

# PROMOTING SAFE WORKPLACES THROUGH VOLUNTARY PROTECTION PROGRAMS

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## HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION

AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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HEARING HELD IN WASHINGTON, DC, JUNE 28, 2012

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# C O N T E N T S

---

	Page
Hearing held on June 28, 2012 .....	1
Statement of Members:	
Petri, Hon. Thomas E., a Representative in Congress from the State of Wisconsin, prepared statement of .....	46
Walberg, Hon. Tim, Chairman, Subcommittee on Workforce Protections ...	1
Prepared statement of .....	3
Woolsey, Hon. Lynn, ranking member, Subcommittee on Workforce Pro- tections .....	4
Prepared statement of .....	5
Statement of Witnesses:	
Barab, Jordan, Deputy Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor .....	7
Prepared statement of .....	8
Henson, Rob, process technician, LyondellBassell .....	15
Prepared statement of .....	16
Layne, R. Davis, executive director, Voluntary Protection Programs Par- ticipants' Association, Inc. ....	27
Prepared statement of .....	29
Lee, Mike, general manager, Nucor Steel Decatur LLC; vice president, Nucor Corp. ....	24
Prepared statement of .....	26
Levine, David I., Haas School of Business, University of California, Berkeley .....	17
Prepared statement of .....	19
Additional Submissions:	
Mr. Barab, response to question submitted for the record .....	48
Mr. Layne, response to questions submitted for the record .....	50
Rokita, Hon. Todd, a Representative in Congress from the State of Indi- ana, letter, dated June 6, 2012, from Mr. Layne to OSHA .....	39
Mr. Walberg:	
Letter, June 28, 2012, from Associated Builders and Contractors (ABC) .....	46
Questions submitted for the record:	
To Mr. Barab .....	47
To Mr. Layne .....	49
Ms. Woolsey:	
VPPPA press release .....	43
Table: "OSHA Whistleblower Protection Program" .....	45



## **PROMOTING SAFE WORKPLACES THROUGH VOLUNTARY PROTECTION PROGRAMS**

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**Thursday, June 28, 2012  
U.S. House of Representatives  
Subcommittee on Workforce Protections  
Committee on Education and the Workforce  
Washington, DC**

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The subcommittee met, pursuant to call, at 9:30 a.m., in room 2175, Rayburn House Office Building, Hon. Tim Walberg [chairman of the subcommittee] presiding.

Present: Representatives Walberg, Kline, Rokita, Bucshon, Noem, and Woolsey.

Also Present: Representative Petri.

Staff Present: Katherine Bathgate, Deputy Press Secretary; Adam Bennot, Press Assistant; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workplace Policy; Benjamin Hoog, Legislative Assistant; 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; Tylease Alli, Minority Clerk; Daniel Brown, Minority Policy Associate; Jody Calemene, Minority Staff Director; Daniel Hervig, Minority Fellow, Labor; Richard Miller, Minority Senior Labor Policy Advisor; Megan O'Reilly, Minority General Counsel; Michele Varnhagen, Minority Chief Policy Advisor/Labor Policy Director; and Michael Zola, Minority Senior Counsel.

Chairman WALBERG. Good morning. A quorum being present the committee will come to order. We are going to try to talk fast and listen fast today. I appreciate our subcommittee members being here this morning. In light of that, we still have a very important hearing to undertake.

I would like to welcome our guests and thank our witnesses for being with us today. Deputy Assistant Secretary Barab, you are certainly no stranger to the committee, and we welcome you back. Today we will discuss what has become an important model for workplace safety enforcement.

Approximately 1,500 inspectors from the Occupational Safety and Health Administration work each day to enforce our Nation's health and safety standards. In an economy as vast and dynamic

as ours, it is a difficult job. We would like to make it more difficult by having an even more vast and growing economy.

The goods and services that are the driving force behind the American economy come from countless workplaces across our country. Fields such as hospitality, manufacturing, health care and construction, to just name a few, can present a unique set of health and safety concerns to workers. The challenges crafting safety policy are as dynamic as the workplaces they oversee.

Toward that end, we should encourage employers to adopt innovative practices and provide strong protections for workers while also promoting flexibility that can address the need of a particular workplace. I believe that is why voluntary protection programs have been so successful.

Established in 1982, Voluntary Protection Programs, commonly referred to as VPP, have recognized employers and workers who go above and beyond Federal standards in order to improve health and safety in their workplaces. In exchange for maintaining injury and illness rates below their respective industries, participating work sites are exempt from OSHA's routine inspections. A key feature of VPP is the cooperative relationship it builds between employers, union leaders, and workers and safety officials. Together these key stakeholders design and implement the comprehensive safety and health management strategy focused on identifying potential hazards and the steps that will be taken to mitigate those hazards.

The comprehensive plan also outlines how the employers will educate employees on the value of proactive safety in the workplace.

The success of VPP speaks for itself with participating work sites reporting 52 percent fewer days away, restricted or transferred from work due to injury or illness. Popularity among employers continues to grow with nearly 2,400 work sites participating in the program today.

Even Federal agencies recognize inherent rewards of VPP and are increasingly implementing programs in their workplaces. It is important to note that the benefits of VPP extend beyond those who currently participate in the program.

As we all know, bad actors will continue to cut corners, put profit before safety, and place their workers in harm's way. When they do, we need safety inspectors available to hold them accountable and demand the corrective action. By working with employers to promote a culture of safety, OSHA can direct scarce resources toward the bad actors to improve the safety of their workplaces.

Like any Federal program, VPP is not without its weaknesses. In fact, in May 2009, the nonpartisan Government Accountability Office released a report critical of OSHA's management of the program. Since that time, the administration has implemented a series of changes recommended by GAO to enhance oversight and ensure greater uniformity in how these programs are administered across the country. I hope we will discuss these changes and whether they have led to a stronger program.

Throughout the 112th Congress, the committee has worked to advance a responsible approach to workplace safety, one that pro-

notes strong protections without undermining efforts to put the American people back to work.

As you know, Mr. Barab, we ask tough questions and demand straight answers. We will continue to do so and continue to hold the administration accountable for the policies it promotes. But I look forward to working with you on all these important issues affecting America's workplaces in the months ahead.

I will now recognize my distinguished colleague, Lynn Woolsey, the senior Democratic member of the subcommittee for opening remarks.

[The statement of Chairman Walberg follows:]

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

Good morning, everyone. I would like to welcome our guests and thank our witnesses for being with us today. Deputy Assistant Secretary Barab, you are certainly no stranger to the committee and we welcome you back.

Today we will discuss what has become an important model for workplace safety enforcement. Approximately 1,500 inspectors from the Occupational Safety and Health Administration (OSHA) work each day to enforce our nation's health and safety standards. In an economy as vast and dynamic as ours, it is a difficult job. The goods and services that are the driving force behind the American economy come from countless workplaces across the country. Fields such as hospitality, manufacturing, health care, and construction—to name just a few—can present a unique set of health and safety concerns to workers.

The challenge is crafting safety policies that are as dynamic as the workplaces they oversee. Toward that end, we should encourage employers to adopt innovative practices that provide strong protections for workers, while also promoting flexibility that can address the need of a particular workplace. I believe that is why Voluntary Protection Programs have been so successful.

Established in 1982, Voluntary Protection Programs—commonly referred to as VPP—have recognized employers and workers who go above and beyond federal standards in order to improve health and safety in their workplaces. In exchange for maintaining injury and illness rates below their respective industries', participating worksites are exempt from OSHA's routine inspections.

A key feature of VPP is the cooperative relationship it builds between employers, union leaders, workers, and safety officials. Together, these key stakeholders design and implement a comprehensive safety and health management strategy focused on identifying potential hazards and the steps that will be taken to mitigate those hazards. The comprehensive plan also outlines how the employer will educate employees on the value of proactive safety in the workplace.

The success of VPP speaks for itself, with participating worksites reporting 52 percent fewer days away, restricted, or transferred from work due to an injury or illness. Popularity among employers continues to grow with nearly 2,400 worksites participating in a program today. Even federal agencies recognize the inherent rewards of VPP and are increasingly implementing programs in their workplaces.

It is important to note that the benefits of VPP extend beyond those who currently participate in a program. As we all know, bad actors will continue to cut corners, put profit before safety, and place their workers in harm's way. When they do, we need safety inspectors available to hold them accountable and demand corrective action. By working with employers to promote a culture of safety, OSHA can direct scarce resources toward the bad actors to improve the safety of their workplaces.

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tinue to do so and continue to hold the administration accountable for the policies it promotes. I look forward to working with you on all these important issues affecting America's workplaces in the months ahead.

I will now recognize my distinguished colleague Lynn Woolsey, the senior Democratic member of the subcommittee, for her opening remarks.

Ms. WOOLSEY. Mr. Chairman, thank you for holding this hearing to examine the Voluntary Protection Program, VPP, at the Occupational Safety and Health Administration (OSHA).

OSHA, an agency our committee has jurisdiction over and has been trying over the last years to bring OSHA into the 21st century. One of the steps that some support is increasing the size of VPP. But before we take any steps to increase the size of VPP, we need to explore several issues about the program's effectiveness and oversight funding.

In 2009, the GAO found that there were inadequate controls to ensure that only genuinely safe work sites participated in the VPP. When GAO reviewed files for 30 VPP sites that had fatalities between 2003 and 2008, they found that OSHA had not done an adequate follow-up.

The Center for Public Integrity found that two workers at the Tropicana juice plant in Bradenton, Florida were severely burned in a preventable explosion. OSHA inspected and found instances where employees were told to throw safety out the window. This was a VPP plant that allowed somebody to say that, and they stayed in the program. That is, Mr. Chairman, very troubling. There must be better OSHA oversight so that those who do not belong in VPP are removed.

GAO also found that OSHA's evaluations of VPP have been inadequate and that the only study done on its effectiveness was flawed. I hope the majority would agree that a scientifically credible study of VPP is necessary before moving forward with legislation to expand this program.

The Government Accountability Office has cautioned that growth in VPP could have unintended effects on resources needed to protect workers at the millions of work sites outside of VPP. Given flat budgets, VPP participants are going to have to help cover OSHA's administrative costs through a fee if VPP is going to grow significantly. The idea of a fee is not a new one. It originally came from a Republican OSHA reform bill that was reported out of the HELP committee in 1996.

Where employers fail to make employees' safety their first priority, OSHA safety inspections are imperative. The following example illustrates what happens when OSHA's limited resources prevent it from inspecting a plant for two decades.

Last November, Carlos Centeno was burned over 80 percent of his body at the Raani Corporation in Illinois after nearly boiling cleaning solution scalded him. Carlos died 3 weeks later from his burns. When OSHA investigated Carlos' death, they found that serious injuries at the 150 employee factory were abundant and some were never recorded. Yet these unsafe working conditions were not caught because OSHA's last inspection at the work site was 1993, almost 20 years.

The problem is that Federal OSHA only has enough resources to inspect each work site once every 131 years—once every 131 years.



We know from peer reviewed studies conducted by one of our witnesses here today that when inspections are conducted they not only prevent workers from getting hurt, they also save employers billions of dollars through reduced workers' compensation costs. Given OSHA's limited resources, it counts on the eyes and ears of workers at the job site to report unsafe conditions that go unresolved and must be fixed.

However, if employers retaliate for reporting unsafe conditions, workers need to know that OSHA will protect them and their jobs at the same time in a timely manner. However, Mr. Chairman, delays in investigating whistleblower complaints are crippling this important protection. There is a backlog of over 2,000 whistleblower cases that are pending for an average of 359 days. That is why OSHA reallocated \$3.2 billion in efficiency savings to the whistleblower program from the compliance assistance budget. Yet this has spurred overblown rhetoric that OSHA has somehow put confrontation ahead of cooperation or is gutting the VPP program.

Mr. Chairman, I look forward to hearing from our excellent panel of witnesses. I thank you for being here today. Luckily, it is not too hot and this will be a decent hearing. We won't make it too hot for you either. So I yield back. Thank you Mr. Chairman.

[The statement of Ms. Woolsey follows:]

**Prepared Statement of Hon. Lynn C. Woolsey, Ranking Member,  
Subcommittee on Workforce Protections**

Mr. Chairman, thank you for holding this hearing to examine the Voluntary Protection Program (VPP) at the Occupational Safety and Health Administration.

Before we take any steps to increase the size of the VPP program, we need to explore several issues about the program's effectiveness, oversight and funding.

In 2009, the Government Accountability Office (GAO) found that there were inadequate controls to ensure that only genuinely safer worksites participated in the VPP. When GAO reviewed files for 30 VPP sites that had fatalities between 2003 and 2008, they found that OSHA had not done adequate follow-up.

The Center for Public Integrity found that two workers at the Tropicana juice plant in Bradenton, Florida were severely burned in a preventable explosion. OSHA inspected and found instances where employees were told to "throw safety out the window," yet the plant was allowed to stay in vpp.

That is troubling. There must be better OSHA oversight so that those who do not belong in vpp are removed.

GAO also found that OSHA's evaluations of VPP have been inadequate, and that the only study done on its effectiveness was flawed. I hope the Majority would agree that a scientifically credible study of VPP is necessary before moving forward with legislation to expand this program.

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The following example illustrates what happens when OSHA's limited resources prevent it from inspecting a plant for two decades.

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When OSHA investigated Carlos' death, they found that serious injuries at the 150-employee factory were abundant. And some were never recorded.

Yet, these unsafe working conditions were not caught because OSHA's last inspection at this worksite was in 1993—almost 20 years ago. The problem is that federal OSHA only has enough resources to inspect each worksite once every 131 years.

We know from peer reviewed studies conducted by one of our witnesses, that when inspections are conducted, they not only prevent workers from getting hurt, they also save employers billions of dollars through reduced workers' compensation costs.

Given OSHA's limited resources, it counts on the eyes and ears of workers at the jobsite to report unsafe conditions that go unresolved.

However, if employers retaliate for reporting unsafe conditions, workers need to know that OSHA will protect them and their jobs in a timely manner.

However, delays in investigating whistleblower complaints are crippling this important protection. There is a backlog of over 2000 whistleblower cases that have been pending for an average of 359 days.

That is why OSHA reallocated \$3.2 million in efficiency savings to the whistleblower program from the compliance assistance budget. Yet this has spurred overblown rhetoric that OSHA has somehow put confrontation ahead of cooperation or is gutting the VPP program.

I look forward to hearing from our excellent panel of witnesses. I yield back.

Chairman WALBERG. I thank the gentlelady.

Pursuant to Committee Rule VII(c) all Members are permitted to submit written statements to be included in the permanent hearing record, and without objection, the hearing record will be remain open for 14 days to allow statements, questions for the record and other extraneous material referenced during the hearing to be submitted into the official record.

It is now my pleasure to introduce our distinguished panel of witnesses. The first is Jordan Barab, Deputy Secretary, Assistant Secretary of Labor for OSHA. Prior to his service at the Department of Labor, Mr. Barab served as a Senior Labor Policy Adviser on this committee. Welcome back. Under Chairman Miller. Mr. Barab holds an undergraduate from Claremont McKenna College and a Master's Degree from Johns Hopkins.

Robert Henson is a Process Technician with LyondellBasell in Channelview, Texas. Mr. Henson has been with the company for 26 years. Mr. Henson received his Associate of Arts Degree from San Jacinto Junior College in 1980.

