

**STATEMENT OF DR. DAVID MICHAELS
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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON LABOR,
HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman Rehberg, Ranking Member DeLauro, and members of the Subcommittee, thank you for the invitation to testify today. I appreciate the opportunity to discuss the Fiscal Year (FY) 2012 budget request for the Occupational Safety and Health Administration (OSHA).

As Secretary Solis said in her testimony last month, winning the future requires a successful competitive market where all firms are playing by the rules to keep workers safe. Workers should be safe in their jobs and we need to ensure that our worker protection efforts keep up with the changing economy.

Difficult Choices

As Secretary Solis described for you last month, the Department of Labor's (DOL) FY 2012 Budget makes difficult choices to help our nation on a sustainable fiscal path while also investing in programs and activities that will fuel economic growth. OSHA is focused on ways to carry out its mission more efficiently: moving toward electronic reporting of data, upgrading computer infrastructure to replace an inefficient and antiquated data system, enabling staff to conduct on-line meetings rather than traveling across the country and, where possible, replacing printed publications with on-line publications. The 2012 budget request for OSHA will also allow us to fulfill our core mission of protecting the health and safety of this nation's most important resource: its working people.

Not only is protecting workers the right thing to do, it also makes economic sense. Workplace injuries, illnesses and fatalities take an enormous toll on this nation's economy – a toll we can hardly afford in good times, and one that is intolerable in the difficult times we are experiencing today. A March 2010 Liberty Mutual Insurance company report showed that the most disabling injuries (those involving six 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.¹ 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 double these costs. Total costs to employees and their families through wage losses uncompensated through

workers' compensation, loss of home production, and family care for the workers further increase the total costs to the economy, even without considering pain and suffering.¹

OSHA: 40 Years of Protecting Workers

This year marks the 40th anniversary of the establishment of the 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, although some states had limited worker protection laws, most American workers did not have the basic legal right to a safe workplace. Instead they were told they always had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job. We have made great progress since then.

The results of this law speak for themselves. In the four decades since the OSH Act was enacted, the nation has made dramatic progress in reducing work-related deaths and injuries. Since 1970, workplace fatalities have been reduced by more than 65 percent. Reported occupational injury and illness rates have decreased by over 67 percent since 1973, but far too many preventable injuries and fatalities continue to occur. In 1971, the National Safety Council estimated that 38 workers died on the job every day of the year. Today, the Bureau of Labor Statistics (BLS) puts that number at 12 per day, with a workforce that is almost twice as large. 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.

Despite these improvements, however, enormous challenges lay ahead for the safety of this nation's workers. Although these are notable successes, there is still much work to do.

In addition to those killed on the job, over 3 million private sector workers are seriously injured each year and far too many of these injuries end up permanently impacting a workers' income and destroying a family's middle class security. 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.

In order to ensure that all employers provide safe workplaces to their employees, the FY 2012 budget request for OSHA is \$583.4 million and 2,387 full-time equivalents (FTE), an increase of \$24.8 million and 52 FTE over the FY 2010 level.

¹ "Accident Costs: Rethinking Ratios of Indirect to Direct Costs," Fred A. Manuele, *Safety Management*, January, 2011.

Why is the administration asking for an increase in OSHA's budget in these austere times? I will explain why this increase is important to the safety and health of this nation's most important resources.

Deterrence Through Enforcement

The President's request includes an increase of \$7.7 million and 25 FTE to expand the compliance safety and health officer (CSHO) workforce to continue OSHA's intensified commitment to preventing injuries, illnesses, and fatalities by deterring employers in the most hazardous workplaces who exhibit a profound disregard for worker safety and health. This funding will also be used to ensure that these new inspectors are properly equipped and trained to address workplace hazards in today's increasingly complicated workplaces.

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. OSHA has several programs that assist these employers, and I will return to describe them shortly. But there are still far too many employers in high hazard industries that cut corners on safety and neglect well recognized OSHA standards and basic safety measures that protect workers' lives. For these employers, enforcement is clearly the best means to ensure that their employees are able to come home safely to their families at the end of the workday.

