, the U.S. Bureau of Labor Statistics, 1992 to 2008, census of fatal occupational injuries, shows that commercial injuries on roofing has gone down. They were not allowed the exception. Didn't ask for it. They didn't get it from the new rules on roofing protection. And residential went up considerably.

So I just think that should be in there. It is a fact. That is what we like to make our decisions on. So for the record.

Chairman WALBERG. Without objection.

Ms. WOOLSEY. Thank you, sir.

[The information follows:]

FALL FATALITIES

[Residential vs. Non-residential]

Year	Num. of fall fatalities		Num. of all fatalities		Percentage of all fatalities		
	Residential	Non-residential	Residential	Non-residential	Residential	Non-residential	Residential/Non-residential
1992	33	162	91	405	36.3%	40.1%	90.5%
1993	30	206	76	528	39.5%	39.1%	101.0%
1994	38	261	88	619	43.2%	42.2%	102.3%
1995	35	267	85	625	41.2%	42.7%	96.4%
1996	47	262	116	609	40.5%	43.0%	94.3%
1997	66	285	136	627	48.5%	45.4%	106.9%
1998	84	266	174	627	48.3%	42.4%	114.0%
1999	84	248	173	613	48.6%	40.4%	120.2%
2000	100	243	188	604	53.2%	40.3%	132.0%
2001	97	292	203	633	47.8%	46.2%	103.4%
2002	108	243	205	559	52.7%	43.5%	121.0%
2003	132	209	277	508	47.7%	41.1%	116.1%
2004	164	251	322	569	50.9%	44.2%	115.3%
2005	155	220	305	541	50.8%	40.6%	125.2%
2006	157	246	327	558	48.0%	44.2%	108.7%
2007	139	274	283	579	49.1%	47.3%	103.9%
2008	112	208	209	495	53.6%	42.1%	127.3%

Source: U.S. Bureau of Labor Statistics, the Census of Fatal Occupational Injuries, 1992-2008.

Note: Residential places include home, hotel/motel, and residential institution. Nonresidential places include industrial places, places for recreation and sport, and public building.

	Percentage of all fatalities		
	Residential	Non-residential	Residential/Non-residential
Average 92-95	40.0%	41.0%	97.6%
Average 96-08	49.2%	43.1%	114.1%

Ms. WOOLSEY. So, Ms. Seminario, thank you for being here, Peg.

Ms. SEMINARIO. Good to see you.

Ms. WOOLSEY. You are my expert.

So OSHA has to issue a standard. How long does it take? And while it is taking as long as it does, how many lives do we lose?

Ms. SEMINARIO. Good question. It now takes, I would say, 10 years, if we are lucky.

The cranes and derricks standard, that was a standard that was done through a negotiated rulemaking committee, commenced by the Bush administration. Everyone agreed on that rule. They agreed to an actual text of a draft rule. They delivered it to the Department of Labor in 2004. We didn't see a proposal until 2008, a final until 2010. It had to go through the entire process, even though everyone agreed on the rule. And so that meant all the analysis, it meant the reviews by OMB, it meant SBREFA panel on small businesses, public hearings, as we should have. So it is a very, very long process.

And what we saw with that particular rule, with the delay of 6 years, based on OSHA's estimates that that standard on cranes and derricks would have prevented 22 deaths, 175 injuries a year. So we ended up with 132 unnecessary workers killed.

You see the same thing on the failure to move forward on the silica standard. So these delays have real costs.

When I started doing this work, standards, you started a standard, you went through the process, from start to finish it was 2 years, maybe 2 and a half, if it was a complicated rule. The process has gotten much more difficult, much more complex over the years.

Ms. WOOLSEY. Is that because what we are dealing with is more complex or is it because the anti-rulemaking people are throwing a monkey wrench into it all the way along? Or is it just that it is really complicated?

Ms. SEMINARIO. No, I think there have been a lot more requirements that have been put on, some by Congress, the Regulatory Flexibility Act, Unfunded Mandates Act, some through executive order. So there are many, many, many more requirements for review and analysis. And what we are seeing now are proposals in the House to even add more to that. And so they will just stop the process.

So I think we need to step back and say, is this process working for anyone in terms of the workers, the uncertainty to employers? It is not helpful to them for 10 years they don't know what is going to happen. So I would say that is an issue that we really need to look at.

Ms. WOOLSEY. So very quickly, because I don't have much time, inflation has changed the value, the real-dollar value of OSHA penalties. If penalties were adjusted for inflation, would they be more of a deterrent?

Ms. SEMINARIO. Well, they would be more in line with today's values. In terms of whether they are a deterrent, I think that goes to the effectiveness of OSHA's enforcement.

One thing I would agree with Mr. Sarvadi on is that we should be distinguishing in our enforcement actions between those things which are really, really serious and those things that have really, really serious impacts. Right now, we don't.

One of the things in legislation you put forward would say we should have a higher penalty when there is a violation, serious, willful, that kills somebody. That is the gravest incident kind of violation you could have. Right now, we don't make that kind of distinction, and I think we should.

Ms. WOOLSEY. Okay. Thank you.

Chairman WALBERG. I thank the gentlelady.

I recognize the gentleman from Indiana, Mr. Rokita.

Mr. ROKITA. Thank you, Mr. Chairman.

I want to take some time and talk about these anti-rulemaking people, quote-unquote.

First question is to Mr. Sarvadi. Now, we have heard testimony from—expert testimony from Ms. Seminario, quote-unquote expert testimony, that suggests that, quote, some would like to return to the days when there were no regulations and enforcement and employers were free to do whatever they chose. That comes from the written testimony.

And then we heard verbal testimony that went along the lines of something like this. Those that want to get rid of useless, burdensome regulations are really those that want no regulation.

It is as if I was on the floor of the United States House. How can we dial back the rhetoric here? Not name call people as anti-

rulemaking people? And are your clients really asking for no rules? Is that what the situation is?

Mr. SARVADI. Nobody that I work with has ever asked us to get rid of all of the rules. That is not the problem. The problem has long——

Mr. ROKITA. So you don't represent anarchists?

Mr. SARVADI. I don't represent anarchists.

Mr. ROKITA. I would like the record to reflect that.

Mr. SARVADI. Among others.

I think the problem that we have is that the rhetoric has gotten out of hand. I was testifying here 5 or 6 years ago, and we talked about some of the same issues.

The question of penalties is a good one, a good example. Ms. Seminario has a viewpoint about what penalties should be. And what I can tell you is that penalties for people who really are not the ones that we should be targeting, have no impact on their decision-making to any significant degree, whether it is for compliance purposes or for challenging the citations that OSHA issues, penalties get important for people who are recalcitrant. To the extent that we are focusing on them, that is where the focus of enforcement needs to be.

So I think we have agreement on that, and I think if we could come up with a better way to deal with that kind of thing and figure out who the bad actors really are, then we could focus the enforcement on that.

I do want to take issue with one thing that Ms. Seminario just said, though, that is important. The idea that somehow we should scale penalties on the basis of the outcome of the accident that occurs is, it seems to me, extremely unfortunate. And that is because, in my experience, the 35 years that I have been doing health and safety and all of my training in graduate school and later, the outcome of an accident is very often the result of luck, not because somebody didn't do some thing.

The example of falling off a roof is a good example. Falling off a roof, whether or not you are killed or seriously injured depends on how you land, how high the roof is, and all the rest of these factors. The fact that a fatality occurs is not necessarily related to the violation of the fall protection rule or whatever rules happen to be in place, even though that is certainly a factor.

So if we start calibrating penalties on the basis of the outcome, we are not going to have people focused on how to prevent the injuries begin with, we are going to have them focused on how to avoid the outcome and the enforcement that eventually follows from that.

Mr. ROKITA. Thank you, Mr. Sarvadi.

Mr. Korellis, are you an anarchist?

Mr. KORELLIS. I am not.

Mr. ROKITA. Do you have anything to add?

Mr. KORELLIS. Yes. I want to start right off with this photo, which is extremely deceiving. This is not roofing work. This is home building, carpentry, construction work.

Mr. ROKITA. Great point, actually.

Mr. KORELLIS. Yes. We don't go up there with holes and rafters exposed. The roof is there. We are generally tearing off existing roofing, having to move large amounts of material around, which

is not this situation. Eighty percent of all roofing is reroofing. And everything OSHA did, and even this, everything is focused on new construction. We are working with reroofing and the hazards and the safety precautions we need to take to that.

These other items of guard rails, of safety nets, scaffolding, we can't put those around your homes. We would tear up your whole entire lawn and again turn a $5,000, $10,000 job—we would double it. Our only option is personal fall arrest systems, truly, which aren't foolproof.

Congresswoman Woolsey, you mentioned that commercial construction falls have decreased. Well, personal fall arrest systems aren't utilized on low slope. All those commercial buildings, they are not even utilized on. What we are actually asking for is something similar to what California has. You do have the option to still use slide guards on these roofs that OSHA is taking away. But California still has that option, and we are looking for something along that lines.

Putting these fall protections all around the perimeter of the roof, we are going to have people hanging off the roof installing these fall protection systems, exposing them to greater hazards than if they weren't using them. And they have to be installed and taken off. When you tear the roof off, they have got to come off. You got to put them back on to put the roof on.

We are a union shop. Every one of my employees gets one of those lifelines. Every one of my employees are OSHA 10-hour certified at a minimum. Most of them are OSHA 30-hour. We haven't had a fatal fall in 51 years of our business, and those guys think this is crazy what we are trying to make them do.

Mr. ROKITA. I thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentleman, and I thank the panel for the insights that you brought to our consideration, and we do want to make it a considered effort as we look forward.

At this point, I will recognize the ranking member for any closing comments that she might have.

Ms. WOOLSEY. Thank you, Mr. Chairman.

I would just like to ask the gentleman from Indiana if you have proof that they are not anarchists. I mean, where did you go to get that information? Are you just going to take their word for it or can you prove that to us?

Mr. ROKITA. I am going to read their testimony.

Ms. WOOLSEY. All right. There you go.

So, Mr. Chairman, today we heard about the human costs that occurs when OSHA isn't able to do its job. The Republican riders added to the House appropriations draft bill will actually make this worse by delaying OSHA's current efforts to protect workers. And, make no mistake, there will be human consequences if these riders ever find their way into law.

Diane Lillicrap of St. Louis sent the committee a statement regarding a crane accident in the St. Louis area that killed Steven, her 21-year-old son, while he was dismantling a 100-ton crawler crane in 2009. Diane is also safety manager at a Fortune 500 company.

She says in her brief statement, and I quote her, because Steven had never received training on fall protection, his lanyard was tied

off to a live cable. The crane operator stepped out of the cab, asked Steven if he was ready to move. While the crane was moving forward, the operator, who could not see Steven, decided to start lowering the gantry. Steven was sucked into the draw works of the crane by the lanyard he was wearing. His life ended as the firefighters were trying to rescue him.

The OSHA rule for cranes and derricks, she continues, that was in place at the time of Steven's death dated back to 1971. Many people in the industry felt this standard was obsolete, and they asked OSHA to modernize it. There had been many technical changes made to the machinery since the time the first standard was issued. After a 7-year rulemaking process, OSHA issued a new crane rule in July of 2010. It was a year and a half too late for my son Steven. I believe that if the new OSHA standard had been in place and followed on February 3, 2009, Steven would still be here today. Several provisions in the OSHA rule could have saved Steven's life, unquote.

I would like to offer the entire statement, Mr. Chairman, for the record.

Chairman WALBERG. Without objection.

[The information follows:]

Prepared Statement of Diane Lillicrap

My name is Diane Lillicrap. I am the mother of Steven Lillicrap, who at the age of 21 lost his life while dismantling a 100-ton crawler crane on February 3, 2009. Steven was an apprentice Operating Engineer for Local 513. He was called out of the hiring hall to work for a contractor in St. Louis, MO. Steven learned about cranes on the job. You don't learn about cranes from the Union until you are a 3rd year apprentice. Steven's mentor was the crane operator. The crane operator never wore fall protection, and never showed Steven how to use it. He never told Steven or showed Steven where anchor points were on the crane. In fact, there were no anchor points on the crane. So where do you tie off if no one shows you?

The day of the fatal accident the company Steven was working for was dismantling the crane to move the machine to another job site. The General Contractor on this job site had a 100% tie off rule for fall protection. Steven had just finished rigging and removing the counterweight of the crane with the help of a support crane. The next move was to prepare to pull the pins off the gantry. Before they could do this step, the crane had to be moved forward a couple of feet because the crane was in a tight area and they need more room to maneuver it. Steven was standing near the draw works of the crane. Because Steven had never received training on fall protection, his lanyard was tied off to a live cable. The crane operator stepped out of the cab and asked Steven if he was ready to move. While the crane was moving forward the operator (who could not see Steven) decided to start lowering the gantry. Steven was sucked into the draw works of the crane by the lanyard he was wearing. His life ended as the firefighters were trying to rescue him.

The OSHA rule for Cranes & Derricks that was in place at the time of Steven's death dated back to 1971. Many people in the industry felt this standard was obsolete and they asked OSHA to modernize it. There had been many technological changes made to the machinery since the time the first standard was issued. After a seven-year rulemaking process, OSHA issued a new crane rule in July 2010. It was a year-and-a-half too late for my son Steven. I believe that if the new OSHA standard had been in place and followed on February 3, 2009 Steven would still be here today. Several provisions in the OSHA rule could have saved Steven's life, including:

1. Assembly/disassembly of a crane must be directed by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons ("A/D director ").