David Levine is the Trefethen Professor of Business Administration with the Haas School of Business at the University of California, Berkeley. Dr. Levine was an undergraduate at Berkeley and received his Ph.D. in economics from Harvard University. Welcome.

I will now turn to Mr. Rokita to introduce our fourth witness.

Mr. ROKITA. Thank you for the privilege, Mr. Chairman. I am pleased to introduce Mike Lee, the Vice President and General Manager for Nucor Steel in Decatur, Alabama. I am pleased to note, also, Mr. Chairman, that Nucor has a plant in my district in Crawfordsville, Indiana. I have been there many times and can attest that Nucor employees are the best of Hoosiers and indeed the best of Americans. Nucor's corporate safety culture is exactly demonstrated through their commitment to programs such as VPP, which I have witnessed.

Mr. Lee holds an engineering degree from Johns Hopkins and has held a variety of positions with Nucor Steel, and I am happy to welcome him here today.

Chairman WALBERG. I thank the gentleman.

And our final witness, Davis Layne, is the Executive Director of the Voluntary Protection Programs Participants' Association, VPPPA. Prior to his directorship, Mr. Layne served in numerous positions at OSHA, including Deputy Assistant Secretary.

Before I recognize each of you to provide your testimony, let me briefly explain our lighting system, which is not totally unfamiliar to a number of you. You will have 5 minutes to present your testimony. When you begin, the light in front of you will turn green. When 1 minute is left the light will turn yellow. When your time is expired, the light will turn red, at which point I ask you to wrap up your remarks as best as you are able. Your full testimony is included in our record.

After you have testified, members will each have 5 minutes to ask questions of the panel, and I will hold myself and our panel to that today, especially in light of decisions being made and interest in those decisions.

With that, let me ask Mr. Barab to begin the witness testimony.

**STATEMENT OF JORDAN BARAB, DEPUTY ASSISTANT SECRETARY OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR**

Mr. BARAB. Thank you, Mr. Chairman. Chairman Walberg, Ranking Member Woolsey, and members of the subcommittee, thank you for this opportunity to discuss OSHA's voluntary protection program, or VPP.

I also would like to take a moment to wish Ms. Woolsey the best on her retirement but I also want to express how sorry we will be to see you go. You have been a tireless advocate for worker safety and worker rights in general and your voice will be sorely missed.

OSHA is very proud of VPP, and we believe it represents a necessary and effective way to recognize and reward companies that have implemented safety and health management systems, maintained injury and illness rates below the national average for their industries, and excelled in worker protection.

VPP companies are characterized by successful injury and illness prevention programs and labor and management cooperation and clearly demonstrate that it is possible to operate a company that is both profitable and serves as a model for worker protection.

These employers often utilize best practices and hazard prevention controls that are more rigorous than those required by OSHA standards.

As of June 21, 2012 there are 2,374 total active VPP sites protecting more than 911,000 workers. VPP participants can be found across American industry from manufacturing to chemicals, and construction to motor freight transportation.

Participants often speak of a cultural transformation that can occur at a company during the development of a comprehensive safety and health program as part of the VPP application process. Fewer injuries and illnesses translate into greater profits for employers when workers' compensation premiums and other costs are reduced.

There are many success stories within VPP, among them is the Nucor Corporation, the largest manufacturer of steel products in North America which began participating in 2007. When one division in Decatur, Alabama first applied, their first goal was simply to be recognized as a VPP participant. As described by management, however, what actually happened at the plant was an evolution of safety and significant decrease in injuries and illnesses.

Despite VPP's success, however, OSHA must struggle to meet competing priorities and balance our resources. Make no mistake, OSHA is committed to VPP as well as our other cooperative programs. But like every other Federal agency, we need to make difficult decisions about how to allocate our limited resources. Our challenge is to maintain an active, quality VPP while also providing assistance to small businesses, help for vulnerable workers, support to enable workers to exercise their rights under the law without fear of retaliation, and an active enforcement program that focuses on the worst offenders.

In addition to resource considerations, the program's slower growth in recent years is partly attributable to OSHA's concern with maintaining the integrity of the program. When the integrity of this program is compromised, it doesn't matter how many participants the program has or how fast it is growing. We do not want a few bad apples to spoil the bunch.

A 2004 Government Accountability Office program report warned that VPP was growing faster than OSHA's resources might be able to sustain. In 2009, GAO found that OSHA did not have sufficient internal controls to ensure the quality of VPP work sites and that its oversight of VPP sites was limited. There have also been numerous fatalities at VPP sites since 2000, and in some no action was taken against the participating companies, even where the fatalities were linked to serious or willful violations.

The number of VPP participants has doubled since 2003, but the number of program participants grew so rapidly that the number of reapprovals required has put a serious strain on the agency's resources.

We are now focused on conducting those reapprovals, eliminating the backlog and addressing the other issues that have been raised in order to ensure that every participant in the program deserves to stay in the program.

Finally, in order to ensure that VPP participants remain leaders in safety and health after discussion with VPPPA, OSHA issued a new policy letter 1 year ago prohibiting any incentive programs that have the potential to discourage reporting of injuries and illnesses. After being identified in the reapproval process, almost all the VPP participants who have these policies have agreed to eliminate them.

OSHA will continue to promote safe workplaces not only for enforcement for those employers who continue to fail to prioritize worker safety and health but also through active support and assistance for small employers and vulnerable workers while continuing to recognize and reward employers who go beyond our requirements to protect their employees.

VPP has demonstrated its value over the decade since it was established. VPP will continue to have my full support and that of Assistant Secretary Michaels.

Thank you and I look forward to any questions you may have.  
[The statement of Mr. Barab follows:]

**Prepared Statement of Jordan Barab, Deputy Assistant Secretary for  
Occupational Safety and Health, U.S. Department of Labor**

CHAIRMAN WALBERG, RANKING MEMBER WOOLSEY, AND MEMBERS OF THE SUBCOMMITTEE: Thank you for this opportunity to discuss the Occupational Safety and

Health Administration's (OSHA) Voluntary Protection Program (VPP). The agency is very proud of VPP and we believe that the program represents a necessary and effective way to recognize and reward companies that make the safety and health of their employees their highest priority.

Over the past three and a half years, Dr. Michaels and I have met with the Voluntary Protection Program Participants' Association (VPPPA) board and members on many occasions and visited VPP plants across the country. We've been extremely impressed with the health and safety programs at those sites. We have witnessed firsthand the participating companies' dedication to workplace safety, as evidenced by the utilization of best practices and implementation of safety and health management systems that are often more rigorous than that required by OSHA standards, as well as an obvious pride in their health and safety achievements. VPP companies are characterized by successful injury and illness prevention programs and labor-management cooperation, which result in excellent injury and illness rates. These employers clearly demonstrate that it is possible to operate a company that is both profitable and serves as a model for businesses and industries in all sectors of the American economy.

Companies that demonstrate such a strong and unwavering commitment to workplace safety and health deserve recognition, and, through VPP, OSHA is able to provide this important acknowledgment of their efforts. To that end, OSHA publicizes the success of VPP participants through stories on the agency's web site, press releases, and recognition in the speeches of OSHA officials.

#### *History*

OSHA's Voluntary Protection Program has a long and honorable history. In creating OSHA, Congress wisely gave the agency substantial flexibility to use a mix of enforcement, standardsetting, compliance assistance, and voluntary programs to achieve the goal of protecting our nation's workforce. The VPP, which launched in 1982, is one of the components of this programmatic mix.

VPP recognizes employers and workers, in both private industry and the Federal Government, who have implemented safety and health management systems and maintained injury and illness rates below the national average for their industries. Through VPP, OSHA works cooperatively with management and labor to prevent occupational injuries, illnesses and deaths. VPP participant worksites maintain comprehensive injury and illness prevention programs that share a number of important elements, including: (1) management commitment and worker involvement; (2) worksite analysis; (3) hazard prevention and control; and (4) training. In our experience, employers who qualify for VPP generally view OSHA standards as establishing a minimum level of safety and health performance; they often go beyond OSHA requirements in protecting their workforce, and involve their employees in all aspects of the health and safety process.

#### *How VPP Works*

Employers seeking to participate in VPP must submit a written application and undergo a rigorous on-site evaluation by a team of safety and health professionals. In addition, union support is required for applicants represented by a bargaining unit. There is no single correct way to meet the VPP application requirement. VPP Managers are stationed in each of OSHA's ten Regional offices to offer advice and guidance on completing the application process. Successful applicants will demonstrate health and safety management systems that work for their specific work activities and hazards. In completing the application process, OSHA encourages employers to submit existing documentation to the extent possible, rather than create a large quantity of new materials.

Once an application for VPP has been reviewed and accepted by the Region, an on-site evaluation is generally conducted within six months. If there are no items that need improvement, the applicant typically receives a formal approval letter three to eight months after the on-site evaluation. Initial approval is valid 30-42 months for a Star site, 18-24 months for a Merit site, and 12-24 months for a Demonstration site. Resource limitations may impact the approval process, including to the review of applications, scheduling onsite evaluations, finalizing onsite evaluation reports, and approving sites. OSHA has been able to meet the goals established in its Operating Plan and Budget for completing new VPP approvals, but recognizes that the length of time for approving new sites is of concern to applicants, and we are working to address this issue. The agency also is working to address the backlog of reapproval evaluations. Because of the VPP's rapid growth since 2003, reapproval evaluations for a considerable number of VPP participants were due during the last few years. This demand led to a backlog in conducting reapproval visits. OSHA has

focused on reducing the reapproval backlog and anticipates eliminating it by the end of 2012.

Generally, an on-site evaluation takes 3 to 5 days and utilizes 2 to 6 staff, including Special Government Employees (SGEs), who are specially-trained private-sector and government employees from existing VPP members and that supplement OSHA's resources to help bring in new participants and reapprove current participants. On-site evaluations at shipyards, refineries, or other sites with activities that fall under the OSHA Process Safety Management standard can take considerably longer—up to 10 work days. On-site visits are conducted as part of both the VPP approval and reapproval processes.

Participation in VPP does not diminish an employer's responsibilities or the rights of employees under the OSH Act. VPP participants are exempt from OSHA programmed inspections while they maintain their VPP status. These worksites still will be inspected, however, when three hospitalizations or a fatality occurs, or when employees file a formal complaint about workplace hazards.

If an onsite evaluation reveals a hazard that endangers the health and safety of employees, the onsite evaluation team must add the hazard to a written list of uncontrolled identified hazards. If the VPP participant cannot correct the identified hazard before the conclusion of the onsite evaluation, then the hazard will be assigned as a 90-day item. If a VPP participant refuses to correct the noted hazard, the worksite in violation is referred to OSHA enforcement for an inspection and appropriate remedial measures, including sanctions, fines, and termination from the program.

OSHA currently approves qualified employer VPP sites for participation in one of three programs. The first, Star, provides recognition for companies that demonstrate exemplary achievement in the prevention and control of occupational safety and health hazards and the development, implementation and continuous improvement of their safety and health management system. Worksites in the Star program have achieved injury/illness rates at or below the national average for their industries. These sites are self-sufficient in their ability to control hazards. Star participants are re-evaluated every 3 to 5 years, but their incident rates are reported to OSHA and reviewed annually.

Merit recognizes companies that have developed and implemented good safety and health management systems, but need to take additional steps to achieve Star quality.

Demonstration recognizes companies that operate effective safety and health management systems that differ from current VPP requirements. Demonstration status provides the opportunity for employers to show the effectiveness of alternative methods of achieving safety and health management excellence. For example, employers with Demonstration status can test the potential of a new approach to hazard reduction within VPP. Demonstration status also recognizes the potential for such purposes as exploring the application of VPP in an industry where it isn't commonly utilized.

As of May 31, 2012, there were 2,374 total active VPP sites (Federal and State) protecting more than 911,000 workers. This figure has more than doubled since 2003. VPP participants can be found across the entire spectrum of American industry—from manufacturing to chemicals, and construction to motor freight transportation, including Federal worksites such as Hanscom Air Force Base in Bedford, Massachusetts.

VPP participants are models for effective employee protection in their respective industries. The most obvious evidence of the program's success is the impressive reduction in occupational injury and illness rates, as well as reduced workers' compensation costs and decreased employee turnover. Participants speak often of the "cultural transformation" that often occurs during the VPP application process.

Data shows that site-based non-construction participants' Total Case Incident Rates (TCIR i.e., the total number of nonfatal recordable injuries and illnesses that occur per 100 full-time employees) of VPP members are 45 percent below the Bureau of Labor Statistics (BLS) rates. The Days Away from Work, Restricted Work Activity, or Job Transfer (DART, i.e., the rate of injuries and illnesses that result in workers having days away from work, restricted work activity, and/or a job transfer) rates are 56 percent below the BLS rates for their respective industries. For site-based construction and mobile workforce participants, TCIR are 60 percent below the BLS rates, and the DART rates are 56 percent below the BLS rates for their respective industries. Fewer injuries and illnesses mean greater profits for employers as workers' compensation premiums and other costs, such as downtime, are reduced. Industries gain from VPP because VPP participants set an example for other companies. For its part, OSHA also gains a corps of ambassadors who are en-

thusiastic about the message of safety and health management and who are eager to share their success stories with others.

In light of the success of the Federal VPP, OSHA has encouraged State plans to establish parallel programs. I am pleased to report that all State plans have done so. Although State VPPs are similar to the federal program, they may have different participation categories, processes and criteria. In particular, we note that some States include programs that closely correspond to OSHA's Star program.

OSHA is also increasing the use of its valuable Special Government Employee (SGE) Program in VPP evaluations. SGEs are employees of VPP firms that assist OSHA in evaluating the worksites of other potential VPP applicants. Prospective SGEs must be approved by OSHA, funded by their companies, and complete a three-day OSHA training course before these qualified volunteers are sworn in as SGEs. VPP worksites and their companies generously support their employees' SGE participation. As of May 31, 2012, there were 1,277 SGEs. In FY 2011, 63 percent of VPP Evaluation Teams used SGEs. The SGE Program encompasses the spirit of VPP's cooperation among industry, labor, and the federal government. This cooperation, in turn, embodies the idea of continuous improvement, which allows SGEs to bring a unique perspective to the team effort and take back to their individual worksites ideas and best practices to further improve worker protections.

To recognize the significant value SGEs bring to VPP and OSHA, each year OSHA presents its National SGE of the Year Award to an SGE who epitomizes and exhibits exceptional support, time, effort, and action in furtherance of VPP. The awardee is actively involved in volunteer activities that benefit the VPP and its stakeholders, and demonstrates outstanding commitment to the VPP ideal of cooperative partnership. The 2011 SGE of the Year Award was presented to Gilbert Aceves, a certified welder, certified electrician, and Production Lead Person at Morton Salt Inc., in Long Beach, California.

#### *VPP Success Stories*

The VPP has produced many success stories. Among them is the Nucor Corporation, the largest manufacturer of steel products in North America, which began participating in the program in 2007. When one division in Decatur, Alabama, first applied, the goal was simply to be recognized as a VPP participant. As described by management, however, what actually happened at the plant was an evolution of safety. VPP sparked a process of improvement that turned into the ultimate team-building exercise. Within several years, the TCIR and DART rate were 83 percent and 80 percent, respectively, below the national average for the steel industry. Today, the site's TCIR is 86 percent below the industry average and the DART is 89 percent below.