Strong enforcement of the law has an important benefit for the vast majority of employers who are doing the right thing – a benefit that 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 irresponsible employers who cut corners on worker protection and hazard abatement. Strong enforcement, accompanied by meaningful penalties, levels the playing field for those employers who are doing the right thing.

The core purpose of OSHA's enforcement program is prevention, not punishment. Just as it makes sense for the police to ticket a drunk driver *before* he kills a family rather than afterwards, it is OSHA's objective to encourage employers to abate workplace hazards *before* workers are hurt or killed, rather than afterwards when it's too late. This is the essence of prevention.

The job of OSHA inspectors is to ensure that employers are complying with federal law to keep their workplaces safe. OSHA has an enormous job. Between federal and state OSHA programs, there are approximately 2200 inspectors tasked with the enormous responsibility of ensuring the safety of over 7 million workplaces in this country. OSHA uses a variety of approaches to target our efforts to those industries and workplaces where workers are most at risk.

First, by law, OSHA is required to conduct 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. In addition, through its 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 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 very young workers, over the past year.

OSHA's Severe Violator Enforcement Program concentrates resources on inspecting employers who have demonstrated indifference to their OSH Act obligations by committing willful, repeated, or failure-to-abate violations.

Protecting Whistleblowers

When the OSH Act was passed, Congress realized that OSHA inspectors would never be able to visit more than a small fraction of the nation's workplaces in any given year. The OSH Act therefore relies heavily on workers to help identify hazards at their workplaces and to work with their employers to control those hazards.

But the authors of the OSH Act also understood that employees are not likely to participate in safety and health activities if they fear that they will lose their jobs or otherwise be retaliated against. That is why Congress wrote Section 11(c) – to protect employees from discrimination and retaliation when they report safety and health hazards or exercise other rights under the OSH Act. The OSH Act was one of the first safety and health laws to contain a provision for protecting whistleblowers.

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. The most recent law to be added to OSHA's workload was the Food Safety Modernization Act. 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 added. In just the past year, however, four additional whistleblower laws were added to OSHA's enforcement responsibility.

The FY 2012 budget requests an increase of \$6.0 million and 45 FTE for the 21 whistleblower programs that OSHA administers. These additional resources and staff will help to reduce the backlog in whistleblower claims, expedite the handling of received complaints, and prepare for a high volume of complex cases associated with the recently enacted laws.

Several organizations including the Government Accountability Office, the DOL's Office of Inspector General, and Congress have raised serious concerns about the effectiveness of the whistleblower program. In response to these concerns, OSHA conducted a top-to-bottom review of the whistleblower program and plans to take steps soon to address the weaknesses and inefficiencies in the operation of the program, including programmatic changes to improve consistency and program delivery.

Common Sense Standards

OSHA's mission is to ensure that everyone who goes to work in the morning is able to return home safely every night. One of the primary responsibilities Congress has given to OSHA to achieve this goal is to issue common sense standards and regulations to protect workers from workplace hazards. OSHA standards have made working conditions in America today far safer than 40 years ago when the agency was created.

Developing OSHA regulations is a complex process that 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. To ensure that OSHA is able to continue its efforts to meet the wide range of safety and health threats in today's workplaces, the request includes a program increase of \$4.0 million to expand the agency's regulatory program. Additionally, OSHA requests \$2.4 million for the development of the Injury and Illness Prevention Program rule.

OSHA issues very few standards and all are the product of years of careful work and consultation with all stakeholders. Last year, OSHA issued a standard protecting workers from hazards associated with cranes and derricks. This standard, which OSHA had worked on for eight years, was initiated under the Bush administration and was the result of a rule negotiated between labor and management. It is expected to prevent 22 fatalities and 175 non-fatal injuries each year. This was only the fourth major standard that OSHA has issued in the past five years.