2. Before commencing assembly/disassembly operations, the A/D director must ensure that the crew members understand all of the following:

a. Their tasks.

b. The hazards associated with their tasks.

c. The hazardous positions/locations that they need to avoid.

3. During assembly/disassembly operations, before a crew member takes on a different task, or when adding new personnel during the operation.

4. Protecting assembly/disassembly crew members out of the operator's view.

5. Where provisions of this standard direct an operator, crewmember, or other employee to take certain actions, the employer must establish, effectively communicate to the relevant persons, and enforce, work rules to ensure compliance with such provisions.

6. For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

OSHA regulations and standards are put in place to protect workers. We all deserve to be taught to do our jobs safely. We shouldn't have to learn by the mistakes, injuries, illnesses and fatalities of our co-workers. Going to work should not be a grave mistake.

Ms. WOOLSEY. So, in closing, I believe we need to work together, absolutely, anarchists or not, to cut the red tape that keeps OSHA from issuing its standards in a timely manner. Because we have to carry out OSHA's statutory mission, and that is to assure, as far as possible, every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

With that, Mr. Chairman, I yield back to you.

Chairman WALBERG. I thank the gentlelady.

I ask for unanimous consent to include in the record statements from the Associated Builders and Contractors and the Sikh Coalition.

Hearing none, they will be included.

[The information follows:]

ASSOCIATED BUILDERS AND CONTRACTORS,
October 5, 2011.

Hon. TIM WALBERG, *Chairman;* Hon. LYNN WOOLSEY, *Ranking Member, Subcommittee on Workforce Protections, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC 20515.*

DEAR CHAIRMAN WALBERG AND RANKING MEMBER WOOLSEY: On behalf of Associated Builders and Contractors (ABC), a national association with 75 chapters representing 23,000 merit shop construction and construction-related firms with nearly two million employees, I am writing in regard to the subcommittee hearing titled, "Workplace Safety: Ensuring a Responsible Regulatory Environment."

As builders of our nation's communities and infrastructure, ABC members believe exceptional jobsite safety and health practices are inherently good for business. They understand the importance of common-sense regulations that are based on solid evidence, with appropriate consideration paid to implementation costs and input from the business community.

Recent regulatory proposals and upcoming actions from the Occupational Safety and Health Administration (OSHA) have created economic uncertainty for employers and threaten to impose excessive and potentially crippling costs that could ultimately impact job creation and stifle growth in the construction industry. ABC has expressed concerns about several such proposals, including:

• Injury and Illness Prevention Program (I2P2): Though still at the "pre-rule" stage, OSHA's "highest regulatory priority" could mandate that all employers continually "find and fix" workplace hazards, regardless of their severity. This could potentially lead to circumstances in which full compliance is unattainable.

• Occupational Exposure to Crystalline Silica: OSHA plans to propose more stringent controls and monitoring of worksite exposure to silica, which many experts believe would be technologically and economically unfeasible, especially in construction. In addition, it is unclear how OSHA plans to enforce tighter requirements, as the agency is unable to appropriately enforce the current standard.

• Musculoskeletal Disorder Recordkeeping: OSHA has proposed a revision to existing injury and illness reporting requiring employers to identify "musculoskeletal disorders" (MSDs) separately from other types of workplace incidents. OSHA's low cost estimates for the proposal allowed the agency to bypass requirements of the

federal regulatory process that would have allowed for a more in-depth economic analysis. While OSHA has temporarily withdrawn the proposal, the agency plans to re-issue it at a later date.

• Redefinition of "Feasibility" in Noise Exposure Standard: Issued outside the formal noticeand-comment process required by the Administrative Procedure Act, OSHA proposed to change existing noise exposure standards (which would involve substantial new costs) without explaining why such action was necessary. While OSHA has temporarily withdrawn the proposal, it is unclear whether it will be reissued at a later date.

ABC strongly supports comprehensive regulatory reform, including across-the-board requirements for federal agencies to evaluate the risks, weigh the costs and assess the benefits of regulations. Existing regulations should be reviewed periodically to ensure they are necessary, current and cost-effective for businesses to implement. Furthermore, agencies, including OSHA, must be held accountable for full compliance with existing rulemaking statutes and requirements when promulgating regulations, and should not seek to circumvent existing checks and balances within the federal regulatory framework.

We appreciate your attention to this important matter and look forward to working with you on reforming burdensome regulations placed on the business community.

CORINNE M. STEVENS, *Senior Director, Legislative Affairs.*

October 5, 2011.

Hon. TIM WALBERG, *Chairman;* Hon. LYNN WOOLSEY, *Ranking Member, Subcommittee on Workforce Protections, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC 20515.*

DEAR CHAIRMAN WALBERG AND RANKING MEMBER WOOLSEY: The Sikh Coalition submits this letter to the Subcommittee on Workforce Protections to express concern about Occupational Safety and Health Administration (OSHA) regulations that may hamper the ability of Sikhs and other religious minorities to enjoy equal employment opportunity. We respectfully request that this letter be incorporated into the official hearing record because it illustrates how poorly-crafted workplace safety regulations can have a deleterious impact on equal employment opportunity.

By way of background, the Sikh Coalition is the largest Sikh civil rights organization in the United States. The Sikh religion was founded over five centuries ago in South Asia and is presently the fifth largest world religion, with more than 25 million adherents throughout the world. Sikhs are religiously required to keep their hair and beards uncut. Throughout history, Sikhs have vigorously defended their articles of faith against persecution, and it is in this spirit that Sikhs continue to strive for religious freedom in workplaces across the United States by challenging laws that have a discriminatory impact on Sikhs.

According to OSHA's current respiratory protection standard, employers "shall not permit respirators with tight-fitting facepieces to be worn by employees who have * * * [f]acial hair that comes between the sealing surface of the facepiece and the face or that interferes with valve function[.]"[1] Although we appreciate the importance of workplace safety, this OSHA standard categorically assumes that bearded individuals cannot safely wear respirators with tight-fitting facepieces and may accordingly violate the Religious Freedom Restoration Act (RFRA). Enacted in 1993, RFRA allows the federal government to substantially burden an individual's exercise of religion only by proving that its application of the burden furthers a compelling governmental interest by the least restrictive means.[2] In Potter v. District of Columbia, the U.S. District Court for the District of Columbia concluded that local fire department regulations requiring religiously bearded individuals to shave violated RFRA; in the course of doing so, the court noted that some religiously bearded plaintiffs repeatedly passed safety tests for gas masks and that clean shaven individuals fail such tests with regularity.[3]

These are not theoretical concerns. Earlier this year, 34 local, state, and national civil rights organizations wrote to California Governor Jerry Brown to express concern about restrictive grooming policies at the California Department of Corrections

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[1] Occupational Safety and Health Administration, Occupational Safety and Health Standards, Personal Protective Equipment, Respiratory Protection, 29 CFR 1910.134(g)(1)(i)(A), available at *http://www.osha.gov/pls/oshaweb/owadisp.show—document?p—id=12716&p—table=standards*

[2] See Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1 (2000).

[3] See Potter v. District of Columbia, No. 01-1189, 2007 WL 2892685 (D.D.C. Sept. 28, 2007).

and Rehabilitation (CDCR) that forbade a Sikh from working as a corrections officer on account of his beard.[4] Although Sikhs in Armed Forces throughout the world—including the U.S. Army—tie or groom their beards in ways that enable them to wear respirators in compliance with strict safety requirements, the CDCR does not even allow Sikh job applicants to take a respirator fit test to demonstrate that they can comply with safety requirements. We reject this "armchair" approach to workplace safety and hope that OSHA will adopt a more nuanced standard in consultation with our organization. If OSHA fails to do so, the agency may not only violate RFRA but also empower state agencies like the CDCR to continue denying equal employment opportunities to Sikhs and other religious minorities, who are needlessly forced to make a false choice between religious freedom and a job.

Respectfully submitted,

RAJDEEP SINGH,
Director of Law and Policy.

Chairman WALBERG. I certainly want to make it very clear there is no intent I think on anyone on this committee, either party, to roll back regulations to days gone by when there was nothing but danger. We want responsible regulations that foster jobs and safety on the jobs, as I have said numerous times, so that we can know that workers consistently go to a workplace that is safe but then can go back to that same workplace the next day having a job that is secure and ongoing.

I am not going to ask this be submitted for the record in comments about anarchists and hobbits or whatever else we might have, but I do make this not only to show my recently caught as of Monday 16-inch rainbow trout here——

Ms. WOOLSEY. You braggart.

Chairman WALBERG. You bet I am a braggart. But it was done—and I will make the record straight. It was done at a trout farm. You know, how can't you catch one even on my fly rod with a fly tied?

I bring this up primarily to say the testimony I heard from this entrepreneur, who has been in business since 1971, has been through all sorts of regulations, specifically in the area of agriculture and aquaculture and in Michigan—and it was brought up today about Michigan's standards but that hasn't been for several years known to really want to work with its job core that is out there, employers, and has made it very difficult. And we have seen too many go to Indiana, of our jobs and our businesses.

But this gentleman informed me that it has been a breath of fresh air in the last 7, 8 months to be before the Department of Agriculture and the regulators there and have them now—total change of perspective and saying, how can we help you? How can we support your efforts to supply jobs to do business in the State of Michigan in agriculture? How can we work together to make that happen?

Before this, he indicated to me that it was always with fear and trepidation he came before a regulatory committee in Agriculture and was questioned as if he was already a violator, as opposed to saying, we want to make it work. How can we do that?

That is what we are looking for here in our efforts. Regardless of what the Appropriations Committee does or anything else, we do have purview here on these issues of regulation. A reference was

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[4] See *http://tinyurl.com/5u5f7ds*

made to making sausage and making sure that sausage not only came out well but didn't humans involved with it. We have had legislation compared to sausage over the years, and some of that sausage has been unsavory and hurtful to an economy and to jobs and to good efforts in society. We do not want to continue bad sausage making in policy, government policy, regulations, as well as laws.

Today, we have all had the opportunity to hear from a cross-spectrum of interested voices. I don't want to say from both sides. I think we are on the same side. But we have different perspectives.

But I have also very clearly heard, as we have had experts in the field who actually deal with this day in and day out at the job site, that there are differences. You know, whether you are new home construction or whether you are reroofing, it is a difference. There are means of attaching yourself to studs with scaffolding and with support systems that are very much different and usable compared to when you are working with a pre-existing roof situation.

All that to say I would encourage our regulators and our industry to spend time together. Yes, it is cumbersome. Yes, it sometimes takes more time. But, ultimately, the outcome I would hope to be the case where the home builders and the roofers and the regulators come to an understanding, or the crane operators—we could go across the board—that we come to a setting where there are best-case scenarios, best practices in place put together in a cooperative effort.

The ranking member and I and our staff had the privilege of going 900 feet underground in a mine just recently. And then an hour—almost an hour back to the actual work site underground, going from Pennsylvania into West Virginia, and seeing some amazing work being done. And we all came out alive, and I am looking around to make sure that we did. We are all here.

There are regulations in place that are necessary. But we also saw in that oversight opportunity, we also saw a company that was willing to establish best-case scenarios made by best practices and were forward thinking, went beyond regulators in certain cases. Now, I think that is information that ought to be on the table. And I think we ought to take the time to do that and listen to the sides, as opposed to putting ourselves at risk with a one-size-fits-all package in order to get the regulations in place.

Let me end by saying this. In a 2010 study by the Small Business Association, they indicated by 2008 the cost of complying with Federal rules and regulations already exceeded $1.75 trillion a year. That is real money, even for those of us who sit in the halls of Congress.

The Obama administration in the first 26 months, in the record, imposed 75 new major rules, costing the private sector more than $40 billion. That again is real money, some of which is important and necessary. But I think we ought to be very careful to make sure that that is the case.

This July, regulators imposed—and this is across the board, not just OSHA—regulators imposed a total of 379 new rules that will cost more than $9.5 billion. Now, that is a concern.

We will never have a total safe society. We want a safe society, but we also want a productive society that continues to move us beyond any other economy in the world, with people who are em-

ployed. Because jobs make the difference. And if we want demand, we want people employed so they can demand the things that come with the ability to work and spend, save, invest, be entrepreneurial, and even at times take risk in this great capitalistic society.

So, having said all that, I appreciate the testimony today. I appreciate the attendance of the committee, the questions that went on. And we do take this seriously and will continue our productive process.

Ms. WOOLSEY. Before you come down with the gavel, Mr. Chairman—I think I got in—I have another CRS report that actually discredits those numbers you just said. Could I put them into the record?

Chairman WALBERG. With a temptation to not.

Ms. WOOLSEY. Thank you.

Chairman WALBERG. Being such a nice guy who wants to keep that reputation, without objection, they will be entered.

Ms. WOOLSEY. Thank you.

[The information follows:]

Analysis of an Estimate of the Total Costs of Federal Regulations

Curtis W. Copeland
Specialist in American National Government

April 6, 2011

Congressional Research Service
7-5700
www.crs.gov
R41763

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Some policy makers have expressed an interest in measuring total regulatory costs and benefits (e.g., the Congressional Office of Regulatory Analysis Creation and Sunset and Review Act of 2011, H.R. 214, 112th Congress), and estimates of total regulatory costs have been cited in support of regulatory reform legislation (e.g., H.R. 10, the Regulations from the Executive In Need of Scrutiny (REINS) Act, H.R. 10, 112th Congress). However, measuring total costs and benefits is inherently difficult. This report examines one such study to illustrate the complexities of this type of analysis.