Hypertherm, a precision turned product manufacturing company, located in Hanover, New Hampshire, is similarly representative of VPP success. The company, recognized by OSHA Assistant Secretary David Michaels in April 2011, is characterized by: a culture of safety with management leadership and worker involvement, including a company CEO who attends the worksite's safety council meetings; a priority given to fixing hazards before someone gets hurt; adoption of VPP's model safety and health management system; and a safety and health team that includes a professional ergonomist, process engineer, wellness staff, and safety coordinator. In significant part because of its safety culture, Hypertherm was voted "Best Place to Work" by Business New Hampshire magazine.

#### *Difficult Decisions*

Despite its enormous success, there are serious issues with VPP that we are striving to address. First, in these challenging economic times, OSHA must struggle to meet competing priorities and balance our resources. Make no mistake: the Department of Labor is committed to VPP, as well as OSHA's other cooperative programs, but like every other Federal agency, we need to make some very hard decisions about how to allocate our limited resources where we will get the most worker protection "bang for our buck." Our challenge, therefore, is to maintain an active, quality VPP while also providing assistance to small businesses, help for vulnerable workers, support to enable workers to exercise their rights under the law, and an active enforcement program that focuses on the worst offenders—the companies that don't get the message, continue to ignore the law, and needlessly put workers' lives in jeopardy.

Regarding the importance and effectiveness of OSHA's enforcement programs, recent studies confirm the effectiveness of enforcement in ensuring the safety and health of workers. We were very heartened by research from Michael Toffel and David Levine, business school economists at Harvard University and the University of California, respectively, which demonstrates OSHA workplace inspections not

only improve safety, but also save billions of dollars for employers through reduced workers' compensation costs. The study, entitled "Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss,"<sup>1</sup> reports that companies subject to random inspections by CAL/OSHA showed a 9.4 percent decrease in injury rates compared with uninspected firms in the four years following the inspection. With no evidence of a negative impact on jobs, employment, or profitability of the inspected firms, the decrease in injuries led to a 26 percent reduction in workers' compensation costs—translating to an average savings of \$350,000 per company. Savings were observed among both small and large employers, and, if extrapolated to the full, nation-wide extent of OSHA inspection activities, would amount to savings of roughly \$6 billion nationwide. These findings lend support to our belief that OSHA regulatory enforcement save lives while reducing workers' compensation costs for American businesses.

Other studies examining the effectiveness of OSHA's enforcement scheme yield similarly encouraging results. In a study of Pennsylvania manufacturing from 1998-2005, John Mendeloff and a group of researchers associated with the RAND Corporation and the University of Pittsburgh,<sup>2</sup> found that OSHA inspections which resulted in penalties reduced injuries by an average of 19-24 percent annually in the two years following the inspection. And researchers affiliated with the Safety and Health Assessment and Research for Prevention Program of the Washington State Department of Labor and Industries found that Washington State OSHA inspections made a significant contribution to reducing workers' compensation rates and costs in the year following an inspection.<sup>3</sup>

#### *On-site Consultation and SHARP*

In order to support small businesses that may not be able to afford in-house safety and health expertise or hire an outside consultant, OSHA invests significant resources in the state-based On-site Consultation Programs, which offer free and confidential advice to small and medium-sized businesses who are looking to create or improve their injury and illness programs. In FY 2010, for example, the On-site Consultation program conducted over 30,000 visits to worksites covering over 1.5 million workers nationwide, with priority given to high-hazard worksites. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs.

The On-site Consultation Program's Safety and Health Recognition and Achievement Program (SHARP) is another particularly effective use of the agency's resources. SHARP recognizes small employers who operate exemplary injury and illness prevention programs and serve as a model for workplace safety and health. Upon receiving SHARP recognition, OSHA exempts a worksite from programmed inspections during the period that the SHARP certification is valid. You are probably aware that the On-site Consultation program, with its SHARP exemptions from programmed inspections for employers who do the right thing, received a significant increase in funding from Congress in FY 2012. The President has proposed to maintain that increase in his FY 2013 budget request.

#### *Whistleblower Program*

We have also found it necessary to increase resources for our Whistleblower program. 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. Thus, the OSH Act relies heavily on workers to help identify hazards at their workplaces and to work with their employers to control those hazards.

But Congress also understood that workers are not likely to participate in safety and health activities, or report on hazardous conditions, if they fear that they will lose their jobs or otherwise be retaliated against as a result of their activities. For this reason, section 11(c) protects employees from discrimination and retaliation when they report safety and health hazards or exercise other rights under the OSH Act—one of the first safety and health laws to contain a provision for protecting whistleblowers.

<sup>1</sup> Levine, D, Toffel, M., Johnson, M. Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss, Science 18 May 2012: Vol. 336 no. 6083 pp. 907-911

<sup>2</sup> Haviland, A. M., Burns, R. M., Gray, W. B., Ruder, T. and Mendeloff, J. (2012), A new estimate of the impact of OSHA inspections on manufacturing injury rates, 1998–2005. Am. J. Ind. Med. doi: 10.1002/ajim.22062

<sup>3</sup> Foley, M., Fan, Z. J., Rauser, E. and Silverstein, B. (2012), The impact of regulatory enforcement and consultation visits on workers' compensation claims incidence rates and costs, 1999–2008. Am. J. Ind. Med. doi: 10.1002/ajim.22084



Since the OSH Act was enacted in 1970, Congress has charged OSHA with enforcement responsibility for 20 additional whistleblower anti-retaliation statutes. Together, these laws protect employees who report violations of trucking, airline, nuclear power, pipeline, environmental, rail, mass transit, maritime safety, consumer product safety, and securities laws that are of fundamental importance in protecting the health, safety and well-being of all Americans.

Despite the increase in OSHA's statutory responsibilities, the staff charged with enforcing these laws did not grow significantly until FY 2010, when 25 whistleblower investigators were added to OSHA's ranks. Since 2010, however, four new whistleblower laws have been added to OSHA's enforcement program. It is vitally important that American workers feel safe to report threats to their own safety and to public safety, and, if their whistleblowing activities adversely affect their employment, they should not have to wait years for their cases to be heard.

#### *Integrity of VPP*

We understand there are concerns that VPP is not growing as quickly as it has in the recent past. As I outlined above, this is, in part a result of resource limitations. However, it is also attributable to OSHA's concern with maintaining the integrity of the program. VPP is recognized and respected as a quality program, one that recognizes the best of the best—companies that excel in safety and health and show that it is possible for businesses to be both profitable and safe.

Nevertheless, if the integrity of this program is compromised, it doesn't matter how many participants the program has or how fast it is growing. Over the past years, unfortunately, the program has faced very difficult challenges in this area. During the middle of the last decade, VPP grew so rapidly—more than doubling since 2003—that the high number of reapprovals required as a result of that growth has put a serious resource strain on the agency's resources. As previously mentioned, we are now forced to devote most of our VPP resources toward conducting those reapprovals to ensure that everyone in the program deserves to stay in the program.

Moreover, when injury and illnesses numbers start rising; when significant incidents occur; when serious violations are identified; or, when VPP policies are violated, OSHA must be ready to take swift action. As the Center for Public Integrity pointed out in 2011, there had been numerous fatalities at VPP sites since 2000, and no action was taken against the participating companies, even in some cases where the fatalities were linked to serious or willful violations. They also found that some companies were retained in the VPP, even when their injury and illness rates were worse than the averages for their respective industries.

The Government Accountability Office (GAO) identified these VPP integrity concerns in two reports, issued in 2004 and 2009. In its first report, GAO warned that the VPP was growing faster than OSHA's resources might be able to sustain. And in 2009, GAO found that OSHA did not have sufficient internal controls to ensure the quality of VPP worksites, and that its oversight of VPP sites was limited. For example, GAO reported that OSHA had not been following through with appropriate action when fatalities or serious injuries occurred at VPP sites.

GAO made three key recommendations in its 2009 report:

1. Develop a documentation policy for information on actions taken by OSHA's regions in response to fatalities and serious injuries at VPP sites.
2. Establish internal controls that ensure consistent compliance by the Agency's Regions with VPP policies.
3. Develop goals and performance measures for the VPP.

In response to these recommendations, OSHA issued five Policy Memoranda designed to strengthen the management and internal control of VPP. In August 2009, for example, we specified the actions National and Regional offices must take to improve administration of VPP, including verification of the quality of VPP self-evaluations that are required each year, as well as the quality of regional review of VPP sites.

In November 2009, we clarified the conduct expected of VPP evaluators. Dr. Michaels then issued a second memorandum in November 2009 clarifying the process through which OSHA's Regional offices must notify VPP participants and their union representatives of site reapprovals. This memorandum also specified the procedures for reconciling injury/illness data on the OSHA log required of employers with data submitted to OSHA during annual self-evaluations. And in February 2011, we clarified the policy and procedures under which VPP participants are to submit annual data.

To ensure compliance with these new policies, OSHA's National office reviews all fatality information submitted by the Regions and maintains up-to-date information on the status of each incident in its VPP fatality database.

OSHA also initiated annual audits of Regional offices' VPP participant files to ensure that participant files properly document the occurrence of a fatality or serious injury. The participant file audit requires each Region to submit copies of specified VPP files to the National office for review. Upon completion of the audit, a memorandum of findings documents the results.

In addition, we updated the Management Accountability Program (MAP) on September 15, 2010. The MAP contains an annual audit, performed by each Region, to ensure that field offices follow national program policies and procedures, including those established for VPP. In particular, the updated MAP incorporates VPP program enhancements, such as required Regional actions and documentation in response to a fatality or serious injury at a VPP site.

#### *Safety Incentive Programs*

In April 2011, due to our concern about workplace policies and practices that can discourage workers from reporting injuries, and following discussions with VPPPA leadership, OSHA clarified the policy and procedures governing the review of safety and health incentive programs run by VPP participants and applicants. After additional discussion with the VPPPA, OSHA further refined that policy in June of 2011. The new instruction states that incentive programs at VPP worksites should promote safety awareness and worker participation and should not contain features that have the potential to discourage reporting.

Some incentive programs—especially those based on injury and illness rates—discourage workers from reporting injuries. We've seen companies, for example, offer a pizza party or enter workers into a raffle if they meet a goal of not incurring reportable injuries over a specified period of time. Programs like these, while possibly well intentioned, ultimately discourage workers from reporting injuries because they want to receive the reward or do not want to be perceived as having ruined it for everyone. Unreported injuries that are not investigated cannot be used to help prevent future injuries. This is not what we want and ultimately, I do not think it is what VPP participants want, either.

But we certainly are not opposed to all incentive programs. On the contrary, a positive incentive program that encourages or rewards workers for serving on safety and health committees, completing safety and health training, or reporting injuries, illnesses, near-misses, or hazards can encourage worker involvement in a safety and health management system. An incentive program that encourages positive employee involvement is a valuable component of a VPP-quality safety and health management system.

Since the policy was implemented a year ago, most companies with impermissible incentive programs have voluntarily withdrawn them. In a very few cases, however, we have been forced to terminate their participation. This is unfortunate, but we believe that VPP companies must lead the way, promoting safety programs that do not discourage reporting.

Ensuring that workers can report injuries or illnesses without fear of negative consequences is crucial to protecting their safety and health. If workers don't feel free to report injuries or illnesses, an entire workforce is put at risk: employers don't learn about and correct dangerous conditions that have resulted in injuries, and injured workers may not receive proper medical attention or workers' compensation benefits to which they are entitled.

An April 2012 GAO report confirmed these problems with rate-based incentive programs. The GAO recommended that OSHA:

“Implement criteria on safety incentive programs and other workplace safety policies across all of its cooperative programs such as VPP and SHARP. The criteria should be consistent with the most recent VPP guidance memorandum that prohibits employers with safety incentive programs that focus on injury and illness rates from participating in the program.”

As part of OSHA's comprehensive response to GAO, as well as the ongoing VPP improvement process, we are refining internal controls and doing a better job measuring program effectiveness. A VPP Workgroup, composed of personnel from both OSHA Headquarters and the Regions, has reviewed several issues, including consistency in VPP administration, response to fatalities on VPP sites, speeding up the approval process, use of limited resources, and the cost of administering the program.

A draft report and recommendations based on an internal management review of the program was submitted to the Assistant Secretary in November 2011. OSHA has already begun work on key changes to strengthen the program's effectiveness and integrity, many of which were recommended the review. In particular, the Workgroup report focused on ensuring the program's continued value and relevance

as a model of excellence; identifying changes in policy, performance requirements, and procedures that will improve the program and maintain its integrity; operating the program consistently throughout the 10 OSHA Regions; and finding ways to address resource issues without compromising VPP's rigorous standards and requirements.

*Conclusion*

Mr. Chairman, VPP is an integral part of the toolbox which the Congress has provided to OSHA to accomplish our mission. We must have strong enforcement for those employers who simply will not adequately protect their workers' safety and health, as well as provide needed assistance to small employers and vulnerable workers. But we must also continue to recognize and reward employers who go beyond OSHA's requirements in protecting their employees. Since its inception, VPP has demonstrated its value in advancing this primary goal. We are extremely proud of this program and are working every day to strengthen it. VPP will continue to have the Department of Labor's full support.

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Chairman WALBERG. Thank you.  
Mr. Henson.

**STATEMENT OF ROB HENSON, PROCESS TECHNICIAN,  
LYONDELLBASELL**

Mr. HENSON. Thank you, Chairman Walberg and Ranking Member Woolsey. Thank you for allowing me to be here this morning on behalf of the Voluntary Protection Programs Participants' Association and to testify before you today and for all your efforts on behalf of working Americans everywhere.

I would also like to express my sincere gratitude that you have taken the time to highlight the tremendous impact that the Voluntary Protection Programs have had for approximately 1 million workers like myself across the United States. And it is through these combined efforts of Occupational Safety and Health Administration and management and labor that this is possible.

As was stated earlier, I work as a process technician for LyondellBasell in Channelview, Texas. It is a very large chemical processing facility employing nearly 2,000 people. We manufacture a wide variety of chemicals which are used in countless products across the globe. We have been a participant in the OSHA VPP program for nearly 20 years.

Management leadership and employee involvement, work site analysis, hazard prevention and control and safety and health programs, which are the elements of VPP, have been a major reason why the Channelview facility is one of the safest places to work. In fact, our year to date total recordable injury rate, or our TRIR, is about a 0.30 at this time. This is approximately eight times lower than the chemical industry average of 2.4 based upon Bureau of Labor and Statistics latest information.

VPP is all about developing a culture of safety and health excellence, actively safeguarding personal lives and livelihoods and also those of your coworkers, family and community. Cooperation extends beyond the work site to include industry and community outreach. The culture and mindset of our employees is that everyone that enters our facility will go home at the end of the day as safe and sound as when they arrived. Safety is a truly number one priority at my facility. Anyone in our plant has the right and the obligation to stop and question anything that they feel may lead to an

injury or unsafe condition. This not only applies to LyondellBassell employees, but to our contractors as well.

Participation in the VPP program has allowed our safety and health programs to be driven by the employees. Everyone has the opportunity and expectation to participate in a variety of safety programs. Management has provided us with all the tools and training materials we need not only to perform our jobs safely, but to also recognize potential hazards and to take actions to eliminate the problem before an accident occurs.