We are currently finalizing long-awaited standards to protect shipyard workers and electrical workers, a confined spaces standard for construction workers, as well as a standard that will harmonize chemical hazard communication with programs around the world. Later this year, we plan to propose an updated standard that will protect workers from the deadly hazards of crystalline silica. Silica has been known for hundreds of years to cause severe lung disease. This critical update to the current standard will better protect workers and modernize an antiquated and difficult-to-use rule that is almost 40 years old. All of the standards I have just mentioned – shipyards, electrical, confined

spaces, hazard communication and silica are longstanding priorities of the Department of Labor.

OSHA is beginning the process of developing an Injury and Illness Prevention Program standard that will require employers to develop a program to address their health and safety hazards in a systematic proactive way. Our approach has been modeled by OSHA's Voluntary Protection Program (VPP) members and will also be based on the experiences of 15 states that have similar requirements.

This standard will not tell employers how to address specific hazards, nor will it be a one size fits all regulation. Instead, it will require employers to develop a systematic plan to help them find and fix hazards in their workplaces. Small and large employers will be able to adapt their programs to the size of their business and character of the hazards they face. The standard will take into account the efforts by employers who already have effective safety and health programs in place.

OSHA has already held five stakeholder meetings around the country on this standard and will soon enter it into the small business review process. All comments from small businesses will be considered before a proposal is issued. Following issuance of a proposal, stakeholders – including small and large businesses, workers and labor organizations – will have several months to provide written comments and extensive public hearings will be held around the country.

In short, OSHA will give everyone that may be affected by this standard numerous opportunities to be heard and to provide their input.

Lending a Hand through Compliance Assistance

Finally, I want to be clear that, consistent with past history, OSHA is not just in the business of issuing and enforcing standards. We are well aware that the vast majority of employers want to do the right thing, but many need information and assistance to do so. OSHA's active and growing compliance assistance program works to ensure that employers and employees understand workplace hazards and how to prevent them. There are several principles under which our Compliance Assistance Program operates:

- We believe that no employer, large or small, should have difficulty providing a safe workplace because they can't get accurate and timely information about how to address workplace safety or health problems or how to understand OSHA standards. We are committed to providing access to the information employers and workers need.
- Every worker, 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 program should receive recognition.

OSHA addresses these principles in a variety of different ways.

OSHA's On-site Consultation Program provides free workplace safety and health evaluations and advice to small businesses with 250 or fewer employees, and is completely separate and independent from OSHA's enforcement program with very few exceptions. Last year, the Consultation Program conducted over 30,000 visits to mostly small businesses.

These programs are run by the states and receive 90% of their funding from OSHA. This important program is currently funded at \$54.8 million. The FY 2012 budget includes a \$1 million increase to ensure that small employers continue to get all the assistance they need.

OSHA continues its strong support for various cooperative safety programs, including OSHA's landmark VPP, as well as the OSHA Consultation's Safety and Health Achievement Recognition Program (SHARP) which 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 role models to all businesses.

OSHA also provides extensive outreach and assistance to employers and workers to help them prevent injuries and understand OSHA requirements and best practices. Accompanying OSHA standards are web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, there is a compliance assistance specialist in almost all of OSHA's 75 area offices who assists employers and workers in understanding hazards and how to control them.

A major new initiative of this administration has been increased outreach to hard-to-reach vulnerable workers, including those who do not speak English or only speak English as a second language. These employees often work 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 because of the high number of fatalities among these workers. According to the BLS, an average of 13 Latino workers are killed on the job each week. To prevent deaths and injuries, these workers must understand their rights under the law and understand the hazards they are exposed to and what to do about them.

OSHA's Susan Harwood Training grant program provides funding to non-profit organizations – universities, unions and business associations to provide training and assistance to workers about job hazards and protections. This program is also increasing

its focus on organizations involved in training vulnerable, non-English speaking, and other hard-to-reach workers. We are pleased that business associations, unions, and community groups have joined us in this effort.