A September 2010 report prepared by Nicole V. Crain and W. Mark Crain for the Office of Advocacy within the Small Business Administration (SBA) stated that the annual cost of federal regulations was about $1.75 trillion in 2008. This cost estimate was developed by adding together the estimated costs of four categories or types of regulation: economic regulations (estimated at $1.236 trillion); environmental regulations ($281 billion); tax compliance ($160 billion); and regulations involving occupational safety and health, and homeland security ($75 billion). Some commenters have raised questions about the validity and reliability of this estimate.

For example, Crain and Crain's estimate for economic regulations (which comprises more than 70% of the $1.75 trillion estimate) was developed by using an index of "regulatory quality." One of the authors of the regulatory quality index said that Crain and Crain misinterpreted and misused the index, resulting in an erroneous and overstated cost estimate. Other commenters have also raised concerns about using the index to estimate regulatory costs, and about the regression analysis that the authors used to produce the cost estimate. Crain and Crain said that they believe they interpreted and used the regulatory quality index correctly.

Crain and Crain's estimates for environmental, occupational safety and health, and homeland security regulations were developed by blending together academic studies (some of which are now more than 30 years old) with agencies' estimates of regulatory costs that were developed before the rules were issued (some of which are now 20 years old). Although the agency estimates were typically presented as low-to-high ranges, Crain and Crain used only the highest cost estimates in their report. The Office of Management and Budget has said that estimates of the costs and benefits of regulations issued more than 10 years earlier are of "questionable relevance."

Crain and Crain's estimate for the cost of tax paperwork was based on data from the Internal Revenue Service and the Tax Foundation, but OMB data indicate that the number of hours of tax paperwork may be much higher than Crain and Crain's estimate. On the other hand, the authors' assumptions regarding the cost of completing the paperwork may be too high. A threshold question, however, is whether tax paperwork should be considered in the same category as regulatory costs. OMB does not include tax paperwork in its annual reports to Congress.

Crain and Crain said they did not provide estimates of the benefits of regulations, even when the information was readily available, because the SBA Office of Advocacy did not ask them to do so. OMB's reports to Congress have generally indicated that regulatory benefits exceed costs. Crain and Crain said their report was not meant to be a decision-making tool for lawmakers or federal regulatory agencies to use in choosing the "right" level of regulation. This report will not be updated.

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Introduction

Regulation, like taxing and spending, is a basic function of government. Each year, federal agencies issue between 3,000 and 4,000 final rules on topics ranging from the timing of bridge openings to the permissible levels of arsenic and other contaminants in drinking water. Unlike taxing and spending, however, the costs that nonfederal entities pay to comply with federal regulations are not accounted for in the federal budget process. Some policy makers have expressed an interest in measuring total regulatory costs and benefits. For example, the Congressional Office of Regulatory Analysis Creation and Sunset and Review Act of 2011 (H.R. 214, 112th Congress) would require the newly created office to issue "an annual report including estimates of the total costs and benefits of all existing Federal regulations." As discussed later in this report, for nearly 14 years, Congress has required the Office of Management and Budget (OMB) to prepare a report each year on the aggregate costs and benefits of federal rules.[1]

However, measuring total regulatory costs and benefits is inherently difficult. For example, researchers must determine the baseline for measurement (i.e., what effects would have occurred in the absence of the regulation) and aggregating the results of studies conducted years earlier with different methodologies and quality can be highly problematic. Some observers, including OMB, currently doubt whether an accurate measure of total regulatory costs and benefits is possible.

The Crain and Crain Report

In September 2010, the Office of Advocacy within the Small Business Administration (SBA) released a report prepared for the office by Nicole V. Crain and W. Mark Crain entitled "The Impact of Regulatory Costs on Small Firms."[2] Among other things, the report stated that the annual cost of federal regulations in 2008 was about $1.75 trillion. The September 2010 report was the fourth such report prepared for the SBA Office of Advocacy in the previous 15 years:

- In 1995, Thomas D. Hopkins estimated annual federal regulatory costs that year to be between $416 billion and $668 billion.[3]
- In 2001, W. Mark Crain and Hopkins estimated the annual cost of regulations in the year 2000 at $843 billion.[4]

[1] The current requirement is in Section 624 of the Treasury and General Government Appropriations Act, 2001, (31 U.S.C. § 1105 note), sometimes referred to as the "Regulatory Right-to-Know Act."

[2] See http://www.sba.gov/sites/default/files/rs371tot.pdf to view a copy of this report. Hereafter, this report is referred to as "Crain and Crain." In addition to estimating the annual cost of federal regulations, the report also provided information indicating that regulatory costs fall particularly hard on small businesses. The report was developed under a contract with the SBA Office of Advocacy (contract number SBAHQ-08-M0466). Although the report cover states that it "contains information and analysis that was reviewed and edited by officials of the Office of Advocacy," it also says that the "final conclusions of the report do not necessarily reflect the views of the Office of Advocacy."

[3] Thomas D. Hopkins, "Profiles in Regulatory Costs," available at http://www.sba.gov/sites/default/files/files/rs1995hoptot.pdf.

[4] W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," available at http://www.sba.gov/sites/default/files/files/rs207tot.pdf. For an analysis of this estimate, see CRS Report RL32339, *Federal Regulations: Efforts to Estimate Total Costs and Benefits of Rules*, by Curtis W. Copeland.

- In 2005, W. Mark Crain estimated annual regulatory costs in 2004 at about $1.1 trillion.[5]

The $1.75 trillion estimate of regulatory costs has been widely quoted in the press,[6] by witnesses at congressional hearings,[7] and by Members of Congress,[8] and it has been cited as evidence of the need for regulatory reform legislation and congressional oversight actions.[9] Other observers, however, have criticized the estimate, saying that it overstates the total cost of federal regulations.[10]

This report examines how Crain and Crain developed the $1.75 trillion estimate of federal regulatory costs in 2008. It also compares the $1.75 trillion estimate for 2008 with the $1.1 trillion estimate for 2004, and with OMB's estimates of regulatory costs in 2008.

How Crain and Crain Developed the $1.75 Trillion Estimate of Regulatory Costs

Crain and Crain developed their $1.75 trillion estimate of total regulatory costs by adding together cost estimates for each of four categories or types of regulation: economic regulations ($1.236 trillion); environmental regulations ($281 billion); tax compliance ($160 billion); and

[5] W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," available at http://www.sba.gov/sites/default/files/files/rs264tot.pdf.

[6] See, for example, Chad Moutrey, "To cure the economy, fix the business environment," *Washington Post*, January 10, 2011, available at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/07/AR2011010705681.html; "Obama's reformer disguise; Accountability is the solution to government red tape," *Washington Times*, January 26, 2011, p. B2; and Mark Tapscott, "Washington is the Reason the Economy Is Not Growing," *The Examiner*, December 2, 2010, p. 39.

[7] See, for example, testimony of Thomas M. Sullivan, before the House Committee on Education and Workforce, Subcommittee on Workforce Protections, February 15, 2011, available at http://edworkforce.house.gov/UploadedFiles/02.15.11_sullivan.pdf; and testimony of Karen Harned, before the House Committee on the Judiciary, Subcommittee on Courts, Commercial and Administrative Law, February 10, 2011, available at http://judiciary.house.gov/hearings/pdf/Harned02102011.pdf.

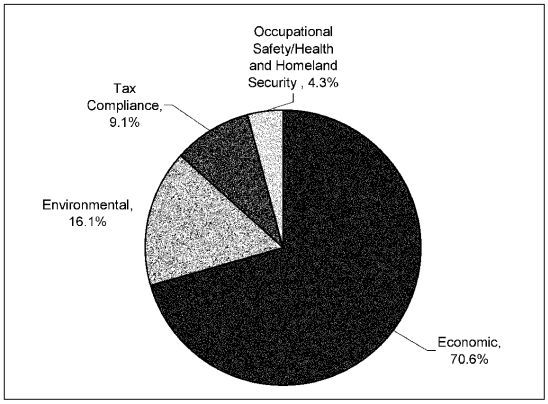
[8] See, for example, Senator Dan Coats, "Coats Says Excessive Regulation is Hindering Private Sector Job Growth," Press Statement in support of S. 358, February 16, 2011, available at http://coats.senate.gov/newsroom/press/release/?id=F6E06668-FE12-460E-9D04-4ED611EAB111; Opening statement of Representative Sam Graves, Chairman, House Committee on Small Business, February 16, 2011, available at http://smbiz.house.gov/UploadedFiles/2011.02.16_State_of_SmBiz_Opening.pdf; and a letter to President Barack Obama by four House committee chairmen, available at http://geoffdavis.house.gov/UploadedFiles/POTUS_Letter_031011.pdf.

[9] See, for example, http://www.geoffdavis.house.gov/Legislation/reins.htm, and http://www.geoffdavis.house.gov/News/DocumentSingle.aspx?DocumentID=208463, in support of the "Regulations from the Executive In Need of Scrutiny (REINS) Act," H.R. 10 in the 112th Congress; http://snowe.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=49fe01bb-b475-4ff1-b9e1-7ea6eda50b7e&ContentType_id=ae7a6475-a01f-4da5-aa94-0a98973de620&Group_id=2643ccf9-0d03-4d09-9082-3807031cb84a&MonthDisplay=3&YearDisplay=2011, in support of the Small Business Regulatory Freedom Act of 2011, S. 474 in the 112th Congress; and H.Rept. 112-6, "Directing Certain Standing Committees to Inventory and Review Existing, Pending, and Proposed Regulations and Orders from Agencies of the Federal Government, Particularly With Respect to Their Effect on Jobs and Economic Growth," Report to accompany H.Res. 72, February 8, 2011.

[10] Carl Bialik, "The Numbers Guy: Small Business Regulatory 'Burden' Is Tough to Quantify," *Wall Street Journal*, January 29, 2011, p. A2; and Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, "Setting the Record Straight: The Crain and Crain Report on Regulatory Costs," Center for Progressive Reform White Paper #1103, February 2011, available at http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf ("CPR report").

regulations involving occupational safety and health, and homeland security ($75 billion). As **Figure 1** below illustrates, the estimated cost of economic regulations was more than 70% of the authors' estimate of total regulatory costs.

Figure 1. Economic Regulations Were More Than 70% of Crain and Crain's Estimate of Total Regulatory Costs



Source: CRS, based on data from Crain and Crain, September 2010.

Note: Due to rounding, the individual segments total 100.1%.

Economic Regulations

According to the Crain and Crain report, "[e]conomic regulations include a wide range of restrictions and incentives that affect the way businesses operate—what products and services they produce, how and when they produce them, and how products and services are priced and marketed to consumers."[11] They said such regulations affect both domestic and international business operations, and include quotas and tariffs on foreign imports that "limit competition from outside the United States, restrict production and employment, raise prices, and generally curtail U.S. economic activities."[12] To develop an estimate of the cost of economic regulations, Crain and Crain used a Worldwide Governance Index (WGI) of "regulatory quality" that was developed by Aart Kraay and Massimo Mastruzzi of the World Bank, and Daniel Kaufmann of

[11] Crain and Crain, p. 17.

[12] Ibid.

the Brookings Institution.[13] According to Crain and Crain, the WGI regulatory quality index "measures perceptions of the ability of governments to formulate and implement sound policies and regulations that permit and promote private sector development."[14] Crain and Crain said the index was calibrated to range between -2.5 and +2.5, and that +2.5 represented "the minimal amount of regulation."[15] In 2008, the WGI regulatory quality index score for the United States was +1.579.

Crain and Crain used regression analysis[16] in an effort to determine the impact of changes in the regulatory quality index on real Gross Domestic Product (GDP) per capita, holding constant four other variables that they said the literature suggests explain differences in economic development across countries and over time: country population, primary education as a share of the eligible population, foreign trade as a share of GDP, and fixed broadband subscribers per 100 people. Using this approach, Crain and Crain concluded that a one-unit change in the WGI regulatory quality index (e.g., a change from +1.5 to +2.5 on the scale) represented a 9.4% change in real GDP per capita. Because the regulatory quality index for the United States in 2008 was +1.579, Crain and Crain said that the 0.921 difference between that value and the +2.5 maximum represented an 8.7% reduction in GDP (0.094 times 0.921) because of economic regulations. Because GDP in the United States was about $14.2 trillion in 2008, Crain and Crain concluded that the types of economic regulations included in the regulatory quality index reduced real GDP per capita in the United States by about $1.236 trillion ($14.2 trillion times 0.087).[17]

Composition of the Regulatory Quality Index

According to Kaufmann, Kraay, and Mastruzzi, the WGI index of regulatory quality for the United States in 2008 was determined by aggregating six expert-based measures and two surveys, each of which was scored on a 0 to 1 scale.[18] The six expert-based measures, their scores, and the particular factors considered in each measure were as follows:

- Economist Intelligence Unit (scored at 0.70), a commercial business information provider headquartered in London, England. The score is based on its experts' judgment of 16 factors, including "protectionism in the country negatively affects the conduct of business," "access to capital markets (foreign and domestic) is easily available," "real corporate taxes are non distortionary," "labor regulations hinder business activities," and "easy to start a business."

[13] In addition to "regulatory quality," the WGI indices include five other governance indicators: "voice and accountability," "political stability and absence of violence," "government effectiveness," "rule of law," and "control of corruption." The WGI methodology is described in Kaufmann, Kraay and Mastruzzi (2010). "The Worldwide Governance Indicators: Methodology and Analytical Issues" World Bank Policy Research Working Paper No. 5430, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130.

[14] Crain and Crain, p. 19.

[15] Ibid., p. 24.

[16] Regression analysis is used to understand how the value of a dependent variable (e.g., real GDP per capita) changes when one of the independent variables is varied (e.g., the index of regulatory quality), while the other independent variables (e.g., country population) are held fixed.