As an operator in the field, I have the authority to initiate and execute the shutdown of the unit, and this is without any fear of reprisal from management, if I feel that the safety and health of myself or my coworkers may be in jeopardy. This is the culture that exists at a VPP site.

There are a lot of values of the program and not enough time today to discuss all of them. But I would like to share one success story today about a major U.S. company as told to me by the safety and health manager of the New England branch. It had been determined that this branch was to be shut down and relocated overseas where production costs were cheaper. As of today, this operation is still open for business in the same location, and the reason is due to a reduction in worker compensation costs brought on by participation in the VPP program. It became cheaper to produce their products in the United States than to send it overseas. The Voluntary Protection Program not only saves lives but saves jobs as well.

The spirit of cooperation between OSHA, management and labor, which is the foundation of the VPP program, has been an extraordinary success. Those who choose to participate are leaders in safety and health and are proactive in protecting workers.

Last week, I had the opportunity to attend the Region 4 VPP conference in Chattanooga, Tennessee. And at that conference there was an OSHA official who stood before the group, and I would like to tell you some of the comments that he made. He stated that if my children had the choice of working at a VPP site or a site where OSHA had made compliance visits, he would, without a doubt, recommend the VPP side for his children.

I would like to thank you once again for allowing me to be here today and hope for your continued support in this very important program. Thank you.

[The statement of Mr. Henson follows:]

**Prepared Statement of Rob Henson, Process Technician, LyondellBassell**

Thank you Chairman Walberg, Ranking Member Woolsey and members of the subcommittee for inviting me on behalf of the Voluntary Protection Participants Association (VPPPA) to testify before you today and for all your efforts on behalf of working Americans everywhere. I would also like to express my sincere gratitude that you have taken the time to highlight the tremendous impact that the Voluntary Protection Programs (VPP) have had for approximately one million workers like myself across the United States through the combined efforts of the Occupational Safety and Health Administration, management and labor.

I work as a process technician for LyondellBasell in Channelview, Texas. This is a very large chemical processing facility with about 2,000 employees. We manufacture and process a variety of chemicals which are used in countless products by consumers across the globe. We have been a participant in the OSHA VPP program for nearly twenty years. Management leadership and employee involvement, work-site analysis, hazard prevention and control, and safety and health programs, which

are the elements of VPP, have been a major reason why the Channelview facility is one of the safest places in the world to work. In fact our YTD Total Recordable Injury Rate (TRIR) is about a 0.30. This is approximately 8 times better performance than the chemical industry average of 2.4 based upon the Bureau of Labor and Statistics latest information.

VPP is about developing a culture of safety and health excellence, actively safeguarding personal lives and livelihoods and also those of your coworkers, family and community. Cooperation extends beyond the worksite to include industry and community outreach. The culture and mindset of our employees is that everyone that enters our facility will go home at the end of the day as safe and sound as when they arrived. Safety is truly the number one priority. Anyone in our plant has the right and obligation to stop and question anything that they feel may lead to an injury or unsafe condition. This not only applies to LyondellBasell employees, but to all of our contractors as well.

Participation in the VPP program has allowed our safety and health programs to be driven by the employees. Everyone has the opportunity and expectation to participate in a variety of ways. Management has provided us with all the tools and training materials we need to not only perform our jobs safely, but to also recognize potential hazards and take action to eliminate the problem before an accident occurs. As an operator in the field, I have been given the authority to initiate and execute the shutdown of a unit, without any fear of reprisal from management, if I feel that the safety and health of me or my coworkers may be in jeopardy. This is the culture that exists at a VPP site.

There are many values of the VPP program and not enough time to discuss them all today. I would like to share a success story with you today about a major U.S. company as told to me by the safety and health manager of the New England branch. It had been determined that this branch was to be shutdown and relocated overseas where production costs were cheaper. Today, this operation is still open for business in the same location. The reason for this is due to a reduction in workers compensation costs brought on by participation in the VPP program. It became cheaper to produce their products in the United States rather than overseas. The Voluntary Protection Program not only saves lives, but saves jobs as well.

The spirit of cooperation between OSHA, Management, and Labor which is the foundation of the VPP program, has been an extraordinary success. Those who choose to participate are leaders in safety and health and are proactive in protecting workers. I had the opportunity last week to hear a speech from an OSHA officer at the Region IV VPP conference in Chattanooga Tennessee. He made a comment that I would like to quote. He stated that "if my children had the choice of working at a VPP site or a site where OSHA had made compliance visits, he would without a doubt, recommend the VPP site."

I want to thank you once again for inviting me to be here today. I hope that you will support VPP program's continued success.

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Chairman WALBERG. Thank you.  
Dr. Levine.

**STATEMENT OF DR. DAVID I. LEVINE, TREFETHEN PROFESSOR OF BUSINESS ADMINISTRATION, HAAS SCHOOL OF BUSINESS, UNIVERSITY OF CALIFORNIA-BERKELEY**

Mr. LEVINE. Good morning Mr. Chairman and members of the committee. I am a professor at the Haas School of Business where I taught for 25 years at the University of California Berkeley. To put it mildly, OSHA has always been controversial. While some criticize it for being too lenient, others are concerned that it is a job killer that raises costs and erodes America's competitiveness.

So what, in fact, does OSHA do? Michael Toffel of the Harvard Business School, Matt Johnson of Boston University and I answered this question for one type of OSHA inspection. Our results appeared in *Science*, which is one of the world's most respected academic journals. The inspections we studied protect the health and safety of America's workers. They not only improve safety,

they do it with no discernible costs to employers' survival, staying in business, and no cost to their growth that we could detect.

Our analysis focused on inspections that Cal/OSHA in California conducted at random in dangerous industries. That means our results could be analyzed like a randomized trial, a clinical trial for a drug. This is the most convincing type of evidence when trying to evaluate a program.

Again, the bottom line is the inspections we studied did what they were supposed to do. They reduced the number of injuries recorded to workers' compensation systems by about 9 percent, and they reduced the cost of those injuries in terms of medical care and wage replacement by 26 percent.

How much is that safety worth to employers? I have to go beyond our data, but I can use estimates from the workers' compensation insurer, Liberty Mutual, to add in the indirect costs, the absenteeism and lower productivity. Those estimates imply that each inspection is worth between, very roughly, 98 and 197 thousand dollars for an employer over 5 years. To put those figures in context, the employers we studied had about 34 employees.

If we include lost wages, each inspection averted as much as \$230,000 in social costs over 5 years. If we add a few more assumptions, we can shift the national level. If all the OSHA inspections were as valuable as the ones we studied, the Liberty Mutual estimates imply that OSHA inspections could be saving industry \$9 to \$18 billion a year. If we include lost wages, OSHA inspections could be reducing the total cost of injuries by as much as \$22 billion a year.

This national experiment provided no evidence that the inspections are harming employers. We found no evidence of more bankruptcies, we found no evidence of lower sales or lower employment. These OSHA inspections offer substantial value to employees, their employers and society.

Why has it taken 40 years to get rigorous evidence about the effect of OSHA inspections? It turns out that question is hard. About half of OSHA inspections are workplaces that have had a complaint or an accident. To think that OSHA inspections cause high injuries at these workplaces is like thinking, boy, a lot of people die in hospitals, we would all live longer if we just close down the hospitals.

Fortunately for us researchers, OSHA does some inspections at random in some dangerous industries. Because they are chosen at random, we can get a scientifically valid result by comparing those randomly chosen and those randomly not chosen from the same industry, which is the method we used.

Most government programs, including OSHA's VPP, lack this sort of rigorous evidence. If VPP had a rigorous evaluation demonstrating the cost savings that it claims for employers, more companies would join. I think more generally the executive branch and Congress would have an easier time if major programs routinely provided evidence about what works and what doesn't. With that sort of evidence we could have a government that works better and maybe more cheaply while still protecting the health and safety of workers and all the other functions government pursues.

I thank you very much for inviting me here, and I am happy to answer your questions.

[The statement of Mr. Levine follows:]

**Prepared Statement of David I. Levine, Haas School of Business,  
University of California, Berkeley**

Good morning, Mr. Chairman, and Members of the Committee. My name is David Levine. I am the Trefethen Professor of Business Administration at the Haas School of Business, University of California, and Berkeley. My Ph.D. is from Harvard University, and I have been a professor for 25 years at the Haas School of Business, where I chaired the Economic Analysis and Policy group. I also co-founded the Center for Effective Global Action, which promotes rigorous evaluations of government programs and other projects around the world.

To put it mildly, OSHA has always been controversial. While some criticize it for being too lenient, others refer to it as a job-killer that increases employers' costs and erodes America's competitiveness. What, in fact, does OSHA do?

Matthew Johnson of Boston University, Michael Toffel of the Harvard Business School, and I answered that question for randomized inspections carried out by California's Cal/OSHA. Our results appeared in *Science*, one of the world's most respected academic journals.<sup>1</sup>

The bottom line of our study is simple: We analyzed randomized Cal/OSHA inspections the way scientists analyze a clinical trial. These inspections protect workers' health and safety. The randomly inspected firms experienced 9% fewer injuries and had 26% lower workers' compensation costs than the control group of similar firms.

Workplace inspections cause no discernible damage to employers' ability to stay in business and no reductions in sales or credit ratings, according to our research. Nor did we identify any effects of workplace inspections on employment or wages. These inspections save employers billions of dollars a year, and a figure that only grows when we include injured workers' lost earnings.

*The challenge of rigorous evaluations*

Debates about OSHA's effectiveness have raged for decades. When I learned Cal/OSHA randomly selected some workplaces in dangerous industries for inspections, I felt an obligation to use that natural experiment to study the effects of these inspections.

It is understandable that debates rage on when evidence is scarce. It is less understandable why, 40 years after its founding, so little rigorous evidence exists on the effects of OSHA's activities. The government—and taxpayers—would have a much better understanding of which policies and regulations work well if policymakers built rigorous evaluations into many more programs. We have moving stories of regulatory successes and failures, of jobs lost and jobs saved. We have no way to know how well those stories generalize of what would have happened with stricter or less strict regulations or inspections.

Rigorous evidence is lacking in part because it is difficult to measure the causal effect of OSHA inspections. One challenge arises because many OSHA inspections target workplaces with recent accidents or safety complaints, and these workplaces often have ongoing safety problems. Thus, workplaces with inspections often have injury rates that are higher than workplaces without inspections, but the inspections did not cause the high injury rates.

A second issue is that workplace injury rates usually decline soon after they experience a big spike upward such as after a serious accident.<sup>2</sup> If the spike induces inspectors to visit, the inspection did not necessarily cause any subsequent decline in injuries.

Fortunately for evaluation purposes, as I noted above, California's Division of Occupational Safety and Health (Cal/OSHA) randomly selected workplaces in dangerous industries for inspections from 1996 to 2006.<sup>3</sup> From a scientific perspective, this randomization lets us analyze our data as would data from a clinical trial for a new drug. The resulting randomized controlled trial is the "gold standard" for evaluation, the most convincing type of evidence when measuring the effects of a program. Randomization is important because on average the randomly inspected firms and the control group of firms we identified are identical except for the luck of the "flip of a coin" that determined whether they were inspected or not. That similarity makes it possible to compare trends in the two groups and be confident that inspections are responsible for any major differences.

An additional challenge for rigorous evaluation is that most previous studies that examined how inspections affect injury rates have relied on the injury logs that OSHA requires these companies to maintain. This data source can be problematic because OSHA inspections often find record-keeping is incomplete and mandate

more complete recordkeeping. If you looked at the injury trends recorded in these logs, it could seem as if inspections caused higher injury rates, simply because the company began documenting a greater proportion of the injuries that were occurring. For example, the injury rates reported by very large manufacturing plants more than doubled in the late 1980s after OSHA imposed multi-million dollar fines on a few large plants for poor recordkeeping.<sup>4</sup>

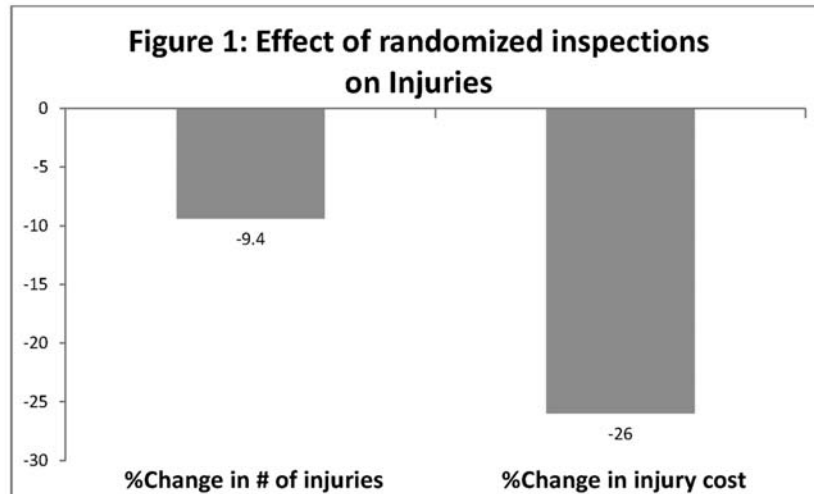
To avoid this problem we analyze injury data from the workers' compensation system. Unlike OSHA-mandated logs, OSHA inspections do not change incentives for workers' compensation recordkeeping.

While injuries are important, so are the costs of reducing those injuries. Thus, in addition to injuries we also analyze company survival, credit ratings, sales, employment and total payroll to look for unintended harms from inspections.

Our research paper and supplementary materials detail how OSHA randomizes inspections and how we constructed our dataset of 409 inspected firms and 409 controls. Our sample is single-plant firms in hazardous industries in California. Each control firm is from the same industry and region of the state as a randomly inspected firm. If we had multiple potential controls we selected the firm most similar in employment prior to the inspection.

#### *Results on injuries and injury costs*

Cal/OSHA's randomized inspections work as intended. Our analysis indicates that on average randomized inspections reduce annual injuries by 9.4 percent (Figure 1). This estimate of the decline in injuries due to inspections was similar when we used a several different statistical models and looked at several subsets of the data. There was also evidence that the declines persist for at least 5 years (the longest period we studied).



*Note:* Results from Table 1 of the accompanying article, comparing trends at 409 randomly inspected firms and 409 controls. The decline in injury count is statistically significant at the 5% level and in injury costs at the 1% level.

#### *Results on unintended consequences*

Even if the benefits are large, it is crucial to know how much employers pay for these improvements in safety. Employees also want to know how much (if at all) inspections threaten wages or employment (for example, if improving safety raises costs substantially).

We find very similar survival rates for randomly inspected firms and the control group. Specifically, 4.4 percent of the randomly inspected firms did not survive until 2006, compared to 5.6 percent, of control firms. The inspected firms had a slightly higher survival rate, but the difference is not statistically significant. Results were similar in analyses that control for pre-inspection characteristics (see Table S7).

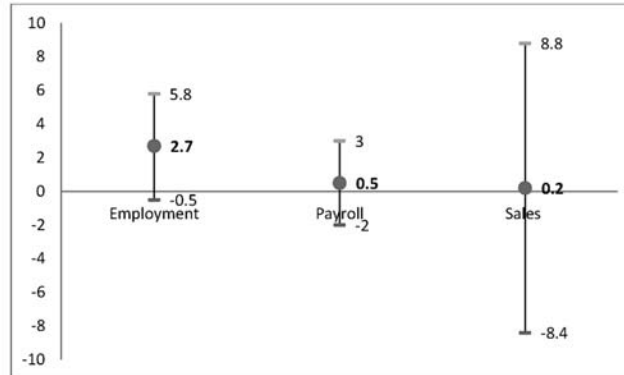
We also assessed whether inspections might lead companies to become financially stressed, as measured by two Dun and Bradstreet indicators of whether a company is a good credit risk. The results hint that inspections increase creditworthiness a



tiny amount—but the estimates are nowhere near statistically significant (Table S8).