OSHA is requesting an additional \$1.25 million for the Harwood Training Grant Program. During the 2010 grant cycle, in which Capacity Building and pilot grants were first introduced, OSHA received a high number of applications – receiving requests for \$38.4 million from 165 applications in Capacity Building grants – but was only able to award \$8 million to 50 applicants. This increase will allow OSHA to offer more training grants and to support grants that will offer innovative training techniques and alternative technologies including webcasts, distance learning and social networking.

OSHA State Plans

Twenty-one states and one territory administer their own state OSHA programs for private and public sector employees. In addition, four states and one territory administer OSHA programs for only public employees. All together, 40% of this nation's employees are covered by state plans. OSHA values its state programs because they address challenges differently from Federal OSHA and there is much to learn from their experience.

The federal government is responsible for ensuring that these programs are at least as effective as the federal program and that they conduct their enforcement, compliance assistance and standard setting responsibilities properly. Over the past two years, OSHA has initiated efforts to identify and correct problems with the operation of some state plan programs.

The agency expects the States to continue to address performance and structural issues identified in the FY 2009 special baseline evaluations conducted in FY 2010 and follow-up evaluations done in FY 2011. OSHA will issue comprehensive evaluations of all State Plans again in FY 2012, by conducting extensive oversight of State Plan performance during FY 2011 to ensure that it is at least as effective as Federal OSHA.

For FY 2012, OSHA requests \$105.9 million for State Plan Programs, a \$1,500,000 increase over FY 2010 to provide the necessary inflationary increase for State Programs. States are required to match at least 50% of the federal contribution. As you are aware, many states are facing severe budget constraints that have led to budget cuts, furloughs and reductions in force. The federal contribution to State Plans covers not only the states' enforcement programs, but also their standard setting, compliance assistance, cooperative and whistleblower programs.

Technical Support

Under technical support, the critical day-to-day enforcement operations of the agency as well as the agency's important homeland security and emergency response functions are funded. OSHA is particularly proud of its response last year to the Deepwater Horizon

Oil Spill where the agency was tasked with protecting the safety of the 40,000 workers cleaning up the spill.

This item also funds OSHA's Salt Lake City Technical Center which analyzes industrial hygiene samples and conducts in-depth investigations to develop or validate sampling and analytical methods to assess worker exposure to a variety of health hazards. OSHA's Health Response Team and occupational physicians and nurses provide critical expert support to OSHA's enforcement staff and are also available to other agencies to assist in addressing chemical, biological and physical hazards.

Safety and Health Statistics

This activity funds OSHA's popular web page which is an instrumental provider of compliance assistance materials to employers and workers across the country. OSHA's webpage receives 180 million hits every year. This activity also provides for the collection, maintenance, evaluation and analysis of inspection and statistical data that support agency activities, including inspection targeting compliance assistance and evaluation of the effectiveness of OSHA's programs. This item also supports OSHA's computer infrastructure and OSHA's new OSHA Information System (OIS) which will replace the agency's antiquated Integrated Management Information System. OIS will enable inspectors to better analyze, track and target high-risk industries in their particular geographic jurisdiction and provide useful enforcement and compliance assistance data for the public.

This item is currently funded at \$34.9 million, and no increase is requested.

Conclusion

The FY 2012 OSHA budget request reflects one of this country's major priorities – ensuring that this nation's working men and women have the right and the ability to come home from work to their families safe and sound. OSHA's flexible common sense efforts focus on assistance to employers who are trying to do the right thing, while using our enforcement resources to deter employers who neglect their responsibilities so that we can prevent injuries illnesses and fatalities in this nation's workplaces. Secretary Solis and I are fully committed to a very simple goal: *Good Jobs for Everyone*. And no job can be a good job unless it's a safe job. We can accomplish this goal while being good stewards of the public's money and while focusing on our shared long-term goal of reducing the federal deficit.

Mr. Chairman, thank you for inviting me today. I am happy to respond to any questions that you may have.