



February 15, 2011

The Honorable Tim Walberg
Chairman
Subcommittee on Workforce Protections
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Lynn Woolsey
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 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, "Investigating OSHA's Regulatory Agenda and Its Impact on Job Creation."

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 and sound scientific analysis, with appropriate consideration paid to implementation costs and input from the business community.

Recent regulatory proposals from the Occupational Safety and Health Administration (OSHA) have threatened to impose excessive and potentially crippling costs that could impact job creation and stifle growth in the construction industry. ABC has expressed concerns about such proposals, several of which circumvent existing checks and balances within the federal regulatory framework. OSHA's proposals and policies include:

- ***Injury and Illness Prevention Program (I2P2).*** This "pre-rule" stage rulemaking will require all employers, regardless of size, to continually "find and fix" workplace hazards, potentially resulting in a situation in which full compliance can never truly be attained. The costs of compliance and subsequent fines stemming from OSHA's enhanced enforcement policies could result in a significant burden on businesses. OSHA has not announced a projected publication date for this proposal; however, the agency has indicated publicly that I2P2 is its "highest regulatory priority."
- ***Proposal to Redefine "Feasibility" in Noise Exposure Standard.*** Last fall, OSHA announced a proposal to change its noise exposure standards to allow the agency to cite a company for relying only upon personal protective equipment (PPE) to protect employees rather than implementing administrative or engineering controls for noise hazards. Under the proposal, citations would have been issued unless the company was able to demonstrate that implementing such controls would put it out of business. OSHA was unable to explain publicly why such a costly proposal was necessary. Furthermore, OSHA classified this proposal as a "non-regulatory" interpretation, allowing the agency to circumvent crucial aspects of the formal regulatory process. Stakeholders were not given advance notice of the proposal in the spring 2010 regulatory agenda, and it did not require formal notice-and-comment or economic analysis. After months of sustained industry pressure, OSHA withdrew the proposal to explore other ways to approach the issue. While ABC appreciates that OSHA has agreed to reevaluate its proposal, it is unclear whether the agency will re-issue the proposal at a later date and, if

so, whether that proposal will be drafted through the formal notice-and-comment process as stipulated by the Administrative Procedure Act.

- ***Musculoskeletal Disorder Recordkeeping.*** OSHA also proposed revising reporting requirements to log “musculoskeletal disorders” (MSDs) separately from other types of workplace injuries and illnesses. On the surface, this appears to be a minor clerical revision; however, upon closer inspection, the proposal wrongly groups together a variety of disorders and symptoms that are not necessarily related (even the scientific community has been unable to settle on a reliable definition or cause of most MSDs). The addition of such a difficult-to-define, catch-all category will result in the collection of erroneous data that in turn could justify burdensome workplace controls for injuries and illnesses that may not even be caused by the work environment. In addition, the time and cost estimates associated with OSHA’s proposal were grossly underestimated, which allowed the agency to bypass requirements of the federal regulatory process—requirements that would have brought increased scrutiny and much-needed small business economic analysis. In 2010, ABC shared its concerns about the rule directly with OSHA and administration officials. Recently, OSHA announced that it would be temporarily withdrawing its proposed rule to solicit more feedback from small businesses. Of course, ABC applauds the withdrawal of yet another potentially burdensome regulatory proposal, and appreciates that OSHA seeks to hear from small businesses. However, we maintain that the rulemaking has been unnecessary and untenable from the onset, and will place a negative and substantial impact on employers, which will in turn impact job creation in our industry.
- ***Emphasis on Enforcement over Cooperative Programs.*** During the past two years, ABC has grown increasingly concerned with OSHA’s apparent emphasis on and promotion of its enforcement agenda over successful, cooperative efforts with employers to achieve safer workplaces. The agency has increased fines and penalties across the board, cut funding and staff for cooperative programs and even attempted to enlist building inspectors in finding and reporting suspected OSHA violations. We strongly believe that funding and staff for cooperative programs including the Voluntary Protection Program (VPP) should not be decreased, and that employers should be viewed as partners in achieving safer workplaces.

ABC strongly supports comprehensive regulatory reform, including across-the-board requirements for departments and agencies to evaluate the risks, weigh the costs and assess the benefits of their regulations. Existing regulations should be reviewed periodically to ensure they are necessary, current and cost-effective. Furthermore, federal agencies, including OSHA, must be held accountable for full compliance with existing rulemaking statutes and requirements when promulgating regulations.

We appreciate your attention to this important matter and look forward to working with you on reforming duplicative and burdensome regulations placed on the business community.

Sincerely,



Corinne M. Stevens
Senior Director, Legislative Affairs