To assess whether random inspections might have impeded firm growth, we examined employment, payroll, and sales (Figure 2). There is no evidence that randomly inspected firms had slower growth in employment, total earnings, or sales than control firms.

**Figure 2: The Effects of Randomized Inspections on Firm Growth (%changes)**



*Note:* Results from Table 2 of the accompanying article, comparing trends at 409 randomly inspected firms and 409 controls. The middle figure is the point estimate of the %change in the outcome due to the randomized inspection. The bars indicate the 95% confidence interval. None of the estimated effects of inspections are statistically significant at the 10% level.

#### Discussion

In sum, workplaces that Cal/OSHA chose for a random inspection subsequently experienced substantially lower injury rates and workers' compensation costs compared to a matched set of workplaces that were eligible for but not chosen for a random inspection. The lower injury rates endured several years following the inspection.

These results are broadly consistent with recent findings of most, but not all, previous research on OSHA inspections.<sup>5</sup> While those studies were typically careful, none had a randomized design that separates the factors that led to the inspections with the effects of the inspections.

It is interesting to calculate the savings employers enjoy from lower injuries. The workers' compensation insurer Liberty Mutual's estimates that each dollar of direct workers' comp costs implies employers pay 2-5 additional dollars of indirect costs (e.g., from lower productivity). Using our sample's mean workers' compensation costs and estimated cost reduction following inspections implies a randomized Cal/OSHA inspection averts \$98,000 to \$197,000 in direct and indirect costs to employers and their insurers.<sup>6</sup>

If we also include lost wages for employees, then (with many assumptions) our point estimate on injury costs implies that on average the reduction in injuries in the five years following a workplace inspection reduces medical costs and lost production and earnings by roughly \$230,000 (in 2011 dollars).<sup>7</sup> This estimated five-year total is roughly 10 percent of the average annual payroll of this sample of employers.

State and Federal OSHA's conduct about 100,000 inspections per year (96,956 in 2006, for example). Most of these inspections are carried out by different regulators from the one we studied. In addition, about half of the inspections are conducted in response to complaints or accidents, not randomized within hazardous industries. With those differences in mind, if all these (non-repeat) inspections happened to be as useful as those we studied, Liberty Mutual's estimate on the indirect costs of injuries that employers bear implies OSHA inspections could save industry \$9 to \$18 billion per year.<sup>8</sup> Including employees' lost wages gives a very rough estimate that state and Federal OSHA inspections could avert as much as \$22 billion in costs of injuries and illnesses per year.<sup>9</sup>

While we cannot rule out unintended consequences such as lower employment or earnings, we find no evidence that inspections harmed employees or employers. The estimates taken literally suggest inspections increase firm survival, credit rating, employment, payroll, and sales, though all coefficients are small and none approach statistical significance.

Our results are also indirectly somewhat informative about the value of OSHA regulations (and Cal/OSHA's sometimes-stricter regulations). Imagine a scenario where most regulations were costly for employers, but did little to improve safety. In that situation, inspections enforcing those regulations would have few safety benefits and would impose high costs. These costs, in turn, would lead to slower firm growth, job losses and plant closures. In fact, we found the opposite: randomized inspections led to substantial safety benefits and no detectable job loss or plant closure. Thus, our results imply that on average the Cal/OSHA regulations that employers comply with due to inspections are not poorly designed and costly.<sup>10</sup>

#### *Much more to learn*

Our study has examined only a subset of companies (single-establishment firms in high-hazard industries and with at least 10 employees) in one region (California), and an enforcement activity (not consultations or voluntary programs). We also examined only a single type of enforcement action: a randomized inspection, not those driven by complaints or by serious accidents. And we studied just one workplace-safety regulator, Cal/OSHA. Our method also does not measure the impact that the threat of an inspection might have on other workplaces, or the costs and benefits of regulations that are complied with regardless of inspections.

It is important to replicate this study in other settings and to use other rigorous study designs to examine the generalizability of our results. Ideally, Congress and the Executive branch would encourage all major programs to build more learning into their programs. Regulators can also share more data (with appropriate protections of confidentiality) to facilitate independent evaluations and could also facilitate partnerships with organizations that have helpful ancillary data, such as agencies with data from the worker's comp system. In addition, an important complement to statistical studies is qualitative research that examines how workplace regulations and inspectors affect workers and employers.

As the GAO has emphasized, it is crucial that rigorous evaluations be conducted for voluntary programs as well as enforcement.<sup>11</sup> OSHA reports that VPP participants have injury rates far below their industry average.<sup>12</sup> However, this encouraging news is not convincing evidence of whether VPP causes improvements in workplace safety because having an injury rate below the industry average is a requirement both to join and to remain in the VPP.<sup>13</sup>

Rigorous evidence showing VPP saves companies money would help encourage more employers to join. Rigorous evidence is equally important for policy-makers, in part because voluntary programs are not always effective. For example, two studies that evaluate environmental self-regulation programs find no evidence they are effective at improving environmental performance.<sup>14</sup> More encouragingly, studies have shown that the EPA's voluntary Audit Policy leads to improved compliance on average<sup>15</sup> but even it is not effective under all circumstances.<sup>16</sup>

Many of the rigorous evaluation techniques I am advocating for were invented roughly a century ago, in large part to study how to improve farm productivity. While hardly the only factor, you all know trends in agricultural productivity in the U.S. in the last century. In the last half century pharmaceutical companies have run over a million randomized trials, and the resulting discoveries are a significant contributor to improving and lengthening lives. Nowadays high-tech firms such as Intel and Google run thousands of randomized experiments each year.

The OMB has recently pushed all Executive Branch agencies to build rigorous evaluations into a substantial share of their programs.<sup>17</sup> My understanding is that OSHA has begun its own randomized trial. While the Executive Branch actions are helpful, Congress has to choose to take a leadership role and encourage even more major programs to demonstrate their effectiveness. Our government could spend more wisely, and potentially quite a bit less, if we invested more in learning what is working and what is not.

Thank you, Mr. Chairman and committee members, for the opportunity to appear before you today. I stand ready to answer any questions you might have.

#### ENDNOTES

<sup>1</sup>David I. Levine, Michael W. Toffel and Matthew S. Johnson, "Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss." *Science* 336, 907 (2012).

<sup>2</sup>J. W. Ruser, Self-correction versus persistence of establishment injury rates. *Journal of Risk and Insurance* 62(1), 67 (1995).

<sup>3</sup> California Department of Industrial Relations, 2005 Report on the High Hazard Enforcement Program and High Hazard Consultation Program (Division of Occupational Safety and Health, 2007), <http://www.dir.ca.gov/dosh/enforcementpage.htm>, accessed September 2011.

<sup>4</sup> J. P. Leigh, J. P. Marcin, T. R. Miller, An estimate of the U.S. government's undercount of nonfatal occupational injuries. *Journal of Occupational and Environmental Medicine* 46(1), 10 (2004).

<sup>5</sup> For results finding (some or all) OSHA inspections predict declines in injuries see:

A. Haviland, R. Burns, W. Gray, T. Ruder, J. Mendeloff, What kinds of injuries do OSHA inspections prevent? *Journal of Safety Research* 41(4), 339 (2010).

W. B. Gray, J. T. Scholz, Does regulatory enforcement work? A panel analysis of OSHA enforcement. *Law & Society Review* 27(1), 177 (1993).

J. Mendeloff, W. Gray, Inside the black box: How do OSHA inspections lead to reductions in workplace injuries? *Law & Policy* 27(2), 219 (2005).

A. Haviland, R. M. Burns, W. B. Gray, T. Ruder, J. Mendeloff, A new estimate of the impact of OSHA inspections on manufacturing injury rates, 1998-2005. *American Journal of Industrial Medicine* (2012).

Baggs, B. Silverstein, M. Foley, Workplace health and safety regulations: Impact of enforcement and consultation on workers' compensation claims rates in Washington State. *American Journal of Industrial Medicine* 43(5), 483 (2003).

At the same time, several older studies did not find any relation:

R. S. Smith, The impact of OSHA inspections on manufacturing incidence rates. *Journal of Human Resources* 14(2), 145 (1979).

W. K. Viscusi, The impact of occupational safety and health regulation. *Bell Journal of Economics* 10(1), 117 (1979).

J. W. Ruser, R. S. Smith, Reestimating OSHA's effects—Have the data changed? *Journal of Human Resources* 26(2), 212 (1991).

While careful, none of these studies used a randomized design or other method that assured the inspected firms were similar those in the comparison group.

<sup>6</sup> Workers' compensation costs for medical care and replacing wages averaged \$25,253 per year at the employers we studied. If workers' comp costs fall 26%, that equals savings to employers of \$6566/year, or \$32,829 over 5 years. The workers' compensation insurer Liberty Mutual (2002) reports:

Each injury's indirect costs are far larger than its direct costs. In fact, 56 percent of business executives from a range of geographic locations, company sizes and industries surveyed by the 2001 Liberty Mutual Executive Survey of Workplace Safety reported that businesses faced between \$2 and \$5 of indirect costs for each \$1 of direct costs.

Braun (2002) explains, "Indirect costs are the result of down time, lost production, training replacement workers, scheduling changes, damaged equipment, filling out forms, and so on." Adding in \$2 to \$5 of indirect costs per dollar of direct costs implies a randomized Cal/OSHA inspection averts \$98,000 to \$197,000 in direct and indirect costs to employers and their insurers.

This method does not count lost wages that were not covered by workers' compensation, ignores the under-reporting of injuries (Rosenman 2000; Biddle 1998), and includes data from inspected firms in the mean workers' comp costs. Both this method and the method in the following footnote ignore safety benefits lasting more than four years, any reduction in pain and suffering, and (working in the opposite direction) the discounting of future lower injury rates.

Because we are estimating cost savings I base these calculations on the 26% reduction in workers' compensation costs we estimated in Table 1. Results of this calculation and those of the next 3 footnotes would be smaller, but still large, if we conservatively based the calculations on the estimate of roughly 9.4% fewer injuries due to inspections.

Theodore W. Braun, "Prevention through Design (PtD) from the Insurance Perspective." *Journal of Safety Research* 39 (2008) 137–139 [<http://www.cdc.gov/niosh/topics/ptd/pdfs/Braun.pdf>], last accessed June 19, 2012.

J. Biddle, K. Roberts, K. D. Rosenman, E. M. Welch, What percentage of workers with work-related illnesses receive workers' compensation benefits? *Journal of Occupational and Environmental Medicine* 40(4), 325 (1998).

K. D. Rosenman, J. C. Gardiner, J. Wang, J. Biddle, A. Hogan, et al., Why most workers with occupational repetitive trauma do not file for workers' compensation. *Journal of Occupational and Environmental Medicine* 42(1), 25 (2000).

Liberty Mutual, "Liberty Mutual Releases Latest Workplace Injury Data" *Ergonomics Today*. (April 19, 2002). [<http://www.ergoweb.com/news/detail.cfm?print=on&id=516>], last accessed June 20, 2012

<sup>7</sup> Leigh (2011) estimates the total cost of occupational injuries and illnesses to employees was roughly \$250 billion in 2007. If we divide by 140 million workers, that comes to \$1,786 in costs per worker per year. The high-hazard employers we studied were about 3 times as risky as the average firm in California. If California is as costly and as risky as the rest of the nation, that implies about \$5,357 cost of occupational injuries and illnesses in our sample. With 34 employ-

ees per firm in our sample, injury costs for these companies average about \$183,000 per year. If an inspection reduces all costs by the same 26% we estimate for workers' compensation costs, then a Cal/OSHA inspection averts roughly \$47,000 in lower medical costs and lost wages per year. If the effect lasts five years (as in Table 1, Column 4), the total value to society of each inspection is very approximately \$230,000. The figures here are slightly lower than those in the Science article because we now use estimates of the cost of injuries from Leigh (2011), which appeared after our original calculations.

J.P. Leigh, *Economic Burden of Occupational Injury and Illness in the United States*. Milbank Quarterly, 89(4), 728 (2011).

<sup>8</sup>Footnote 6 estimated each randomized Cal/OSHA inspection saved employers and their insurers an average of \$98,000 to \$197,000 in total costs from occupational injuries. Multiplying by the 96,956 inspections per year (minus 3% for repeat inspections) implies savings to employers and their insurers of roughly \$9 to \$18 billion per year.

<sup>9</sup>Footnote 7 built off of Leigh (2011) and estimated very approximately \$230,000 in reduced medical care and lost earnings due to one Cal/OSHA randomized inspection. Multiplying by the 96,956 (minus 3% for repeat inspections) inspections per year implies a social value of (very approximately) \$22 billion per year.

<sup>10</sup>The increased compliance can be due to fixing a problem that led to a violation, information provided by the inspector, or increased awareness of safety concerns after an inspection.

<sup>11</sup>GAO (2009) OSHA'S Voluntary Protection Programs, GAO-09-395 <http://www.gao.gov/assets/300/290017.pdf>

<sup>12</sup>US Department of Labor, "All about VPP." (2012) [<http://www.osha.gov/dcspp/vpp/all-about-vpp.html>], last accessed June 19, 2012.

<sup>13</sup>The evaluation challenge is made more difficult because even looking at trends is not sufficient. As an illustrative example, consider the extreme case where following the VPP method has no effect on safety. Assume 100 firms with average injury rates for their industries want to receive VPP recognition and so begin implementing the VPP method. Two years later some firms will have injury rates below their industry average, some still near the average, and some above. Only the subset with declines can then join VPP. Even though VPP methods have no effect on injuries in this example, only the firms that purely by chance experienced a downward trend were allowed into the VPP. Thus, we will observe: (1) VPP members have below-average injury rates and (2) prior to implementing the VPP method their injury rates were near the industry average. More generally, no matter how useful the VPP methods are any simple comparison of trends that does not identify those who implemented the VPP methods and failed to qualify will over-estimate the benefits of VPP.

<sup>14</sup>Andrew King and Michael Lenox. 2000. "Industry Self-Regulation without Sanctions: The Chemical Industry's Responsible Care Program." *Academy of Management Journal*, vol. 43, no. 4, pp. 698-716. J. Rivera, P. de Leon, and C. Koerber. 2006. "Is Greener Whiter Yet? The Sustainable Slopes Program after Five Years." *Policy Studies Journal*, vol. 34, no.2, pp. 195-224. J. Rivera and P. de Leon (2004). "Is Greener Whiter? The Sustainable Slopes Program and the Voluntary Environmental Performance of Western Ski Areas." *Policy Studies Journal*, vol. 32, no. 3, 417-437.

<sup>15</sup>Michael W. Toffel, and Jodi L. Short. 2011. "Coming Clean and Cleaning Up: Does Voluntary Self-Reporting Indicate Effective Self-Policing?" *Journal of Law and Economics*, vol. 54, no. 3, pp. 609-649. (Unlike OSHA's VPP, EPA Audit Policy participants are not promised fewer inspections.)