[17] Here, and elsewhere in the Crain and Crain report, cost estimates are provided for 2008 in 2009 dollars. It is unclear why Crain and Crain used 2009 dollars to present cost estimates for 2008.

[18] See http://info.worldbank.org/governance/wgi/pdf/rq.pdf. Documentation for each individual source is available at http://info.worldbank.org/governance/wgi/sources.htm.

- Global Insight Business Conditions and Risk Indicators (scored at 0.94). Global Insight is a commercial business information provider headquartered in Boston, Massachusetts. The score is based on its experts' assessment of two factors: (1) "tax effectiveness," defined as "how efficient the country's tax collection system is"; and (2) "legislation," defined as "whether the necessary business laws are in place, and whether there any outstanding gaps."
- Global Insight Global Risk Service (scored at 0.95). Global Risk Service is a commercial business information provider headquartered in Boston, Massachusetts. The score is based on its experts' judgment of five factors: (1) "export regulation," (2) "import regulation," (3) "other business regulation," (4) "nonresident business ownership restrictions," and (5) "nonresident equity ownership restrictions."
- Heritage Foundation Index of Economic Freedom (scored at 0.73). The Heritage Foundation is described by the WGI index as a "nongovernmental research and educational institute headquartered in Washington, United States, advocating conservative public policies." The index score is based on its experts' judgment of two factors: (1) "foreign investment" and "banking/finance."
- Institutional Profiles Database (scored at 0.89), which is provided by the French government's Ministry of the Economy. The score is based on its experts' judgment of four factors: (1) "ease of starting a business," (2) "administered prices and market prices," (3) "competition: productive sector: ease of market entry for new firms," and (4) "competition between businesses: competition regulation arrangements."
- Political Risk Services International Country Risk Guide (scored at 1.00). Political Risk Services is a commercial business information provider headquartered in Syracuse, New York. The score is based on their experts' judgment of one factor entitled "investment profile," summarizing the investment environment.

The two surveys used to develop the regulatory quality index, their values, and the particular factors considered in each survey were as follows:

- Institute for Management and Development World Competitiveness Yearbook (scored at 0.50). The Institute for Management Development is an educational and research organization headquartered in Lausanne, Switzerland. The score is based on a survey of business people working in the United States, who are asked to comment on the same 16 factors used by the Economist Intelligence Unit mentioned above (e.g., "protectionism in the country negatively affects the conduct of business," "access to capital markets (foreign and domestic) is easily available," "real corporate taxes are non distortionary," "labor regulations hinder business activities," and "easy to start a business").
- World Economic Forum Global Competitiveness Report (scored at 0.62). The World Economic Forum is an international organization based in Switzerland. Its survey asked domestic and foreign-owned firms their views regarding seven statements: (1) "administrative regulations are burdensome," (2) "tax system is distortionary," (3) "import barriers/cost of tariffs as obstacle to growth," (4) "competition in local market is limited," (5) "it is easy to start company," (6)

"anti-monopoly policy is lax and ineffective," and (7) "environmental regulations hurt competitiveness."

Some observers have questioned whether WGI indices, such as the regulatory quality index, "measure what they purport to measure,"[19] and the authors of the WGI have responded to those concerns.[20] Crain and Crain noted in their report that the World Bank Development Research Group published a detailed description of how the WGI indices were developed,[21] and noted that the WGI indices were correlated with an index of economic regulations developed by the Organization for Economic Cooperation and Development (OECD) that Crain had used in his 2005 study of federal regulatory costs.[22] Crain and Crain said they used the WGI regulatory quality index in their 2010 study because it covered more countries for a longer period of time than the OECD index, and because it used a variety of sources and dimensions.

In a "Frequently Asked Questions" page on the World Bank's website, the WGI authors indicated that indices such as the regulatory quality index are "useful as a first tool for broad cross-country comparisons and for evaluating broad trends over time," but cautioned that they are "often too blunt a tool to be useful in formulating specific governance reforms in particular country contexts." They went on to say that such reforms "need to be informed by much more detailed and country-specific diagnostic data that can identify the relevant constraints on governance in particular country circumstances."[23]

Comments Regarding the Estimate of the Cost of Economic Regulations

The validity and accuracy of Crain and Crain's estimate of the cost of economic regulations depends on at least two factors: (1) whether the WGI index of "regulatory quality" can be used as part of a formula to measure the cost of economic regulations, and (2) whether the authors interpreted the regulatory quality index in the way it was intended. Several commenters on the Crain and Crain study have addressed one or both of these issues.

Comments from Aart Kraay of the World Bank

On January 27, 2011, Aart Kraay, a lead economist in the Development and Research Group at the World Bank, and one of the authors of the WGI regulatory quality index, contacted Crain and Crain by e-mail and provided his views on their use of the index in their September 2010 report on regulatory costs.[24] Kraay said that although "in principle an exercise like this could make

[19] See, for example, M.A. Thomas, "What Do the Worldwide Governance Indicators Measure? *European Journal of Development Research*, vol. 22 (2010), pp. 31-54.

[20] Daniel Kauffman, Aart Kraay, and Massimo Mastruzzi, "Response to 'What Do the Worldwide Governance Indicators Measure?'" *European Journal of Development Research*, vol. 22 (2010), pp. 55-58.

[21] Daniel Kaufman, Aart Kraay, and Massimo Mastruzzi, "Governance Matters VIII: Aggregate and Individual Governance Indicators 1996 – 2008," World Bank Development Research Group, Macroeconomics and Growth Team, Policy Research Working Paper 4978, June 2009.

[22] See G. Nicoletti, Scarpetta, and O. Boylaud, "Summary Indicators of Product Market Regulation and Employment Protection Legislation for the Purpose of International Comparisons," OECD Economics Department Working Paper No. 226 (2000).

[23] World Bank, "World Governance Indicators: Frequently Asked Questions," available at http://info.worldbank.org/governance/wgi/faq.htm.

[24] Kraay provided CRS with a copy of his January 27, 2011, e-mail to Crain and Crain on March 4, 2011.

sense," he said that he believed there were two "basic problems with how you use our data." First, he said that although Crain and Crain interpreted higher values of regulatory quality as "less stringent regulations," "[t]his isn't a good characterization of what the [regulatory quality, or RQ] index measures—rather RQ seeks to measure perceptions of the overall quality of the regulatory environment, which is very different from simply measuring whether it is 'stringent' or not." Kraay noted that the United States came in at about the 90th percentile of all countries in the world, and that countries like Finland and Sweden rank ahead of the United States on regulatory quality. "So by this standard," he said, "it is hard to say that the RQ measure 'rewards' deregulation." He also said that he and the other WGI authors had "indicated throughout that the WGI indicators are not literally true and have non-trivial margins of error, indicating that there is of course imprecision in how countries are ranked."[25]

The second major issue that Kraay noted was that Crain and Crain "may be misinterpreting the units of the WGI" by comparing the United States' score of +1.579 to +2.5—what the authors referred to in the report as "the minimal amount of regulation,"[26] and what Nicole V. Crain had referred to in a *Wall Street Journal* article as a "conceptual regulatory environment."[27] In his e-mail to the authors, Kraay said the following:

> You claim that 2.5 is the "best possible" score on the WGI. But this isn't really correct as the WGI are measured in units which don't have a fixed upper or lower boundary (technically the units are those of a standard normal random variable). It would make a lot more sense for you to compare the US score on RQ with that of a country whose regulatory environment you prefer, and then use that difference in score to calibrate the costs of regulations. So for example the highest numbers we see on WGI-RQ in 2009 are around 1.8 for countries like Singapore, followed closely by Denmark (!). The US comes in at around 1.4. So a more relevant comparison would be between the US and Denmark, rather than between the US and 2.5. This of course would mean that your estimated costs of regulation would be a lot smaller, since the distance between the US and Denmark is much smaller than the distance between the US and 2.5.[28]

(Kraay told CRS that the WGI authors periodically make minor revisions to WGI data for previous years, thus explaining the difference between the +1.579 regulatory quality index that Crain and Crain cited, and the "around 1.4" value that he noted in his e-mail to Crain and Crain.)[29] Using the same 2008 data that Crain and Crain used in their study, the nation with the highest regulatory quality index was Ireland, with a value of +1.915.[30] Subtracting the United States' regulatory index value from that of Ireland yields a difference of 0.336 (1.915 minus 1.579). As noted earlier, Crain and Crain used regression analysis to conclude that a one-unit change in the regulatory quality index represented a 9.4% change in real GDP per capita. If this

[25] In his comments to Crain and Crain, Kraay continued by saying that "one should not make a big deal of the fact that Sweden and Finland come in a bit ahead of the US, as the difference is not statistically significant (the margins of error overlap). But this does give you a good indication that WGI-RQ is not just measuring 'less regulation' as you seem to interpret it."

[26] Crain and Crain, p. 24.

[27] Carl Bialik, "The Numbers Guy: Small Business Regulatory 'Burden' Is Tough to Quantify," *Wall Street Journal*, January 29, 2011, p. A2.

[28] E-mail from Aart Kraay to Crain and Crain, January 27, 2011.

[29] E-mail to the author from Aart Kraay, World Bank, March 4, 2011.

[30] To view the data, see http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/06/29/000158349_20090629095443/Rendered/PDF/WPS4978.pdf. Two other jurisdictions had higher scores than Ireland in 2008, but they are technically not countries (Hong Kong, at 1.998, and Singapore, at 1.918).

measure is correct, the 0.336 difference between the Ireland and United States regulatory quality indices suggests a 3.16% reduction in GDP (0.094 times 0.336 equals 0.0316) in the United States compared with Ireland, the country with the least "stringent" regulatory climate. Therefore, the monetary "cost" of this GDP reduction would be about $448 billion (0.0316 times $14.2 trillion GDP in 2008), or about $788 billion less than the $1.236 trillion that Crain and Crain calculated. However, all of the above calculations assume that higher values on the regulatory quality index reflect "less stringent regulations," which Kraay indicated it does not.

Kraay also told CRS that he had concerns about the quality of Crain and Crain's regression analysis. He said "The problem is simply that high scores on regulatory quality are correlated with a lot of other good policies and institutions which also matter for GDP per capita. And so it is hard to sort out how much of the correlation between RQ and GDP per capita is due to the regulatory environment per se, and how much is due to other stuff."[31] He also said that "unless one can perfectly control for all these other factors (which is nearly impossible), the econometric estimates [that Crain and Crain] provide will reflect not just the effects of regulation on output, but also of all those other policies that are correlated with regulation."

When contacted by CRS for comment, Crain and Crain said that they understood Kraay's conceptual argument that the regulatory quality index might not reflect changes in the "stringency" of regulation, but they said that "the empirical evidence indicates that it does in practice." They said the index captures the extent of regulation from a variety of stakeholders' perceptions, and noted the nature of the questions used to construct the index (e.g., "How problematic are labor regulations for the growth of your business?" and "How problematic are customs and trade regulations for the growth of your business?"). Crain and Crain also said they did not compare the United States to another country (e.g., Denmark) because to estimate the cost of regulations to small and large businesses (what they contracted with SBA to do), they needed to estimate the total cost of all regulations. They also said they do not believe that they misinterpreted the WGI measure because the documentation provided by the WGI authors indicates that the index values range from about -2.5 to +2.5, and they selected +2.5 as the "best approximation of the regulatory environment that we were trying to capture in our estimate."[32]

Other Commenters

Before publishing the Crain and Crain report, the SBA Office of Advocacy had the study peer reviewed by two economists—Bob Litan of the Kauffman Foundation,[33] and Richard Williams of the Mercatus Center[34] at George Mason University.[35] Litan's complete comments were "I looked it over and it's terrific. Nothing to add." Williams's comments were more extensive. Overall, he said that the study was a "great project," and he hoped his comments would make it stronger. In relation to the estimate of the costs of economic regulations, he said the use of the index of

[31] E-mail to the author from Aart Kraay, World Bank, March 4, 2011.

[32] E-mail to the author from Nicole V. Crain and W. Mark Crain, March 7, 2011.

[33] The Ewing Marion Kauffman Foundation is described on its website as one of the largest foundations devoted to entrepreneurship. See http://www.kauffman.org/.

[34] The Mercatus Center is described on its website as the world's premier university source for market-oriented ideas. See http://mercatus.org/.

[35] According to a March 7, 2011, e-mail to the author from Radwan Saade of SBA's Office of Advocacy, the study was sent to the two peer reviewers "that identified as credible researchers and contributors to the discussion on regulatory costs." He said other researchers were contacted but were unavailable to serve as peer reviewers.

regulatory quality was an "innovative idea," but said he was "concerned that the index may not measure what the authors say it measures, and even if it does, it may overstate the costs of regulation when used in conjunction with the other measures."[36] Among other things, he said that the study "might over-estimate the total costs of regulation because the effect of the Regulatory Quality Index on GDP may also capture some or all of the effects of environmental, workplace, security, and tax regulations." On the other hand, Williams also said that "there are reasons to believe that [the index] may underestimate costs."[37] He said some of the problems "could perhaps be solved simply with a better and more careful explanation of what the Regulatory Quality Index really measures. To guard against over-estimating costs, however, the authors would either need to control for the effects of other types of regulation on GDP, or refrain from adding some or all of the costs that are estimated via other methods."