<sup>16</sup>Jodi L. Short and Michael W. Toffel. 2010. "Making Self-Regulation More Than Merely Symbolic: The Critical Role of the Legal Environment." *Administrative Science Quarterly*, vol. 55, no. 3, pp. 361-396.

<sup>17</sup>"Use of Evidence and Evaluation in the 2014 Budget", OMB Memorandum to the Heads of Executive Departments And agencies May 18, 2012 M-12-14 <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-14.pdf>

Chairman WALBERG. Thank you.  
Mr. Lee.

#### **STATEMENT OF MIKE LEE, VICE PRESIDENT AND GENERAL MANAGER, NUCOR STEEL DECATUR**

Mr. LEE. Chairman Walberg, Ranking Member Woolsey, and members of the committee, thank you for this opportunity. I want to begin by asking you to imagine a program where government auditors are invited by employers to conduct comprehensive workplace regulatory compliance audits. Imagine a government program built on trust and cooperation among government and industry participants. Imagine a government program that requires above and beyond regulatory standards with a backlog of applicants trying to get in. Imagine a government program that helps save lives, substantially reduce injuries and improve the bottom line for busi-

nesses. It isn't hard to imagine. It exists now in OSHA's Voluntary Protection Program, or VPP.

I am Mike Lee, General Manager of Nucor Steel Decatur in Alabama, where we employ over 700 teammates at our state of the art sheet steel mill. I am also Vice President of Nucor Corporation. With a production capacity that exceeds 26 million tons, Nucor is the largest steel producer in the United States. We are also one of the world's largest recyclers of any kind.

Nucor is made up of more than 20,000 teammates whose goal is to take care of our customers by being the safest, highest quality, lowest cost, most productive and most profitable steel and steel products company in the world. That is our mission, as forcefully stated by our Chairman and CEO Dan DiMicco. But you can't be the most productive and profitable steel mill in the world and not also be the best in safety. They all go together. We believe we are the best, but we are always striving to improve.

The cornerstone of Nucor's continuous safety and health improvements is VPP. I am proud to have worked as a management teammate as three of Nucor's OSHA VPP star sites work through the process. Nucor Steel Hertford County, which became the company's first steel mill to successfully complete OSHA's VPP in 2006, Nucor Steel Nebraska, and now Nucor Steel Decatur.

OSHA's VPP is America's premier voluntary safety and health program, recognizing the best of the best in employer safety and health programs. Of the approximately 7 million U.S. employers eligible for OSHA VPP, only about 2,375 have qualified. That is only .03 percent, so that is quite an elite group.

Nucor Corporation has 20 VPP sites and nine sites in similar cooperative safety programs. All other members of the Nucor family are working toward VPP. We also have 20 special government employees from 13 divisions working alongside OSHA professionals to improve workplace safety and health. Nucor's safety goal, as is OSHA's, is zero incidents and accidents. This is why we strongly support the cooperative government industry approach of VPP. The foremost beneficiaries of VPP are Nucor teammates who at day's end safely arrive home to their families.

But there is also a significant benefit to Nucor. A safer workplace means healthier and more productive teammates, better morale, and a strong sense of teamwork.

VPP will not work if it is the sole responsibility of a safety director, a safety cop if you will, looking over an employee's shoulder, nor should it ever be necessary for an OSHA inspector to be present to instruct every American worker how to do his or her job safely. VPP is not a top down or bottom up approach. It is a partnership between primary safety stakeholders, OSHA, management, employers and employees.

To be a successful VPP, you have to trust your employees and empower them to participate in their site safety and health programs, and management cannot just give lip service support for VPP. Managers and supervisors have to roll up their sleeves and work at safety every day just as hourly workers must.

At our VPP site in Decatur, for example, we start every meeting with a discussion of safety and health issues. We recognize areas of potential concern and make plans to achieve our safety goals.

This activity occurs in every shift. Our VPP culture invites our teammates to find, report and help us work as a team to address opportunities for improvement.

A great example occurred just last week. In preparation for Nucor Steel Decatur's upcoming VPP star reevaluation, we invited nine team members from three other Nucor VPP star sites to join our teammates in conducting a 2-day assessment of one of our production departments. Not one of those folks was a full time safety professional. They were all hourly production men and women who make up our safety teams. That is VPP, taking hourly operators and turning them into safety professionals through leadership support, hazard recognition training, work site analysis and effective safety and health training.

Perhaps I am a dreamer, but I am not the only one. I am also a doer and so are thousands of VPP workers who are practicing the VPP philosophy every day. The goal of zero will never change. The Nucor-OSHA VPP partnership will continue to drive improvements in safety and health. VPP works. VPP saves lives, and Nucor Corporation is proud to be a part of it. Thank you.

[The statement of Mr. Lee follows:]

**Prepared Statement of Mike Lee, General Manager, Nucor Steel Decatur LLC; Vice President, Nucor Corp.**

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most beneficiaries of VPP are Nucor teammates who, at day's end, safely arrive home to their families. But there is also a significant benefit to Nucor: a safer workplace means healthier and more productive teammates, better morale, and a strong sense of teamwork.

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Thank you.

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Chairman WALBERG. Thank you.  
Mr. Layne.

**STATEMENT OF R. DAVIS LAYNE, EXECUTIVE DIRECTOR, VOLUNTARY PROTECTION PROGRAMS PARTICIPANTS' ASSOCIATION**

Mr. LAYNE. Chairman Walberg, Ranking Member Woolsey, and members of the subcommittee, I am, like the other members of the panel, I am particularly pleased to be here today to talk to you about OSHA's Voluntary Protection Programs.

VPP started as a pilot program in California with Cal/OSHA in 1979 before being federally adopted in 1982, and as of now all OSHA State plans also have a voluntary protection program covering over 2,000 work sites across the United States.

As indicated, I started with the Occupational Safety and Health Administration in 1971 as a compliance officer. And during that time it was very clear to me that our job in those early days was to go out and make inspections, issue citations and propose penalties. We were clearly told back then, don't give any advice on how to abate conditions, don't—just go out, make the inspections, write up your reports, issue your citations.

And as time went on, as I moved up in the organization, the Voluntary Protection Programs began to come to my attention. And I never will forget my first exposure to Voluntary Protection Programs. When I began to hear about it based upon my earlier training I said, oh, what is this, this VPP thing? Oh, let's go out and

enforce. And then when I had an opportunity to participate in some VPP evaluations, I said something different is going on here, something very different. And it became very apparent to me that there is a culture change about workplace safety and health at VPP sites.

It is based upon the four elements of VPP: Management, commitment and employee involvement, work site analysis, hazard prevention and control, and safety and health training. These form the basis of a superior workplace safety and health program, and it had a positive impact on reducing injuries and illness. And it really builds a sense of community and cooperation among employers, employees and the Occupational Safety and Health Administration. Employees feel more valued and look out for the well-being of their peers and contribute more to the workplace's safety and health program. It reduces injuries and illnesses but also contributes to the bottom line by increasing productivity and quality of product.

The only thing about VPP is it is proactive. It calls upon participants to continuously improve their systems. VPP is not some form of honor roll or special club that allows sites to rest on their laurels. VPP sites must demonstrate not only that they have maintained their low injury and illness rates, but also how they continue to address any of the remaining hazards and to improve their safety and health processes even further or risk being removed or denied participation in the program. And this dedication to continuous improvement also ensures that VPP sites are able to address hazards that are new or emerging in the workplace.

It is not any secret that OSHA's rulemaking process and standards making process is severely broken. And that causes, in many instances, for new hazards to be unaddressed in the work site. And to give you a for instance on this, OSHA's standard on pulp and paper mills has a number of national consensus standards that were adopted when the act was passed back in 1970.

For instance, the safety code for conveyors, cable ways and related equipment for the pulp and paper industry is based upon an ANSI standard that was written in 1957. Several other portions of that standard also rely upon old standards. And VPP sites will not limit themselves to the requirements established during the Eisenhower administration. They seek to tackle all work sites regardless of OSHA requirements, not just merely comply with the current OSHA laws.

The Department of Defense has adopted VPP as a way to address unsafe or unhealthy working conditions at Department of Defense facilities. For instance, sites that have participated in VPP range in cost savings to the American taxpayer anywhere from 73,000 to \$8.8 million a year.

There are 13 tenets of the Occupational Safety and Health Act. One of them deals with enforcement, three of them deal with working cooperatively with employers. And I hope in the spirit we can all work together to guaranty VPP can continue to thrive as America's premier program for workforce safety and excellence. To echo Assistant Secretary Michaels before this very subcommittee in October of last year, VPP saves jobs and saves lives.

Thank you.

[The statement of Mr. Layne follows:]



**Prepared Statement of R. Davis Layne, Executive Director,  
Voluntary Protection Programs Participants' Association, Inc.**

Thank you Chairman Walberg, Ranking Member Woolsey and members of the subcommittee for granting me the opportunity to speak before you today about the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Programs (VPP).

My name is Davis Layne and I currently serve as executive director of the Voluntary Protection Programs Participants' Association, Inc. (VPPPA). I got my start in the safety and health field working with the U.S. Army Material Command Field Safety Agency and subsequently joined OSHA in 1971 as a compliance officer, served as an area director in three offices, a deputy regional administrator, a regional administrator and retired as deputy assistant secretary for the agency in 2004.

I was initially skeptical of VPP when I first encountered it as a deputy regional administrator. However, after seeing the profound impact it can have in workplaces of all sizes, I have come to believe that there is simply no better approach to nurture a culture of safety and health excellence.

*Program History and Overview*

VPP got its start as a pilot program with California's Division of Occupational Safety and Health, also known as Cal/OSHA, during the first Jerry Brown administration in 1979. The program proved to be a tremendous success and was adopted by federal OSHA in 1982. Since then, it has grown steadily through every administration and enjoyed bipartisan support. Impressed by VPP's track record, the Department of Energy (DOE) created its own version of the program in 1994 to address the unique hazards its employees face. In 1998, federal government worksites became eligible for VPP.

VPP is comprised of four elements: Management Commitment and Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training. These four focuses form the basis of a superior worksite safety and health culture that supports cooperation, trust and innovation. After a worksite has maintained a VPP-quality safety and health management system for at least a year, as outlined by OSHA's VPP Policies and Procedures Manual, it then undergoes an extensive qualitative audit of said system. This entails an onsite inspection of the working environment, an examination of records and documentation and interviews with employees. If all of these support the criteria set forward by OSHA and the site has maintained injury and illness rates below the average for its industry, then it will be approved for VPP. On the whole, VPP sites have rates 50% below industry averages.

*Value for Participants*

Aside from the direct impact on worker safety and health, VPP has many important benefits for American businesses and communities. As worksites come together to address occupational hazards, they build a sense of community and trust that creates a beneficial cycle of involvement. Employees feel more valued and look out for the well-being of their peers and contribute more to the worksite's safety and health efforts. Productivity and awareness rise because of reduced time away from work due to injuries and illnesses and morale improves.

Another key component of VPP is outreach. Sites are encouraged to share their knowledge and experience with industry peers and the local community, benefiting an even larger section of the public. VPP employees will often supplement their safety and health teams with valuable initiatives emphasizing safety at home, environmental issues or healthy eating. These fall outside VPP programmatically, but they demonstrate how eager these workers are to use the organizational framework and attitude of VPP to effect other positive changes.

By taking part in VPP, worksites are inviting OSHA to their site. Estimates often point out that it would take OSHA more than 130 years to randomly inspect every American worksite, and more than 70 years in those jurisdictions with state programs. VPP employees have the benefit of working with regulators to improve their safety and health programs and share information and best practices. Most Americans will never interact with OSHA, or they will only if something has gone horribly wrong.

Additionally, VPP is a proactive program that calls on participants to continuously improve their systems. It is not some form of honor roll or a merit badge to be earned. Sites that rest on their laurels and only maintain the work that earned them entry into VPP will not be re-approved. They must demonstrate how they have continued to work to address any remaining hazards or improve their processes even further.

This also ensures that VPP sites are able to address hazards that are new to the working environment and unaddressed by OSHA regulations. Many OSHA standards have not been updated since the administration was formed by the Occupational Safety and Health Act of 1970. Some are even more outdated because those initial standards are based on even older legislation and rules. For example, the Safety Code for Conveyors, Cableways, and Related Equipment for the pulp and paper industry is based on an industry consensus created in 1957. Several other portions of the standard rely on guidance that also predates the formation of OSHA. VPP sites are not content to limit themselves to requirements established during the Eisenhower administration. Because of the slow nature of new standards being formulated and implemented, many hazards can remain inadequately addressed for long periods of time. VPP sites seek to tackle all hazards at a worksite, regardless of OSHA requirements, to best ensure the health and safety of their employees.

#### *A Competitive Edge*

The effectiveness of VPP yields indirect advantages for employers as well. Compensation costs are an often overlooked expense for employers. By reducing time away from work and bolstering morale, VPP can improve productivity. The National Safety Council estimated that the program saved private industry \$300 million in 2007. Additionally, federal agencies saved \$59 million that same year. Several participants have shared that they believe their operations would have been relocated abroad because of cost considerations had they not pursued VPP status.

It is for these numerous benefits that many of America's top companies have VPP sites, including: General Electric, Raytheon, Honeywell, IBM, Amazon, 3M, Kraft Foods and Morton Salt. But smaller employers also find success with VPP. Wenner Bread Products in Bayport, N.Y. has experienced a tremendous change in their workplace environment. Elisonia Valle, assistant manager to human resources at Wenner, shared, "Pursuing VPP has been an overall rewarding experience for the Wenner family [\* \* \*] Wenner Bread has experienced improved labor relations within the bilingual workforce, which led to an increase in productivity and an increase in product quality." VPP provides these small businesses with a proven process for establishing a safety and health management system and the resources of hundreds of other sites eager to reach out to interested companies.

VPP worksites represent the breadth of the American economy, with approximately one million workers at approved sites across more than 400 industries. These are not limited to large manufacturing and plant environments either; office locations have been approved for VPP, addressing the ergonomics and other hazards faced by an increasing percentage of the nation's workforce. More than 46% of VPP worksites have less than 100 employees.

#### *Organized Labor's Vital Contribution*

Unions at prospective VPP sites are involved in every step of the process to attaining VPP status. As part of overall employee involvement, union participation and contributions are considered vital. Any union, even if it is one of many at a worksite, can halt a site's preparation for VPP. This also holds true for existing VPP sites. Any union can remove its entire site from the program. This veto power exists to ensure that all parties at a worksite are committed to safety and health excellence; if there is any concern that this goal is being jeopardized or sidelined, employees are not locked into continuing to pursue VPP approval or remaining in the program. Because of this safeguard that emphasizes the voluntary nature of VPP, more than one quarter of approved worksites host unions.

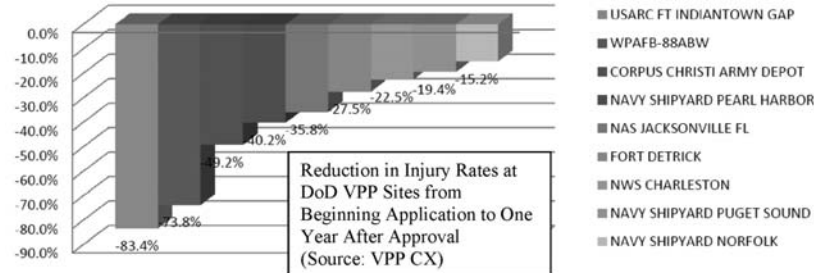
Some prominent examples of unions involved in VPP include: American Federation of Government Employees, United Steelworkers, International Association of Machinists and Aerospace Workers, International Union of Operating Engineers, International Brotherhood of Electrical Workers, Communications Workers of America and Service Employees International Union.