In February 2011, the Center for Progressive Reform (CPR) issued a report criticizing the Crain and Crain study, and has requested that SBA's Office of Advocacy withdraw its sponsorship of the report.[38] In relation to the estimate of economic regulatory costs, CPR said (among other things) that (1) the WGI authors did not intend the regulatory quality index to be a proxy measure for regulatory burden, or as a tool for critiquing a particular country's regulatory stringency; (2) the lack of a clear definition of "economic regulations" raises the possibility that it includes other types of regulatory costs, which could lead to double counting; (3) the regression analysis used in the report assumes a simplistic relationship between regulatory "stringency" and GDP; and (4) the report gives the false impression that the index of regulatory quality in the United States is low, even though the United States ranked 11th out of more than 200 countries.[39]

CRS Analysis of Crain and Crain's Linear Regression[40]

The Crain and Crain report analyzed data for 25 OECD countries in order to assess the effect of economic regulation on GDP per capita, a common measure of the standard of living.[41]

[36] Comments of Richard Williams, Mercatus Center, George Mason University, available at http://www.sba.gov/sites/default/files/files/TheImpactofFederalRegulatoryCostsonSmallFirmsPRFY2010.pdf.

[37] Williams said "You can start with the fundamental idea of opportunity costs. Resources that are devoted to complying with regulations are not used to produce GDP that responds to normal market forces (demand). Both activities, complying with regulations and normal market activities add to GDP. What has been estimated here is the difference between the two, GDP with resources that would have been devoted to normal market forces minus GDP with resources devoted to complying with regulation. That difference is, I think, one component of the cost of regulation. However, that may leave, (if I am thinking about this correctly) the cost of complying with regulation that is picked up by GDP. That is, a person can produce 10 widgets that comply with regulation and 15 widgets if employed normally by the market, and this model would estimate the costs of the regulation at 5 widgets (the difference in GDP). But that doesn't count the original 10 widgets of expenditure that adds to GDP and is also a cost and must be weighed against the benefits."

[38] Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, "Setting the Record Straight: The Crain and Crain Report on Regulatory Costs," February 2011, available at http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf. See http://www.progressivereform.org/articles/SBA_Letter_020811.pdf for a copy of the letter requesting that SBA's Office of Advocacy withdraw its sponsorship of the Crain and Crain report. In a March 11, 2011, letter to CPR, the Chief Counsel of SBA's Office of Advocacy said that he disagreed with CPR's assessment, and stood behind the findings of the Crain and Crain report.

[39] Ibid., pp. 4-6.

[40] This section of the report was written by D. Andrew Austin, Analyst in Economic Policy, Congressional Research Service.

[41] The OECD has 34 member states. Chile, Slovenia, and Israel joined in 2010, and Estonia is in the final stages of formal accession. Some historical data for those new entrants is unavailable. See OECD website (http://www.oecd.org) for details.

Economists generally believe that a country's standard of living is affected by a variety of factors, including the availability of (1) land and natural resources, (2) labor and human capital, (3) capital and infrastructure, (4) the level of technology and sophistication of business practices, and (5) opportunities to trade with other countries.[42] Most economists also believe that government interventions in the economy (e.g., through taxes, spending, and regulation) can affect a country's standard of living.[43]

As noted previously in this report, Crain and Crain used linear regression analysis to examine the relationship between GDP per capita and the regulatory quality index, controlling for the effects of four other independent variables: country population; foreign trade as a share of GDP; primary education as a share of the eligible population; and fixed broadband subscribers per 100 people.[44] These four control variables may not capture all of the factors that affect GDP per capita, and other measures of those factors may be more appropriate. For example, "fixed broadband subscribers per 100 people" may or may not capture all aspects of capital investment, and may also partially reflect other factors (e.g., the state of information technology investment, population density, and per capita income levels).[45] The Crain and Crain report did not discuss how the authors selected the control variables used in their analysis.

Crain and Crain also used an estimation strategy that appears non-standard. Like many researchers, Crain and Crain analyze data for several countries over multiple years, known as a cross-country panel data set. Linear regressions on panel data often include country-specific control variables (fixed effects) to take into account national idiosyncrasies that do not vary over time and year-specific control variables to account for shocks that affected all countries in the sample in a given year.[46] Crain and Crain, however, reported that year-specific control variables that were estimated to be statistically insignificant in an unreported first-stage regression were then omitted from the reported second-stage regression results.[47] The statistical properties of this two-stage estimation strategy, which appears to be novel, has apparently not been explored in peer-reviewed journals.

CRS asked Crain and Crain to provide us with a copy of the data that they used in their study, but the authors did not do so. In an effort to assess the sensitivity of their results, CRS ran a linear regression using similar, but somewhat different, data and methods.[48] The results indicated that the regulatory quality index had no discernable independent effect on GDP per capita, suggesting

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[42] Rudiger Dornbusch, Stanley Fischer, and Richard Startz, *Macroeconomics* (10th ed.), (New York: McGraw-Hill, 2008), ch. 1 and 2.

[43] Randall G. Holcombe, *Public Finance*, (Minneapolis: West, 1996).

[44] For details on the linear regression model and its statistical properties, see Peter Kennedy, *A Guide to Econometrics* (4th Edition), (Cambridge, Massachusetts: MIT Press, 1998), ch. 3, "The Classical Linear Regression Model."

[45] In another study, Crain and Crain used a measure of equipment investment in an article that example determinants of GDP per capita for a sample of 99 countries. See Nicole V. Crain and W. Mark Crain, "Terrorized Economies," *Public Choice*, vol. 128, pp.317-349.

[46] Badi Baltagi, *Econometric Analysis of Panel Data* (4th ed.), (New York: Wiley, 2008). If certain technical conditions hold, this approach can generate estimates with desirable statistical properties. See William H. Greene, *Econometric Analysis* (New York: Prentice Hall, 2003), ch. 13, "Models for Panel Data."

[47] See notes to Table 2 in Crain and Crain (2010).

[48] The primary education variable was replaced with two demographic variables: the proportion of the population under age 14, and the proportion of the population over age 65. The data were for 30 OECD countries for the same time period as the Crain and Crain study (2002 – 2008). The analysis used a standard fixed-effects panel estimator with year dummy variables.

that the analysis is highly sensitive to the choice of control variables and measures. **Appendix** of this report discusses this sensitivity analysis and the results in greater detail.

While most economists believe that economic regulation, like other forms of government intervention, can affect a country's standard of living, those effects may be too subtle for a seven-year cross-country panel to pick up. A country's regulatory environment may evolve slowly, and may interact with social and political conditions, other instruments of public policy such as taxation. Understanding the relationship between a measure of regulatory quality and GDP per capita (or other measures of economic well being) may require more focused empirical tools.

Environmental Regulations

Crain and Crain said they developed their cost estimates for environmental regulations by following the same basic approach as used by OMB in its annual reports to Congress. For environmental regulations issued through the first quarter of the year 2000, the authors used OMB's estimate of environmental costs from its 2001 report to Congress[49] (which was drawn in part from a study by Robert W. Hahn and John A. Hird),[50] which the authors converted into 2001 dollars.[51] For environmental regulations issued from April 1999 through September 2001, Crain and Crain used the estimate of the cost of major environmental rules from OMB's 2002 report.[52] For each subsequent fiscal year (October through September), the authors used estimates of the cost of major environmental rules from the subsequent OMB report. By adding together all of these cost estimates and converting the estimates from 2001 dollars to 2009 dollars, the authors concluded that environmental regulations cost between $175 billion and $280 billion in 2009. However, to develop the cumulative cost of all regulations, Crain and Crain used only the $280 billion estimate. The authors said their use of only the upper-end estimate "reflects a judgment that cost estimates are absent for important environmental regulations and that government agencies tend to be conservative in estimating regulatory costs."[53]

The data that Crain and Crain used to estimate the costs of environmental rules represent a mix of academic estimates of the cost of all rules prior to 1988, agency estimates of the costs of all rules issued between 1987 and the first quarter of 2000, and agency estimates of the costs of major rules (e.g., those with a $100 million or more annual impact on the economy) issued from April

[49] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/costbenefitreport.pdf for OMB's 2001 report.

[50] Robert W. Hahn and John A. Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal of Regulation*, vol. 8 (1991), pp. 233-278. Hahn and Hird provided estimates for all rules issued prior to 1988. The estimate for rules issued from 1987 through the first quarter of 2000 were from agencies' estimates of all rules.

[51] In its 2001 report, OMB estimated environmental costs as of the first quarter of 2000 at between $96 billion and $170 billion, in 1996 dollars. In 2001 dollars, Crain and Crain said the costs were between $108.359 billion and $191.887 billion.

[52] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2002_report_to_congress.pdf for OMB's 2002 report. In this and all subsequent reports, OMB's estimates were in 2001 dollars. As used in this report, the term "major rule" includes all rules meeting the definition in the Congressional Review Act (5 U.S.C. § 804(2) (e.g., an annual effect on the economy of $100 million or more). For a discussion of "major rules," see CRS Report R41651, *REINS Act: Number and Types of "Major Rules" in Recent Years*, by Curtis W. Copeland and Maeve P. Carey.

[53] Crain and Crain, p. 27. In a March 7, 2011, e-mail to the author, Crain and Crain noted that the OMB data do not include regulations whose costs are expected to be below $100 million, or costs that are not monetized. Therefore, they said, using the upper bound is an attempt to correct for this omission in a systemic and reasonable way. They also said that agency cost estimates are unlikely to include costs associated with negotiated enforcement.

1999 through September 2008. Therefore, the unit of analysis is not the same for all of the years (i.e., all rules prior to the year 2000 versus major rules starting in April 1999), and the methodologies differ (i.e., academic studies prior to 1988, and agencies' ex ante estimates of regulatory costs after 1988). In its 2000 report to Congress, OMB said that summarizing the total costs and benefits of regulations by adding together diverse sets of individual studies was an "inherently flawed approach" because the studies vary in quality and methodology, use differing assumptions, and seldom analyze the interaction effects among tens of thousands of regulations.[54]

Also, the time periods covered by the cost estimates that Crain and Crain used overlap in some years, raising the possibility of double counting. For example, both the Hahn and Hird estimate and the agency estimates cover rules that were issued in calendar year 1987. In addition, the baseline estimates of rules issued through the first quarter of 2000 overlap with the estimates for the period April 1, 1999, to September 30, 2001 (i.e., both cover the period April 1, 1999, through March 31, 2000).

In two of the one-year periods covered by the Crain and Crain analysis, the authors appear to have incorrectly recorded the information on environmental regulatory costs from the OMB reports:

- For the period October 2002 through September 2003, the authors said that OMB's estimate was $335 million (in 2001 dollars). Actually, OMB reported those costs as $360 million (in 2001 dollars).[55]
- For the period October 2003 through September 2004, the authors said that OMB's estimate was $3,840 million to $4,073 million (in 2001 dollars). Actually, OMB reported those costs as $3,060 million to $3,211 million (in 2001 dollars).[56]

Also, Crain and Crain did not report any of OMB's estimates of the benefits of environmental regulations. As discussed later in this report, the authors indicated that regulatory benefits were not included because they researched the topic as required by the Office of Advocacy.[57] **Table 1** below shows both the estimated costs and estimated benefits of environmental rules from OMB's reports. Overall and in eight of the nine time periods covered by the table, the average estimated benefits were higher than the average estimated costs. In six of the nine time periods covered by the table, the lowest estimated benefits were higher than the highest estimated costs. The highest estimated benefits were lower than the lowest estimated costs in only one of the time periods (October 1, 2002, to September 30, 2003).

[54] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2000fedreg-report.pdf, p. 15.

[55] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2004_cb_final.pdf, p. 7, Table 1.

[56] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2005_cb/final_2005_cb_report.pdf, Table 1-3. The $3,840 million to $4,073 million cost estimate in this report is for rules issued by the Departments of Health and Human Services and Transportation, and the Environmental Protection Agency.

[57] E-mail to the author from Nicole V. Crain and W. Mark Crain, March 7, 2011.

Table 1. Estimates of Costs and Benefits of Environmental Rules in OMB Reports to Congress

Years Rules Were Issued	Estimated Costs (millions of 2001$)	Estimated Benefits (millions of 2001$)	Source
Through 03/31/2000	$108,359 to $191,887	$109,490 to $1,817,280	OMB, 2001, Table 2
04/01/1999 to 09/30/2001	$11,380 to $12,812	$25,338 to $56,141	OMB, 2002, Table 7
10/01/2001 to 09/30/2002	$192	$1,250 to $4,818	OMB, 2003, Table 1
10/01/2002 to 09/30/2003	$360	$204 to $355	OMB, 2004, Table 1
10/01/2003 to 09/30/2004	$3,060 to $3,211	$10,935 to $100,703	OMB, 2005, Table 1-3
10/01/2004 to 09/30/2005	$2,609 to $3,373	$14,512 to $161,708	OMB, 2006, Table 1-3
10/01/2005 to 09/30/2006	$2,720 to $2,965	$5,113 to $42,109	OMB, 2007, Table 1-3
10/01/2006 to 09/30/2007	$7,475 to $7,584	$21,143 to $170,391	OMB, 2008, Table 1-3
10/01/2007 to 09/30/2008	$7,591 to $8,780	$7,475 to $37,810	OMB, 2008, Table 1-3
Total	$143,746 to $228,274	$195,460 to $2,391,315	OMB, 2001 to 2008

Source: OMB's annual reports on the costs and benefits of regulations, available at http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/.

Notes: The estimates of rules issued "Through 03/31/2000" includes all rules. All of the other time periods include only major rules.

Comments Regarding the Estimate of the Cost of Environmental Regulations

Crain and Crain said their report "assumes that OMB's coverage of environmental regulations has been relatively complete."[58] Peer reviewer Richard Williams's only comment about the estimate of environmental regulatory cost was that this statement should be noted as an assumption.

As noted earlier, Crain and Crain said they used only OMB's upper estimate of environmental costs because they believed cost estimates were absent for some important environmental regulations, and "government agencies tend to be conservative in estimating regulatory costs."[59] The authors stated in a footnote that several regulatory experts have drawn a similar conclusion about OMB environmental cost estimates, but also noted that "considerable debate continues."[60] Crain and Crain cited studies indicating that government agencies systematically overestimate benefits and underestimate costs, but also cited one study by Winston Harrington and others that reportedly concluded that overestimation of unit costs occurs about as often as underestimation.[61]

[58] Crain and Crain, p. 25.

[59] Crain and Crain, p. 27.

[60] Ibid.

[61] Ibid, footnote 27. Actually, the Harrington study concluded that agencies' estimates of direct costs appeared to be too (continued...)

In its analysis of the Crain and Crain report, the Center for Progressive Reform said that agencies' estimates of environmental costs tend to be too high, reflecting estimates provided to them by industry, whom CPR said have an incentive to overstate costs. CPR also said that industry cost estimates (and therefore the agency estimates) do not take into account technological innovations that reduce the cost of compliance. To support its position on this issue, CPR cited four studies indicating that agencies' initial cost estimates tended to be too high.[62] CPR also questioned Crain and Crain's use of the Hahn and Hird study to estimate the cost of environmental regulations prior to 1988, noting that the study was more than 20 years old, synthesized other estimates developed by a small group of economists, and some of those studies used data that are now more than 30 years old.

In responding to comments on one of its reports to Congress on the costs and benefits of regulations, OMB noted the "theory that agency estimates, upon which many but not all of our estimates are based, systematically understate costs and overstate benefits because agency self-interest lies in regulation." OMB went on to say the following:

> Although this view of agency behavior enjoys widespread support among academics as a theoretical matter, there is little documentation available to support it—perhaps because there are several potentially offsetting factors. For example, much of the data that agencies use to make their estimates of costs comes from the regulated entities who generally have the opposite incentives—namely, they will likely overstate costs to help convince decision makers not to issue the regulation. Also, as noted in our report, competitive firms over time frequently find more cost-effective ways, including new technologies, to comply with regulations than had been envisioned ex ante. Some commenters pointed to a set of case studies that is about to be published to support this contention. On the other hand, there is a large body of literature that shows that agencies tend to overestimate the benefits of their programs because, over time, technological progress—in communications to energy exploration to infectious disease—has reduced the long run expected benefits of earlier regulations.[63]

Tax Compliance

To estimate the costs associated with complying with federal tax paperwork, Crain and Crain said they compiled data from the Internal Revenue Service (IRS), and in some cases the Tax Foundation,[64] on the amount of time required to complete each type of tax form, and the number of filings per form. The authors concluded that businesses, individuals, and nonprofits devoted about 4.3 billion burden hours to completing tax paperwork in 2008 (about 2.28 billion burden hours for business and about 2.02 billion burden hours for individuals and nonprofits). To

(...continued)

high in 12 rules, and too low in 6 rules. The authors' conclusions regarding per-unit abatement costs only applied to EPA and OSHA regulations. See Winston Harrington, et al., "On the Accuracy of Regulatory Cost Estimates," available at http://www.rff.org/documents/RFF-DP-99-18.pdf.

[62] Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, "Setting the Record Straight: The Crain and Crain Report on Regulatory Costs," p. 7.

[63] Office of Management and Budget, "Appendix: Summary of Public Comments," available at http://www.whitehouse.gov/omb/inforeg_appendix.

[64] The Tax Foundation is a nonpartisan tax research group based in Washington, D.C. For more information, see http://www.taxfoundation.org/about/. Crain and Crain said they used information from the Tax Foundation's 2005 report, but did not provide a citation for that report.

monetize that burden, Crain and Crain estimated the cost of completing business paperwork at $49.77 per hour for businesses (which they said was the average hourly rate for "human resources professionals" in 2009 from the Bureau of Labor Statistics website) and $31.53 per hour for individuals and nonprofits (which they said was the average hourly rate for "accountants and auditors" in 2009), for a total cost of about $159.6 billion.

Crain and Crain did not indicate in their report how they "compiled" data from the IRS website and the Tax Foundation to arrive at the estimated 4.3 billion hours of tax paperwork in 2008. According to the Information Collection Budget that OMB develops annually, the government-wide paperwork burden in FY2008 was about 9.71 billion burden hours, of which the Department of the Treasury accounted for about 7.78 billion burden hours.[65] Although the Information Collection Budget did not separately identify the number of burden hours for the IRS, in May 2009, the IRS represented about 77.8% of the government-wide estimate, and about 99.5% of the Treasury estimate.[66] If those same ratios applied in 2008, IRS paperwork would have been about 7.5 billion burden hours—about 3.2 billion hours higher than in the Crain and Crain report.

Certain aspects of how Crain and Crain monetized IRS burden hours are also unclear. For example, it is unclear why the authors assumed that "human resources professionals" would be completing all business tax paperwork, that all individuals and nonprofits would have their returns prepared by "accountants and auditors," or where on the "Bureau of Labor Statistics website" the hourly rates for human resources professionals ($49.77 per hour) and accountants and auditors ($31.53) were derived. According to the Bureau of Labor Statistics' Occupational Employment Statistics, in May 2009, tax preparers received an average salary of $17.34 per hour (median salary was $14.45 per hour).[67] Even if one assumed that total compensation (including benefits and overhead) was one-third higher, the average compensation for tax preparers would still be just over $23 per hour ($17.34 times 1.33). Using this figure for all tax compliance may balance out those businesses and individuals who prepare their returns themselves and those who use more expensive preparers.[68] Therefore, multiplying 7.5 billion burden hours times $23 per hour yields a total cost of about $172.5 billion—about $12.9 billion higher than the Crain and Crain estimate.

A threshold issue, however, is whether tax paperwork should be included in estimates of regulatory costs at all. OMB does not include tax paperwork in its annual reports to Congress on the costs and benefits of federal regulations. In one of the first of those reports, OMB said that "filling out tax forms is not the result of 'regulations' but rather of the tax code itself, with most regulations merely providing interpretations and clarifications of tax law."[69] Also, in testimony before the House Committee on Government Reform in July 2003, John D. Graham, administrator of the Office of Information and Regulatory Affairs (OIRA) within OMB, said the following:

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[65] Office of Management and Budget, *Information Collection Budget: 2009* (reporting on FY2008), available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/icb_2009.pdf.

[66] See CRS Report R40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows.

[67] See http://www.bls.gov/oes/current/oes132082.htm for these data.

[68] For example, BLS data indicated that accountants and auditors were paid an average of $32.42 per hour in May 2009. See http://www.bls.gov/oes/current/oes132011.htm.

[69] Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulations*, September 30, 1997, available at http://www.whitehouse.gov/omb/inforeg_rcongress/.

> To a greater extent than for other agencies and programs, IRS paperwork burden is driven by a statute (the Tax Code), and in particular the complexities of the Code. To ensure taxpayer compliance with our tax laws, IRS must collect a tremendous amount of information. This task is complicated by a massive, complex Tax Code that is subject to continuous revision. In the 15 years following the 1986 overhaul of the Code, Congress passed 84 tax laws. These laws required IRS to create and/or revise reporting and recordkeeping requirements, which in turn increased taxpayer burden. The Internal Revenue Service also had to make several changes to the 1040 schedules to implement the Economic Growth and Tax Relief Reconciliation Act of 2001. These statutorily driven revisions increased the burden on taxpayers by 47 million hours. Moreover, there are other factors totally outside the control of IRS—most notably increases in the number of tax filings due to economic and population growth over the years—that increase the aggregate IRS burden hours but not—and this is important—the average burden on individual taxpayers.[70]

Occupational Safety and Health and Homeland Security Regulations

Because the "economic regulations" category included many types of workplace regulations, Crain and Crain said that their final category of regulatory costs included only workplace regulations that deal with safety and health, primarily those issued by the Occupational Safety and Health Administration (OSHA) within the Department of Labor, as well as regulations related to homeland security. To estimate the cost of occupational safety and health regulations prior to 2001 (estimated at more than $64.3 billion in 2009 dollars), the authors used information from a 2005 study by Joseph M. Johnson that reportedly synthesized and evaluated other studies of workplace regulations.[71] Crain and Crain said they then added data from OMB's 2009 report to Congress on regulatory costs and benefits on (1) 2001 to 2008 occupational safety and health regulatory costs (estimated at $471 million in 2009 dollars), and (2) all homeland security costs through 2008 (estimated at about $10.4 billion in 2009 dollars). Adding these elements together, the authors concluded that the total cost for occupational safety and health and homeland security regulations in 2008 was about $75.2 billion.

Crain and Crain said they obtained the estimate for occupational safety and health regulatory costs between 2001 and 2008 from Table 1-2 in OMB's 2009 report to Congress. That table reports the estimated costs and benefits of major federal rules within selected programs from October 1, 1998, through September 30, 2008. One of the programs was labeled "Occupational Safety and Health Administration," with the costs associated with four rules estimated at between $362 million and $389 million (in 2001 dollars). Several of those years (October 1998 through December 2000) appear to overlap with estimates provided in Johnson's study of costs prior to 2001, raising the issue of possible double counting.[72] Also, converting the OMB estimate to 2009 dollars yields a range of $440 million to $471 million. Therefore, although the authors did not explicitly say so, it appears that Crain and Crain only used the upper-end of OMB's estimated cost range for these regulations (as they did for environmental regulations).

[70] See http://www.whitehouse.gov/omb/legislative_testimony_graham_030722_graham/ for a copy of this testimony.

[71] Cited by Crain and Crain as Joseph M. Johnson, "A Review and Synthesis of the Cost of Workplace Regulations, in *Cross-Border Human Resources*, Labor International: Netherlands, 2005, pp. 433-467.

[72] Although Crain and Crain said (in Table 5 on p. 30 of their report) that they only used rules issued between 2001 and 2008, the 2009 OMB report does not identify when the four Occupational Safety and Health Administration rules were issued. Also, conversion of OMB's upper-end estimate for all four rules ($389 million in 2001 dollars) into 2009 dollars yields an estimate of $471 million—the same figure used in Crain and Crain's report.

Crain and Crain said they obtained their estimate for homeland security costs from page 18 of OMB's 2009 report. There, OMB reported that since the Department of Homeland Security was created, "agencies have finalized 17 major homeland security regulations that impose a total annual cost on the economy of between $4.2 billion to $8.6 billion. Converting these estimated costs in 2001 dollars to 2009 dollars yields a range of $5.1 billion to $10.4 billion. Therefore, although they did not say so in their report, it appears that Crain and Crain again only used OMB's upper-end of the estimated cost range. As noted earlier in this report, the authors said that their use of the upper-end of OMB's estimates for environmental rules reflected a judgment that cost estimates were absent for important regulations and that government agencies tend to be conservative in estimating regulatory costs.[73] On the other hand, OMB has said that there is little evidence that agencies' cost estimates are too conservative.[74]

The Center for Progressive Reform's analysis of the Crain and Crain report stated that the cost estimates that the authors used for occupational safety and health costs (both the Joseph M. Johnson study and the agency estimates of costs before the rules are published) likely overstate true compliance costs because they are based on information provided by regulated industries. CPR also said that the Johnson study inflates OSHA's original cost estimates by multiplying them by 5.5, which was reportedly done to take into account non-major rules for which costs were not estimated, and for fines imposed for violations of OSHA standards. CPR said it saw no justification for counting such fines as "regulatory costs." "Under this logic," CPR said, "mass lawbreaking raises regulatory costs, enabling regulatory opponents to argue that we need to reduce regulations because of these regulatory costs."[75]

Comparison of Crain and Crain's 2008 Estimate to Crain's 2004 Estimate

As noted previously and as shown below in **Table 2**, in 2005, W. Mark Crain estimated total federal regulatory costs in 2004 at about $1.11 trillion. In 2010, Crain and Crain estimated those costs in 2008 at about $1.75 trillion—an increase of about $639 billion (57.4%) in four years. Some of this increase is due to inflation,[76] but the authors said that the main reason for the increase was a change in the methodology used in developing their estimate of the cost of economic regulations.[77] As **Table 2** below indicates, were it not for the increase in the cost

[73] Crain and Crain, p. 27. In a March 7, 2011, e-mail to the author, Crain and Crain noted that the OMB data do not include regulations whose costs are expected to be below $100 million, or costs that are not monetized. Therefore, they said, using the upper bound is an attempt to correct for this omission in a systemic and reasonable way. They also said that agency cost estimates are unlikely to include costs associated with negotiated enforcement.

[74] Office of Management and Budget, "Appendix: Summary of Public Comments," available at http://www.whitehouse.gov/omb/inforeg_appendix.

[75] CPR, p. 9.

[76] Crain and Crain said that the $1.1 trillion estimate of regulatory costs in 2004 would be $1.26 trillion in 2009 dollars.

[77] Crain and Crain, p. 20. The authors said that the 2005 study used an index of economic regulations developed by the Organization for Economic Cooperation and Development (OECD), supplemented by information from the International Trade Commission and other sources. Crain and Crain said they used the World Bank index of regulatory quality because it was a more comprehensive index of economic regulations. Had the 2005 study used the methodology used in the 2010 study, the authors said that the total cost would have been $1.7 trillion, an increase of $43 billion between 2004 and 2008 after adjusting for inflation.

estimate for economic regulations, the total estimated cost of the three other types of regulations would have decreased by about $6 billion between 2004 and 2008.