#### *DoD Experience*

In 2005, the secretary of defense set a goal of reducing the Department of Defense's (DoD) preventable injuries by 75% from 2002's recorded levels. Subsequently, the Defense Safety Oversight Council (DSOC) recommended that the department should utilize VPP to reach this goal and the DoD Voluntary Protection Programs Center of Excellence (VPP CX) was formed to see this through. Currently, more than 40 DoD sites across services and agencies are approved as VPP sites with dozens of others pursuing VPP status.

The military views the safety of its employees as a key component of mission readiness. DoD VPP sites have averaged 69% lower incidence rates and 62% lower lost day rates. This has improved both morale and productivity at these locations.

VPP CX holds that this has increased available military end strength and force readiness.



Since starting the DSOC and VPP, DoD has experienced a 40% reduction in Civilian Lost Time, resulting in \$149,000,000 in savings in Fiscal Year 2010. Corresponding cost savings from VPP participation due to lower rates range from \$73,000 to more than \$8.8 million per site. For instance, Pearl Harbor Naval Station has saved \$8 million since implementing VPP and realized a 40% reduction in their injury rate.

Lieutenant General William E. Ingram, Jr., director of the Army National Guard, supports VPP's mission: "Mutual commitment and accountability are fundamental to such pacesetting actions as the Occupational Safety and Health Administration's Voluntary Protection Programs, and the Guard must continue to set an example for our Soldiers by implementing such proven initiatives."

#### *An Asset and a Resource*

In the past, some have called for companies to pay for their VPP approval. This is a misguided policy proposal and is essentially tantamount to, as one participant has put it, "buying the VPP flag." It would also ruin the independent nature of the VPP process; program administrators would have perverse incentives to maximize the revenue generated by fees, potentially overlooking rural, isolated and smaller sites as a result. OSHA estimates that the program costs more than \$3 million to run annually. This figure is unequivocally dwarfed by the direct savings realized by government participants, the indirect benefits received by private industry and the human resources committed by participating companies.

In addition to the vast savings realized by DoD, other government worksites benefit from VPP. DOE runs its own VPP program that addresses the different hazards faced by its employees. Additionally, locations as varied as the U.S. Mint in Philadelphia to the Kennedy Space Center are participating VPP sites. Colonel Robert Cabana, director of the center, states that, "Although we were already safe, VPP takes you to that next level, with strong management attention, strong contractor attention and strong workforce involvement. It really makes a difference; it's teamwork, it's pulling together." Federal Government sites save millions in tax dollars as outlined previously.

Because VPP sites seek out new and more efficient ways to address hazards, they often create best practices that OSHA can share with their industry peers. Through the Special Government Employee (SGE) Program, something unique to VPP, sites are able to share their expertise even further. SGEs, after receiving training from OSHA, are sworn in to serve as temporary government employees on VPP audits to supplement up to half of the auditors assigned. This not only frees up OSHA resources, but also contributes years of knowledge and industry-specific experience. A given evaluator cannot be familiar with every work task and its associated hazards in the entire American economy. SGEs provide OSHA with the ability to ensure that VPP sites are truly delivering superior protection for their employees. Moreover, because VPP operates in a spirit of cooperation, this is another opportunity for best practices and ideas to cross-pollinate between different worksites that normally would not interact. SGEs receive no pay from the government and their travel costs are paid by their companies. If OSHA uses 330 SGEs in a given year, then using moderate estimates for travel expenses and lost work time, VPP companies contribute at least \$2 million to the program through SGEs per year.

Furthermore, acting as a force-multiplier, VPP frees up resources for OSHA as VPP site representatives become advocates for safety and health excellence, engaging in outreach and training so that other sites can improve their safety and health as well. As OSHA expresses it, VPP serves as a "corps of ambassadors enthusiasti-

cally spreading the message of safety and health system management. These partners also provide OSHA with valuable input and augment its limited resources.”

#### *Incentive Programs*

The VPP Policies and Procedures Manual, as established by OSHA, originally stated that incentive programs should not be based solely on rewarding employees for lower or no safety and health incidents. Additionally, it held that evaluations should look at existing programs with a specific eye on how they could impact reporting and the veracity of injury and illness data. With the release of VPP Policy Memorandum #5, this policy has shifted so that any program that has the “potential to discourage worker reporting” disqualifies a company for VPP. While auditors have the discretion to allow worksites a brief window to alter their incentives programs or award them VPP on the condition that they do so, some VPPPA member companies have been told that any incentive program, regardless of its nature, could jeopardize their status.

Also, OSHA did not think out all of the implications of this new policy and overlooked the fact that collective bargaining agreements can include stipulations on incentives and would need to be renegotiated in order to comply with this policy change. The administration now occasionally allows worksites in this situation more time in order to accommodate renegotiation. This makeshift solution disadvantages worksites without collective bargaining agreements that must comply with the policy in a shorter timeframe.

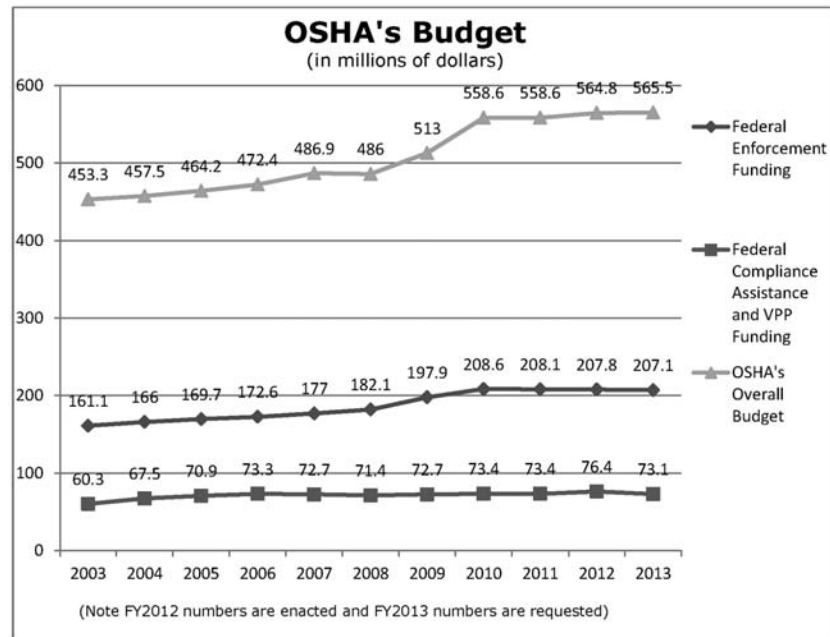
The Government Accountability Office (GAO) published a report in April 2012 on the subject of incentives programs, “Better OSHA Guidance Needed on Safety Incentive Programs.” This report recommended that OSHA should expand the policy set forward by VPP Policy Memorandum #5. The data backing up this conclusion is tenuous at the very best. Of the 26 studies utilized by GAO, only six examined the effectiveness of incentive programs, and of those, only two studied the effect on injury and illness reporting. The results of these two were inconclusive according to GAO: “Three studies—including the two that specifically evaluated the programs’ effect on reporting of injuries—focused on one type of safety incentive program and found that their effect on workplace safety was inconclusive or that the programs had no effect.” To my knowledge, none of these studies took place at a VPP worksite.

This begs the question as to why OSHA is specifically applying incentives guidance to VPP worksites, which, unlike other worksites under its jurisdiction, already have to have their incentive programs qualitatively reviewed by OSHA auditors. The administration should restore its policy on incentive programs as it originally existed in the VPP manual.

#### *Guaranteeing VPP’s Continued Success*

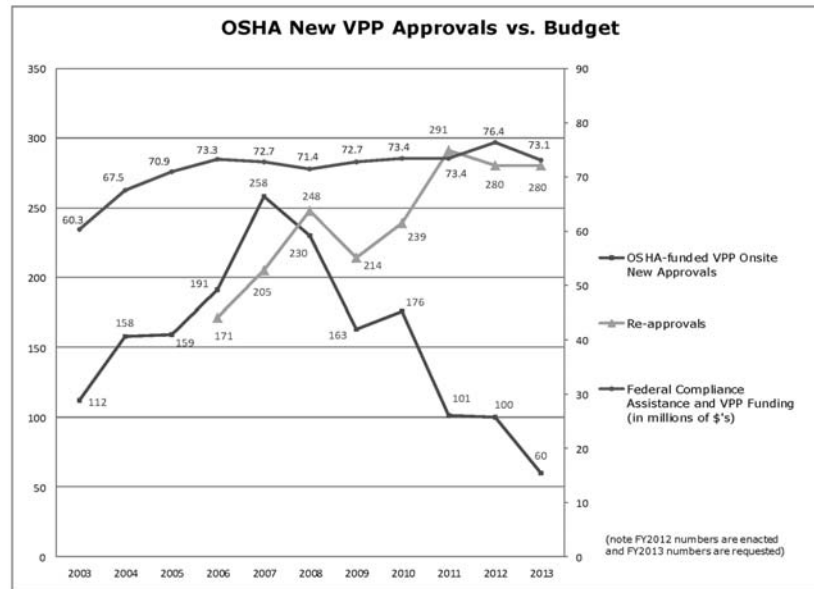
VPP has received strong backing from every administration since its inception and the number of participants has grown steadily until very recently. During the administration of President Clinton, then-Assistant Secretary of Labor for Occupational Safety and Health Joseph Dear highlighted VPP as “the premier example of partnership between government, management and workers, and is a model for virtually all of OSHA’s reinvention initiatives. These are the companies where you want your family, your children, your husband or wife to work.” Former Vice-President Al Gore celebrated the program’s emphasis on cooperation: “It is about working in partnership with common goals, instead of as adversaries, to protect the safety and health of our workers. It’s about focusing a lot less on red tape, and a lot more on results.”

This support has continued under the current administration. Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels has repeatedly emphasized the importance of VPP and the commitment of time and resources by participating companies, stating, “We do as [much] compliance assistance as we do enforcement inspections. We’re going to keep doing that. We want employers to come to us and say, ‘We want to do everything we can.’ We think the best model for that is the Voluntary Protection Program. The companies in VPP know how to do it, they’ve made the commitment and put the resources into it, and we certainly support that.”



Unfortunately, the evenhanded approach cited by Dr. Michaels has not been borne out by some of OSHA's recent choices. Funding for OSHA's Compliance Assistance-Federal budget category, of which VPP constitutes a small portion, grew slightly and leveled off over the past decade. This has not kept pace with the growth in federal enforcement or OSHA's overall budget. While this funding comes from Congress, OSHA has chosen to direct resources away from VPP, which it estimates costs over \$3 million annually and utilizes approximately 40 full-time equivalents (FTE). For comparison, compliance assistance-federal's fiscal year 2012 allotment of FTE is 295 and the Department of Labor (DOL) as whole uses more than 2,300 FTE.

In DOL's Fiscal Year 2013 Budget Request, it seeks to remove 31 FTE and over \$3 million from compliance assistance-federal. This will have a direct impact on VPP as OSHA says that it plans to approve just 60 new VPP sites, a number that has been falling steadily since 2007. Interest in VPP has not fallen over time; OSHA has chosen to move its resources away from VPP of late. I have heard from several of VPPPA's members concerning applications for approvals and re-approvals that have been delayed for well over a year. At this rate, it appears that OSHA is not even keeping up with its obligations to re-approve those sites in order to maintain the program. The fact that the number of active VPP sites has decreased over the past couple years supports this. Dr. Michaels spoke recently to a safety and health group and commented that the program had gotten too large and that budget cut-backs were to blame for this slowing pace. OSHA's compliance assistance-federal funding has not seen a drastic cut as of yet, so the administration is choosing to divert resources away from VPP. The program has grown steadily in past years and I cannot see why anyone would prevent it from continuing to do so considering the profound impact that has had at worksites in both the private and public sectors. Former Assistant Secretary of Labor for Occupational Safety and Health John Henshaw put it best: "I know we all will agree that VPP adds so much value that we cannot deny workplaces, who qualify, the opportunity to participate and grow into the programs."



### Conclusion

The Occupational Safety and Health Act of 1970 requires 13 objectives to be accomplished. Only one of the 13 objectives is enforcement. Three are directly related to the development of cooperation between employer and employee to establish a safe workplace: exactly what the founders of VPP established the program to accomplish.

I'm sure everyone has heard the phrase, "You can't prove a negative." When debating issues of workplace safety, this can seem especially true; there is no way to concretely prove whether an accident might have been prevented or a small business owner saved X number of dollars because of particular policy initiatives. But from my entire experience with VPP, from a young, skeptical deputy regional administrator for OSHA through retiring as the administration's senior career employee, I can say this with complete confidence: VPP works. Regardless of the dollar amounts or safety figures, there is something tremendous about the culture that VPP promotes. It is truly about involving everyone to incessantly strive to make our lives safer and healthier. I hope that in this spirit we can all work together to guarantee that VPP can continue to thrive as the America's premier program for safety and health excellence. To echo Assistant Secretary Michaels before this very subcommittee in October of last year, "[VPP] saves jobs and it saves lives."

Chairman WALBERG. Thank you. And I thank the witnesses for generally staying very much on time or under time. So I thank you for that.

I recognize myself for 5 minutes of questions. Let me ask Mr. Layne, you clearly have many decades and I say that with admiration.

Mr. LAYNE. And I accept it that way, sir.

Chairman WALBERG. Not just chalking up years—we will hang together right—with VPP. In your opinion, how has VPP expanded and promoted safe workplaces since you first became involved with VPP?

Mr. LAYNE. Well, when I first got involved with VPP, it was a very, a program that was new to the agency and employers didn't

really understand what it was about. As a matter of fact we used to go out and help employers develop their applications and work with them and actually get them to submit the application. It was one on one. But over the years, as work sites began to understand the value added of the VPP program in reducing injuries and illnesses and contributing to the bottom line of the work site, that more and more work sites began to pick up on the VPP process, and part of that process is that all those workers at VPP sites become ambassadors for workplace safety and health. And they began to outreach to not only coworkers, but community members, and they take the concepts of safety and health home and to their families. And as those families and children begin to grow up and enter the workforce, they carry that culture with them.

So the VPP programs have had a significant impact on having work sites, as you had mentioned, that were some of the bad actors in the past to saying, okay, we are going to use VPP as a vehicle to change our culture about workplace safety and health.

Chairman WALBERG. So best practices have been expanded exponentially outwards as opposed to just a single source systemically?

Mr. LAYNE. Yes, sir.

Chairman WALBERG. It appears that OSHA's funding levels for compliance assistance which VPP funding can be found have recently been cut, while OSHA's overall budget and their budget for Federal enforcement has increased dramatically. Have there been any consequences for OSHA's decision to keep these funding levels flat in relation to your total budget?

Mr. LAYNE. Well, we were disappointed in the President's proposed budget for fiscal year 2013 when in that budget there was a projection of only doing 60 new VPP evaluations that year. And we began to realize that not only is the VPP program beginning to have a reduction in productivity, but also all of the compliance assistance programs, if you look at the data on it, show that there is a downturn in all of the OSHA's compliance assistance activities.