Table 2. Changes in Estimates of the Costs of Federal Regulations: 2004 to 2008

Type of Regulation	2004	2008	Increase/Decrease (%)
Economic	$591 billion	$1,236 billion	$645 billion increase (+109.1%)
Environmental	$221 billion	$281 billion	$60 billion increase (+27.1%)
Workplace	$106 billion	$75 billion	$31 billion decrease (-29.2%)
Tax Compliance	$195 billion	$160 billion	$35 billion decrease (-17.9%)
Total	$1,113 billion	$1,752 billion	$639 billion increase (+57.4%)

Source: The 2004 data are from Crain (2005), and the 2008 data are from Crain and Crain (2010).

Notes: In Crain and Crain's 2010 report, "workplace" regulations were termed "occupational safety and health, and homeland security" regulations.

Comparison of Crain and Crain's 2008 Estimate to OMB's Estimates

For nearly 15 years, Congress has required OMB to submit annual reports on the costs and benefits of federal regulations. The first such requirement was in Section 645 of the Treasury, Postal Service and General Government Appropriations Act, 1997 (P.L. 104-208), which required the director of OMB to submit a report by September 30, 1997, that provided (among other things) "estimates of the total annual costs and benefits of federal regulatory programs, including quantitative and nonquantitative measures of regulatory costs and benefits." Similar requirements were contained in other appropriations bills in subsequent years.

In 2001, Section 624 of the Treasury and General Government Appropriations Act, 2001, (31 U.S.C. § 1105 note), sometimes known as the "Regulatory Right-to-Know Act," put in place a permanent requirement for an OMB report on regulatory costs and benefits. Specifically, it requires OMB to prepare and submit with the President's budget an "accounting statement and associated report" containing an estimate of the total costs and benefits (including quantifiable and nonquantifiable effects) of federal rules and paperwork, to the extent feasible, (1) in the aggregate, (2) by agency and agency program, and (3) by major rule. The accounting statement is also required to contain an analysis of the impacts of federal regulation on state, local, and tribal governments, small businesses, wages, and economic growth.

OMB's Early Estimates of Total Regulatory Costs and Benefits

For the first several years, OMB provided estimates of total regulatory costs and benefits, and those estimates (particularly the benefits estimates) varied substantially from year to year.

- In its 1997 report, OMB estimated total federal regulatory costs in 1997 at $279 billion, and estimated the benefits of federal regulations at $298 billion.[78]
- In its 1998 report, OMB estimated federal regulatory costs at between $170 billion and $230 billion (in 1996 dollars as of 1998), and estimated regulatory benefits at between $260 billion and $3.5 trillion.[79] The dramatic increase in the benefits estimate (by a factor of 12) was almost entirely due to the inclusion of an Environmental Protection Agency (EPA) estimate of the benefits associated with the Clean Air Act. Many observers had serious questions regarding the use of this EPA estimate, and EPA itself said it had only a small probability of being correct.
- In its 2000 and 2001 reports, OMB estimated the cost of all social regulations at between $146 billion and $229 billion (in 1996 dollars as of 1999), and estimated benefits at between $254 billion and nearly $1.8 trillion.[80] The nearly 50% drop in the upper-bound benefits estimate (from $3.5 trillion to $1.8 trillion) was primarily caused by a significant drop in the previously mentioned EPA estimate of the benefits of the Clean Air Act (from $3.2 trillion to $1.45 trillion).

Each year, OMB presented its aggregate cost and benefit estimates with strong caveats. For example, in its first report in 1997, OMB said "it is extremely difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with any degree of precision."[81] The next year OMB said "there is not yet a professional consensus on methods that would permit a complete, consistent accounting of total costs and benefits of Federal regulation."[82] Some of the methodological problems that OMB pointed out in these and other reports included the following:

- The baseline for measurement is often not clear (i.e., what costs and benefits would have occurred in the absence of the regulation). Regulatory requirements sometimes become standard business practice (e.g., requirements to remove lead from gasoline or to put air bags in automobiles), so cost or benefit reductions would be unlikely to occur if the rules were eliminated entirely.
- It is difficult to attribute costs or benefits to federal regulations as opposed to state or local rules, voluntary standards organizations, insurance requirements, or the tort system.
- Technological change can make previous estimates of benefits and costs extremely inaccurate.
- Aggregating the results of different studies is highly problematic, as the studies vary in the quality, methodology, and types of regulatory impacts they include.[83]

[78] See http://www.whitehouse.gov/omb/inforeg_rcongress/ for a copy of this report.

[79] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/costbenefitreport1998.pdf, Table 3.

[80] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/costbenefitreport.pdf, Table 2.

[81] See http://www.whitehouse.gov/omb/inforeg_chap2.

[82] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/costbenefitreport1998.pdf, p. 1.

[83] Specifically, in its 1997 report, OMB said "studies that have attempted to tote up the total costs and benefits of Federal regulations have basically added together a diverse set of individual studies. Unfortunately, these individual studies vary in quality, methodology, and type of regulatory costs included. Thus we have an apples and oranges problem, or, more aptly, an apples, oranges, kiwis, grapefruit, etc., problem." See http://www.whitehouse.gov/omb/ (continued...)

- It is unclear which rules should be included in any tabulation of regulatory costs and benefits (e.g., "transfer" regulations such as crop subsidy payments).

In developing its estimates of total regulatory costs, OMB did not include "transfer" rules (which OMB said were about $140 billion in costs and benefits in 1997) because it considered them to be payments that reflect a redistribution of wealth rather than social costs to society as a whole. OMB also excluded the costs associated with filling out tax paperwork (which OMB estimated were about $140 billion in 1997) because it did not consider filling out income tax forms "regulations" in the traditional sense. Neither did it include estimates for rules published after 1987 for which agencies did not conduct cost-benefit analyses (e.g., rules with less than a $100 million impact on the economy).

OMB's Reports Since 2001

OMB's "Regulatory Right-to-Know Act" reports since 2001 have differed from the office's previous reports in that they have not presented cost or benefit estimates for all rules in existence. Instead, OMB has presented information for all regulations that it reviewed within a particular time-frame that (1) had costs or benefits of at least $100 million annually and (2) the costs and benefits had been monetized by either the rulemaking agency or OMB. Specifically:

- OMB's report for 2002 presented information on the costs and benefits of all regulations meeting those criteria that it reviewed for a six-and-one-half year period from April 1, 1995, to September 30, 2001. OMB said the total cost of those rules was about $50 billion to $53 billion (in 2001 dollars), and the benefits ranged from $48 billion to $101 billion.[84]
- In its 2003 report, OMB provided estimates of the costs and benefits of 107 regulations meeting the above criteria that it reviewed during the 10-year period from October 1992 through September 2002. OMB estimated that the total costs of these rules ranged from nearly $37 billion to nearly $43 billion (in 2001 dollars), with benefits ranging from $146 billion to $230 billion. OMB noted that four rules issued by EPA accounted for a substantial fraction of the aggregate benefits for all 107 rules.[85]

Each report since 2003 has provided information for rules meeting the above criteria during the previous 10 years. In its 2002 report, OMB said its decision to present data for only certain rules during a limited time-frame was driven by the inconsistent and increasingly aged nature of many of the studies used to develop aggregate estimates. OMB went on to say that "we do not believe that the estimates of the costs and benefits of regulations issued over ten years ago are reliable or

(...continued)

inforeg_chap2.

[84] Office of Management and Budget, Office of Information and Regulatory Affairs, Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities, 2002, available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2002_report_to_congress.pdf.

[85] Office of Management and Budget, Office of Information and Regulatory Affairs, Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, 2003, available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2003_cost-ben_final_rpt.pdf.

very useful for informing current policy decisions."[86] Therefore, OMB said that "in keeping with the spirit of OMB's new information-quality guidelines, we have decided not to reproduce the aggregate estimates that were contained in Appendix C of the draft report."[87] The report went on to say that the total costs and benefits of all federal rules then in effect "could easily be a factor of ten or more larger." In its 2003 report, OMB said that estimates prepared for rules adopted prior to the 10-year period "are of questionable relevance now."[88]

This point was elaborated by John D. Graham, former administrator of OIRA, in testimony before the House Committee on Government Reform in July 2003:

> The fact that attempts to estimate the aggregate costs of regulations have been made in the past, such as the Crain and Hopkins estimate of $843 billion…, is not an indication that such estimates are appropriate or accurate enough for regulatory accounting. Although the Crain and Hopkins estimate is the best available for its purpose, it is a rough indicator of regulatory activity, best viewed as an overall measure of the magnitude of the overall impact of regulatory activity on the macro economy. The estimate, which was produced in 2001 under contract for the Office of Advocacy of the Small Business Administration, is based on a previous estimate by Hopkins done in 1995, which itself was based on summary estimates done in 1991 and earlier, as far back as the 1970s. The underlying studies were mainly done by academics using a variety of techniques, some peer reviewed and some not. Most importantly, they were based on data collected ten, twenty, and even thirty years ago. Much has changed in those years and those estimates may no longer be sufficiently accurate or appropriate for an official accounting statement. Moreover, the cost estimates used in these aggregate estimates combine diverse types of regulations, including financial, communications, and environmental, some of which impose real costs and others that cause mainly transfers of income from one group to another. Information by agency and by program is spotty and benefit information is nonexistent. These estimates might not pass OMB's information quality guidelines. In particular, many of the studies they relied upon for these aggregate estimates are not sufficiently transparent about the data and methods to facilitate the reproducibility of the information by qualified third parties. That is why we have opted in the most recent Reports to Congress to report just the costs and benefits of major regulations prepared by agencies and reviewed by OMB over the last ten years.[89]

Later that year, testifying on the Paperwork and Regulatory Improvements Act of 2004 (H.R. 2432, 108th Congress), Graham said that requiring agencies to submit annual estimates of the cost and benefits of all their rules, and mandating preparation of a complete inventory of the costs and benefits of all federal rules and paperwork requirements, was "not workable."[90]

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[86] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2002_report_to_congress.pdf, p. 40.

[87] Ibid., p. 41. Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, generally known as the "Data Quality Act" or the "Information Quality Act," amended the Paperwork Reduction Act and directed OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies."

[88] See http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2003_cost-ben_final_rpt.pdf, p. 7. In its 2010 report to Congress, OMB continues to say that estimates that are more than 10 years old are of "questionable relevance." See http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf, p. 11.

[89] Testimony of John D. Graham before the House Committee on Government Reform, July 22, 2003, available at http://www.whitehouse.gov/omb/legislative_testimony_graham_030722_graham.

[90] "Chief of OMB Regulatory Review Opposes Ose Bill on Regulatory Accounting, Budgeting," *BNA Daily Report for Executives*, July 23, 2003, p. A-43.

OMB's 2009 Report to Congress

OMB's 2009 report to Congress provided estimates of the total annual benefits and costs of 98 regulations reviewed by OMB during the 10-year period from October 1, 1998, to September 30, 2008. The 98 rules were those that (1) were estimated to generate benefits or costs of approximately $100 million in any one year; and (2) a substantial portion of the benefits and costs were quantified and monetized by the agency or, in some cases, monetized by OMB. As **Table 3** below shows, OMB said that the estimated costs of these rules ranged from nearly $51 billion to nearly $60 billion, and the benefits were estimated to be between about $126 billion and about $663 billion (in 2001 dollars). Because the estimates were provided for only 98 rules meeting the above criteria, and because not all benefits and costs for even those rules could be assessed, OMB noted that the estimates were "not a complete accounting of all of the benefits and costs of all regulations issued during this period."[91]

Table 3. Estimates of the Total Benefits and Costs of Major Rules by Agency: October 1, 1998 – September 30, 2008

(in millions of 2001 dollars)

Agency	Number of Rules	Benefits	Costs
Department of Agriculture	6	$906 – $1,315	$1,014 – $1,353
Department of Education	1	633 – 786	349 - 589
Department of Energy	6	4,954 – 5,391	3,067 – 3,118
Department of Health and Human Services	18	20,522 – 32,426	3,879 – 4,387
Department of Homeland Security	1	20 – 29	13 – 99
Department of Housing and Urban Development	1	190	150
Department of Justice	1	275	108 – 118
Department of Labor	6	481 – 1605	320 347
Department of Transportation	18	11,256 – 19,098	5,218 – 8,968
Environmental Protection Agency	40	87,042 – 601,469	36,853 – 40,851
Total	98	126,277 – 662,584	50,973 – 59,978

Source: OMB's 2009 Report to Congress, Table 1-1.

As in its previous reports, OMB said it presented information only for a 10-year period because "pre-regulation estimates prepared for rules adopted more than ten years ago are of questionable relevance today."[92] OMB also said the following:

[91] OMB's 2009 report to Congress, p. 9.

[92] Ibid.

> Aggregating benefit and cost estimates of individual regulations—to the extent they can be combined—provides significant insight about the effects of regulations. But the resulting estimates are neither precise nor complete. Individual regulatory impact analyses vary in rigor and rely on different assumptions, including baseline scenarios, methods, and data. Summing across estimates involves the aggregation of analytical results that are not strictly comparable. [93]

How OMB's and Crain and Crain's Estimates Differ

It is difficult to compare OMB's estimates of regulatory costs and Crain and Crain's estimates because they were constructed in very different ways, and because the presentation categories were different (e.g., by agency in OMB's study, and by type of regulation in the Crain and Crain study). For several reasons, Crain and Crain's estimates of annual regulatory costs in 2008 were much larger than the estimates provided by OMB.

- Crain and Crain included estimates of costs associated with all rules for certain periods, and major rules for other periods. Their estimates attempt to measure the cumulative costs of all rules. OMB's estimates included only major rules that met certain criteria that had been issued during a 10-year period.
- Crain and Crain included estimates of the cost of "economic regulations," whereas OMB's estimate did not include economic regulations.[94]
- Crain and Crain included costs associated with tax paperwork, whereas OMB's estimate did not include tax paperwork.

Concluding Observations

Although accurate measures of the costs and benefits of all federal rules would be useful, decision makers using studies of aggregate regulatory costs and benefits to guide public policy need to be aware of those studies' conceptual and methodological underpinnings. The validity and reliability of Crain and Crain's $1.75 trillion estimate of total federal regulatory costs in 2008 depends on the validity and reliability of its individual elements. More than 70% of the overall estimate ($1.236 trillion) is based on the WGI index of regulatory quality for the United States, with the authors determining the extent to which economic regulations reflected in that index reduces per capita real GDP in the United States. However, one of the authors of the regulatory quality index has said that Crain and Crain misinterpreted the index, and that higher values on the index cannot be interpreted as "less stringent regulations." Even if it could, he said that the index for the United States should be compared to a country with a preferable index, not to an idealized "best possible" score on the index. Comparing the United States' regulatory quality index in 2008 to the country with the highest index that year (Ireland) would have reduced Crain and Crain's estimate of the cost of economic regulations by nearly two-thirds. Other commenters (including one of the peer reviewers of the Crain and Crain study) raised similar concerns about whether the

[93] Ibid., p. 8.

[94] OMB's report did, however, provide some information on rules issued by certain independent regulatory agencies (e.g., the Board of Governors of the Federal Reserve System and the Securities and Exchange Commission) as provided to OMB by the Government Accountability Office. The agencies typically did not provide information on costs and benefits.

regulatory quality index could be used to measure the cost of economic regulations, and about the regression analysis used to produce the cost estimate. Responding to these criticisms, Crain and Crain said that they continue to believe that the regulatory quality index indicates the stringency of a country's economic regulations, and believe that it was appropriate for them to compare the index for the United States to a "conceptual regulatory environment" represented by a 2.5 score rather than to another country with a somewhat higher index score. The World Bank indicates on its website that measures like the regulatory quality index are "often too blunt a tool to be useful in formulating specific governance reforms in particular country contexts."

Crain and Crain's estimates for environmental, occupational safety and health, and homeland security regulations were developed by mixing together academic studies (some of which were more than 30 years old) with agencies' estimates of regulatory costs that were developed before the rules were issued (some of which are now 20 years old). OMB has said that adding together diverse sets of individual studies to develop a summary measure of regulatory costs is an "inherently flawed" approach. The agency estimates that Crain and Crain used were drawn from OMB reports to Congress on the estimated costs and benefits of regulations, which were typically presented as low-to-high ranges. However, Crain and Crain used only the highest cost estimates from these reports, stating that they did so because the OMB estimates did not cover all regulations, and because they believe "government agencies tend to be conservative in estimating regulatory costs." OMB has said that there is little documentation to support this view, and empirical studies of agencies' regulatory cost estimates have not resolved the issue. Also, OMB has concluded that estimates of the costs and benefits of regulations issued more than 10 years earlier are of "questionable relevance." Since 2003, OMB's annual "Regulatory Right-to-Know Act" reports to Congress have only included information on the costs and benefits of major rules issued during the previous 10 years. Although OMB has recognized that this approach understates total regulatory costs and benefits, OMB has said it does not believe older estimates are reliable or useful in informing policy decisions.

In one of its first reports to Congress on this issue, OMB also said that the incremental costs of regulations (i.e., over and above what businesses and individuals would have done in the absence of regulations) tend to decrease over time, as companies' business practices and consumers' expectations change.

> Thus, although the National Highway Traffic Safety Administration has significantly increased the safety of automobiles, it is not likely that if the agency's regulations were eliminated the automobile companies would discontinue the safety features that had been mandated. Consumers demand safer cars than they used to and automobile companies are concerned about product liability. This same phenomenon exists with the environment, although probably to a lesser extent. Environmentally responsible behavior has become good for the bottom line.... Over time, this "rising baseline" phenomenon reduces the true costs and benefits of health, safety, and environmental regulations. Estimates of the aggregate costs and benefits of regulation that include unadjusted estimates from aging studies are thus likely to be over estimates of the current costs and benefits of those regulations.[95]

[95] Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulations*, September 30, 1997, available at http://www.whitehouse.gov/omb/inforeg_rcongress/.

OMB went on to say that "it does not seem implausible that, for environmental and other social regulations over ten years old, no more than half of compliance costs would likely be saved if these Federal regulations magically disappeared over night."[96]

Crain and Crain's estimate for the cost of tax paperwork was reportedly based on data from the IRS and the Tax Foundation, but data in OMB's annual Information Collection Budget suggests that the number of hours of tax paperwork may be much higher than the authors used in their report. On the other hand, Crain and Crain's assumptions regarding the per hour cost of completing the paperwork may be too high (e.g., the assumption that "human resources professionals" paid at nearly $50 per hour would be completing all business paperwork). However, a threshold question is whether tax paperwork should be considered in the same category as regulatory costs. OMB does not include tax paperwork in its annual reports to Congress on regulatory costs and benefits.

Regulatory Benefits

Although Crain and Crain attempted to determine all of the costs associated with federal regulations, their report did not discuss the benefits of those regulations—even when information on regulatory benefits was readily available in the OMB reports that they used to determine regulatory costs. In their report, the authors said that it "does not address the benefits of regulation, an important challenge that would be a logical next step toward achieving a rational regulatory system."[97] Crain and Crain told CRS that they did not include regulatory benefits in their study "because we researched the topic as required by the Office of Advocacy."[98] The SBA Office of Advocacy confirmed that Crain and Crain "were not asked to look at benefits, as the task for this last iteration was to update the previous study, which also looked at costs and the disproportionality between small and large businesses."[99]

Executive Order 12866 requires covered agencies to "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."[100] It also says that agencies should generally select regulatory approaches that "maximize net benefits." OMB's reports to Congress on the aggregate costs and benefits of federal regulations have generally indicated that the estimated benefits exceed the estimated costs. For example, see the following:

- In the report for 2010 covering major rules reviewed by OMB from October 1999 through September 2009 for which benefits and costs were monetized, the aggregate costs were estimated to be between $43 billion and $55 billion, and the aggregate benefits were estimated to be between $128 billion and $616 billion. Of the 16 major rules issued during FY2009 for which benefits and costs were

[96] Ibid.

[97] Crain and Crain, p. 10.

[98] E-mail to the author from Nicole V. Crain and W. Mark Crain, March 7, 2011.

[99] E-mail to the author from Radwan Saade, SBA Office of Advocacy, March 7, 2011. See https://www.fbo.gov/?s=opportunity&mode=form&tab=core&id=8ffd890376c03038eb0e7f3fa657f7c1&_cview=1 to view the solicitation for this study.

[100] Executive Order 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, Oct. 4, 1993.

monetized, the costs were estimated at between $3.7 billion and $9.5 billion, and the benefits were estimated at between $8.6 billion and $28.9 billion.[101]

- In the draft report for 2011 covering major rules reviewed by OMB from October 2000 through September 2010 for which benefits and costs were monetized, the aggregate costs were estimated to be between $44 billion and $62 billion, and the aggregate benefits were estimated to be between $136 billion and $651 billion. Of the 18 major rules issued during FY2010 for which benefits and costs were monetized, the costs were estimated at between $6.5 billion and $12.5 billion, and the benefits were estimated at between $23.3 billion and $82.3 billion.[102]

Each year, however, there were a number of rules in which the agencies only quantified or monetized benefits or costs, but not both. Most commonly, the agencies quantified or monetized only costs.

Policymaking and the Crain and Crain Estimate

As noted at the beginning of this report, Crain and Crain's estimate that federal regulations cost $1.75 trillion in 2008 has been cited as evidence of the need for regulatory reform legislation. However, Crain and Crain told CRS that their report was "not meant to be a decision-making tool for lawmakers or federal regulatory agencies to use in choosing the 'right' level of regulation. In no place in any of the reports do we imply that our reports should be used for this purpose. (How could we recommend this use when we make no attempt to estimate the benefits?)"[103]

As Crain and Crain suggest, information on regulatory costs alone, whether for individual rules or for all rules in the aggregate, provides only one piece of information that Congress and other policymakers can use in determining how to proceed. For example, even if all federal regulations did cost $1.75 trillion in 2008 (which at least some commenters believe may not be correct), if the monetized benefits of those regulations were determined to be greater than those costs, then policymakers may conclude that those costs were (in the words of Executive Order 12866) "justified." On the other hand, if the monetized benefits of federal regulations were estimated to be less than the estimated costs, policymakers may reach another conclusion, or may decide to examine any non-monetized costs and benefits of those rules. But a valid, reasoned policy decision can only be made after considering information on both costs and benefits.

[101] See http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf for a copy of this report.

[102] See http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/Draft_2011_CBA_Report_AllSections.pdf for a copy of this report.

[103] E-mail to the author from Nicole V. Crain and W. Mark Crain, March 7, 2011.

Appendix. CRS Sensitivity Analysis

In an effort to assess the sensitivity of Crain and Crain's results, CRS ran a linear regression using similar, but somewhat different, data and methods.[104] Specifically, CRS compiled a dataset for 30 OECD countries over the period 2002-2008 using the same dependent variable (GDP per capita in constant 2000 dollars) and four of the five independent variables that were used by Crain and Crain. The four identical independent variables were (1) the World Governance Indicators regulatory quality index, (2) broadband penetration rates, (3) country population, and (4) foreign trade as a percentage of GDP. Data for these four variables were obtained from the OECD website (http://www.oecd.org).

Crain and Crain also included one other variable in their analysis: primary school enrollment as a share of the eligible population. In their analysis, the associated coefficient had an unexpected negative sign (indicating that as primary school enrollment went up, GDP per capita went down). Crain and Crain told CRS that the negative coefficient could be due to "aging pyramid" demographic effects. In the CRS analysis, two variables were added to account for such demographic effects: the proportion of the population under 14 and the proportion of the population over 65. These variables were calculated from data obtained from the U.S. Census Bureau international population statistics.[105] These demographic measures may capture "aging pyramid" effects more directly than the primary education variable.

CRS ran a cross-country fixed effects panel estimator with year indicator variables. Natural logarithms of all variables except the regulatory quality index were used in the regression. Estimation results using Stata 11 xtreg procedure, using robust (White) standard errors that are used by most empirical researchers. Estimation results run with conventional standard errors, which are very similar, are available upon request.

The estimation output is shown in **Table A-1** below. The estimated coefficient on the World Governance Indicators regulatory quality index is very small and is not significantly different from zero. The coefficient on population is also statistically insignificant, although other estimated coefficients have expected signs and are statistically significant at conventional levels of confidence.

[104] This appendix was written by D. Andrew Austin, Analyst in Economic Policy, Congressional Research Service.

[105] The U.S. Census Bureau International Population Data Base is available at http://www.census.gov/ipc/www/idb/informationGateway.php. The regulatory quality index was taken from the World Bank's World Governance Indicators website, available at http://info.worldbank.org/governance/wgi/index.asp. The OECD data were taken from data portal available at http://www.oecd.org.

Table A-1. CRS Regression Analysis

Estimated determinants of log real GDP per capita

Independent Variables	Estimated Marginal Contribution	Robust Standard Error	t-statistic	P>|t|	95% Confidence Interval	
Regulatory Quality Index	.0001609	.0217325	0.01	0.994	-.0442871	.0446089
Population (log)	.2132556	.2595086	0.82	0.418	-.317499	.7440102
Broadband Penetration Rate (log)	.0233723	.0035276	6.63	0.000	.0161575	.0305872
Percent Population Under 14 (log)	-1.449251	.1967557	-7.37	0.000	-1.851661	-1.04684
Percent Population Over 65 (log)	-.3208979	.1686001	-1.90	0.067	-.6657239	.0239281
Foreign Trade as % of GDP (log)	.1051034	.0493794	2.13	0.042	.0041111	.2060957
sigma_u	.6039017	sigma_e .0206743				
Rho	.99882937	(fraction of variance due to u_i)				

Source: CRS.

Notes: Estimated using fixed-effects ordinary least squares regression with year dummies. Huber/White robust standard errors are reported.

Number of observations = 210. Number of groups = 30. Observations per group: 7. F(12,29) = 86.57.

R-square: within = 0.9003; between = 0.0521; overall = 0.0409. Corr(u_i, Xb) = -0.7610.

The point estimate of the coefficient regulatory quality index (.0001609) can be used to estimate the economic effect of shifting the United States from the 2008 regulatory quality index value (1.508) to the 2008 level of Ireland (1.856). According to that calculation which presumes that the regression specification reflects the true structure of the economy, that shift would result in an increase of $2.14 in per capita GDP (measured in year 2000 dollars). Because the point estimate of the effect of the regulatory quality index is so imprecise, however, the calculated effect of a hypothetical shift of U.S. regulatory quality to the Irish level is also imprecise.

One test statistic (rho, a measure of intercountry correlation) indicates that 99.9% of the variance in the model results from differences among countries, rather than time-series variation within countries. This could suggest that estimating the effects of variables that generally change slowly over time, such as the regulatory environment in economically advanced countries, may be challenging using panel estimation methods the employ highly aggregated country-level data. Other econometric approaches that focus on more specific changes in regulatory environment may provide a better path for understanding the effects of regulation on economic activity.

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Chairman WALBERG. Having said that and completed that, this committee stands adjourned.

[Whereupon, at 12:06 p.m., the subcommittee was adjourned.]