Chairman WALBERG. So across the board.

Mr. LAYNE. Across the board, not only in VPP but also in all of their SHARPs programs, their consultation programs as well.

Chairman WALBERG. Even with increasing funding for general OSHA?

Mr. LAYNE. Yes, sir.

Chairman WALBERG. Mr. Lee, we have seen impressive statistical evidence that validates our understanding that VPP improves worker safety and health, your testimony included. From my understanding, the average VPP workplace has a days away restricted or transferred case rate, or DART case rate, that is 50 percent lower than industry averages.

How does VPP help improve worker safety and health across Nucor Corporation, and more specifically, how has it helped you in your Alabama mill?

Mr. LEE. At Nucor, as a corporation, our DART rate, days away restricted time, is actually 75 percent lower than the industry average. So as a corporation, we have really improved from a safety perspective through the VPP system.

Now one thing I will note as a division becomes, starts to enlist itself in VPP and striving to become VPP certified and ready, the

division begins to improve just from the work effort and the attitude and the folks and the culture kicks in. But from the perspective of Nucor Decatur, we are actually 100 percent of the DART rate today as our DART rate through today is zero. So we are having a very good year and our DART rate over the past couple years is very, very good as well and a lot of it has to do with VPP attitude and folks working together in collaboration.

And I will state a little bit about the relationship between OSHA VPP and Nucor. It has grown to the point where it becomes personal. I personally have called up our VPP Region 4 administrator and asked him questions about things that may have happened yesterday or an incident that may have happened and how can I handle it? We discuss ideas back and forth openly.

Chairman WALBERG. As a partnership ought to be.

Mr. LEE. As a partnership as opposed to what OSHA, the cloud of what OSHA is. When the OSHA came to the door 20 years ago, that was not a good day. But today, with OSHA VPP and working together collaboratively, it is a—who better to use as a liaison in safety and improving safety in a workplace than OSHA? And that is the position that we are in as a company and our division when you can openly talk to the chairman of the VPP Region 4 and not without any concern or worries about what this may lead to.

Mr. LEVINE. Mr. Chairman—

Chairman WALBERG. My time has expired but you will have the opportunity.

Before I recognize the senior member for her questioning, to report on the report that has just come from the Supreme Court because some of you might be interested, the individual mandate survives as a tax, said to be constitutional. Justice Roberts joined the majority. Appears that the law will stand, still working out the details, so we will keep you informed.

Ms. WOOLSEY. Smile.

I think you are calling on me next.

Chairman WALBERG. I am calling on you.

Ms. WOOLSEY. Thank you, Mr. Chairman.

When Mr. Lee is testifying, it is very clear to me 20 years ago when I was human resources manager of a startup manufacturing company with 800 employees under Cal/OSHA, that we were a VPP company because we did exactly—this is 20 years ago—exactly what you are doing now, Mr. Lee.

So, Jordan, Mr. Barab, why don't all work sites have the same values as VPP? What gets in the way?

Mr. BARAB. What gets in the way, there are a lot of—unfortunately as you are aware, there are still 4,500 workers that are killed in the workplace every year, over 4 million injured in the workplace every year. Clearly there are a lot of workplaces out there that just still don't get it that are trying to cut corners, save a buck, just have no real concern with worker safety. And that is why we do try to focus on those workplaces that really need, unfortunately, need enforcement, need much closer oversight.

Ms. WOOLSEY. And aren't there some VPP companies that have had accidents and deaths that remain in the system as VPP and what is happening with that?



Mr. BARAB. Well, we hope no longer. Yeah, we were made aware both through the 2009 GAO report in addition to the press reports since then of several incidents in companies where there were either fatalities, serious injuries, willful citations in some cases, and the companies in question were still allowed to stay in VPP. We were asked, or told, by the GAO to monitor VPP more carefully, make sure that every company in VPP really deserves to be in VPP.

And as I said in my testimony, the real value of VPP is not really in the numbers, we have a few more, a few less but really in the quality of the program, the integrity of the program. So that really is our primary focus right now. Again we greatly value this program, but it has to be a program that has that kind of quality.

Ms. WOOLSEY. So where are we in having enough inspectors for OSHA in general and VPP specifically?

Mr. BARAB. Well, as you have heard, we have over the last several years increased our enforcement presence. We need to have a very balanced program. And right now our program is not in balance, most particularly in the area of whistleblower protection. As has been repeated here many times, we have really only a comparatively few number of inspectors in terms of the enormous number of workplaces to be reached every year. That is why the creators of the Occupational Safety and Health Act gave workers rights because workers need to be the eyes and ears of OSHA or else the whole law doesn't work.

But in order for workers to be those eyes and ears, they have to be relatively secure that they are not going to be retaliated against. So we need to enforce that part of the law and that is why we have been trying to balance our program and really try to increase one area where we really have not had sufficient resources, and that is in our whistleblower protection. So that is really the one area in our 2013 budget that we are increasing to try to protect those rights of workers without retaliation.

Ms. WOOLSEY. Thank you. Dr. Levine, your testimony suggested that there is a lack of evidence regarding the effectiveness of VPP. Why do you say that? And what questions need to be asked and answered in a study on VPP to scientifically assess its effectiveness?

Mr. LEVINE. The GAO brought up some really terrible news stories. We can balance those with the really inspiring example of the folks I am sharing the table with today.

We need to know on average what is going on. Just looking at the very low injury rates in VPP members isn't all that convincing because you need a low injury rate to get in and to stay in. So that is not really showing what the value added is. Just looking at who gets in isn't even convincing because unless the VPP program is working, you are not eligible to get in.

So you have to look at a whole set of companies or workplaces before they get in as they start to try and see what happens. So one could take a large group of Nucor plants or Federal Department of Defense workplaces and see as they start to work on it what happens to their injury rate and compared to those that start early and late. Ideally you would randomize which ones went first, but the really wonderful stories or the really terrible stories, are

not going to tell us what is happening over all. We want larger sample and——

Ms. WOOLSEY. You had something you wanted to respond to the Chairman.

Mr. LEVINE. We surely know that when it is done right, the results are fantastic and it is a privilege to be up here, that we don't yet know how representative those results are, and VPP like most Federal programs could use more rigorous evaluation, so you and leaders in the executive branch have the evidence to make those decisions about what saves lives or whatever other goal of the program.

Chairman WALBERG. Thank you. The gentlelady's time has expired. I recognize the gentleman from Indiana, Mr. Rokita.

Mr. ROKITA. Thank you, Mr. Chair. For the record, I would like to enter a June 6, 2012, letter from Mr. Layne's VPP association, please.

Chairman WALBERG. Without objection so ordered.  
[The letter follows:]



Voluntary Protection Programs Participants' Association, Inc.

June 6, 2012

Dr. David Michaels, PhD, MPH  
Assistant Secretary of Labor  
Occupational Safety & Health Administration  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Dr. Michaels,

The Occupational Safety and Health Administration (OSHA) has modified its position on incentive programs with respect to the Voluntary Protection Programs (VPP) several times recently. These changes have caused confusion because of their broad and subjective nature and inconsistent application.

The VPP Policies and Procedures Manual originally stated that incentive programs should not be based solely on rewarding employees for lower or no safety and health incidents. Additionally, it held that evaluations should look at existing programs with a specific eye on how they could impact reporting and the veracity of injury and illness data. With the release of VPP Policy Memorandum #5, this policy has shifted so that any program that has the "potential to discourage worker reporting" disqualifies a company for VPP. While auditors *may* label such incentive programs as a 90-day item or award the site a one-year conditional Star designation, some of the VPP Participants' Association, Inc. (VPPPA) members have been told that any incentive program, regardless of its nature or content, can jeopardize their status within the program.

This inconsistency has been compounded by disproportionate application of the policy. Amid concerns that sites with collective bargaining agreements would be unable to renegotiate in order to comply with OSHA's new incentives policy, the administration now occasionally allows them to delay doing so to allow time for renegotiation. This grants preferential treatment over non-union sites.

Additionally, OSHA seems to be targeting VPP specifically with this new focus on incentives, both in terms of other cooperative programs and its consultation and enforcement functions. In the recent Government Accountability Office report on the matter, a regional OSHA official speculated that almost 20 percent of VPP sites would not remain eligible for the program based on the policy change, regardless of whether any incentive programs present at those sites discourage worker reporting. The VPPPA has not been informed of any such discouragement ever occurring at VPP sites. Could you please share the data from OSHA VPP sites used to support the June 29, 2011 policy memorandum on this matter?

OSHA needs to restore the incentives policy it originally laid out in the VPP Policies and Procedures Manual. As part of the evaluation process, auditors should be examining any incentives programs closely to determine if they have any effect on reporting. This allows OSHA to safeguard workplace safety and health and ensure that sites report accurate rates without the confusion and wholesale exclusion set forward by current policy. I look forward to working with you to navigating this complicated issue to further strengthen VPP as the nation's premier workplace safety and health program. Please contact me at (703) 761-1146 Ext. 101 or [rdlayne@vpppa.org](mailto:rdlayne@vpppa.org).

Sincerely,

R. Davis Layne  
Executive Director

7600-E Leesburg Pike • Suite 100 • Falls Church, VA 22043 • Phone: (703) 761-1146 • Fax: (703) 761-1148 • [www.vpppa.org](http://www.vpppa.org)

Mr. ROKITA. Thank you. My questions go to Mr. Barab.  
Are you aware of this June 6 letter that I entered into the record? Do you need a copy of it? It outlined three recent changes in OSHA policy towards the VPP program.

Mr. BARAB. You are talking about the incentive program? Is that what you are referring to?

Mr. ROKITA. Yes. What specifically is your department doing to try to resolve these issues outlined in the letter?

Mr. BARAB. We introduced, we issued our incentive program, the current version of the incentive program a year ago. And in that

year, I think we have found ourselves in a position of having to terminate one company. A couple of other companies withdrew, but most companies when we raised these issues with them have withdrawn their policies voluntarily.

It is an important issue. We really don't want to and I am sure VPP doesn't want to be in a position where they have policies that discourage reporting.

Mr. ROKITA. Right.

Mr. BARAB. Our challenge is obviously is to make this policy consistent throughout our regions. This is a constant challenge for OSHA trying to make our enforcement policy consistent, our compliance assistance policies consistent.

Mr. ROKITA. Why do you think that is?

Mr. BARAB. Well, we are a large agency, we have 10 regions across the country, we have many, many different standards and policies we need to enforce. It is definitely a challenge to be consistent throughout the country, not just for our incentive program for VPP in total and enforcement. And it is something I think we do a pretty good job of. But it is a constant challenge.

Mr. ROKITA. One of the things that Mr. Layne outlines in the letter is he says that some of his members have been told that any incentive program regardless of its nature or content can jeopardize that member's status within the program. Do you support that?

Mr. BARAB. That is not the case. We are only concerned about incentive programs that have the potential of discouraging reporting. Incentive programs, and these are mainly rate based programs where they are focused on injury and illness rates.

Now, on the other hand, you have incentive programs that incentivize positive actions, such as participation in health and safety committees, participation in training, reporting near misses, for example. These are great things to incentivize, and we strongly encourage companies to have policies that provide those incentives.

Mr. ROKITA. Thank you.

I will go to Mr. Layne. Do you see that being resolved or not? Do you agree with what has just been said or not?

Mr. LAYNE. I understand Deputy Assistant Secretary Barab indicated when OSHA at first came out with their change on incentives at VPP work sites, we did have discussions with the Occupational Safety and Health Administration. And as a matter of fact when Assistant Secretary Michaels at our Orlando annual conference addressed this, the statement was that work sites that have incentive programs that focus primarily on injury and illness rates would be unacceptable. When the policy memo came out, and there was a letter before that, it came out a little bit different saying basically saying if there was the potential to have an adverse impact on reporting of injuries and illnesses, and that is very different from being based primarily on it.

So we work with the Occupational Safety and Health Administration, but we are still getting some feedback from our members that there is some problems with the way the incentive program is being interpreted by OSHA.

Mr. ROKITA. Thank you, Mr. Layne. And Mr. Barab, do you see Mr. Layne's problem there?

Mr. BARAB. Yeah, I think I understand the problem. We are trying to educate companies about this, educate VPP about this. But, again, it has not been a big deal quite frankly. Again we have only had to terminate one company. Others have seen the light, I guess, and seen our point and withdrawn their policies.

Mr. ROKITA. Thank you, Mr. Barab. I am running out of time. Mr. Henson, I would like to get this question in if I could, please, sir.

In your position with Channelview, what types of training do you receive related to VPP compliance specifically and then also what types of training do you receive related to OSHA regulations more generally?

Mr. HENSON. Well, we have various things that we have to train. We have our quarterly computer-based training which goes over all of our life critical procedures, everything that we do as far as our safety and health programs which is all part of being in the VPP program. It makes up the entire system of things that we have to be held accountable for.

We participate in hazard recognition audits. We have folks who receive extra training in hazard recognition. There is just various programs, and that is how our incentive program is based, is that it is based on our participation, as Mr. Barab stated. That is what they are looking for. It is not based on a number, it is based on our participation.

Mr. ROKITA. Thank you. Mr. Chairman, my time is expired.

Chairman WALBERG. I thank the gentleman. And now I recognize the gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Mr. Chairman, thank you for allowing me to participate in the hearing. I just have one or two questions.

In this Congress I work as chairman of the Aviation Subcommittee, and we obviously spent a lot of time on aviation. Aviation is perceived to be risky, although it is the safest mode of travel in the United States. That didn't happen overnight, but the industry has worked very hard and the government to set in process processes that result in continuously safer aviation travel.

There has been a lot of debate about which approach is most effective, but there is a growing consensus that a collaborative approach makes the most sense because no one really wants an accident that can happen because people are people and something dumb happens or maybe something is misdesigned or 101 reasons. But better to get it out and investigate and let other people know and then make changes to be continuously more safer.

So the VPP program is one that I think has a lot of promise for improving safer procedures by working in a collaborative way to improve the conditions for workers rather than an "I gotcha" approach.

My question is, for Dr. Levine, because I understand the importance of having random selection of workplace safety tests, but employers in my district are constantly complaining, not about being randomly selected, but about the big difference in quality of inspection by different inspectors.

Did you randomly select the inspectors, or were they people—were the inspections done in collaboration with, you know, Cali-

fornia OSHA's people so that they had their top quality inspectors out there? How did this process really, really work?

Mr. LEVINE. So we analyzed all the data we could find on all the randomized inspections. The research I did was not done in cooperation with Cal/OSHA. We interviewed them to understand their data and their procedures. We have talked to a lot of inspectors, but this wasn't—they did the randomized inspections, and we came in and analyzed the data afterwards. So we analyzed data on every randomized inspection we could find so that it is all the inspectors they put into their high hazard unit. It wasn't selective.

We don't know the identity of the inspectors, so we couldn't look at differences by inspector. That wasn't part of the publicly available data.

Mr. PETRI. Well, this is all anecdotal and but very few, I mean, most people who are in business for a while anyway really want to be safe, and they know there are people in their industries that may be a problem, so they don't object to having some kind of a program as long as it is sensible to promote best practices and enforce them where necessary on bad actors in their own industry or whatever.

So OSHA has had a great success working collaboratively with trade associations and others at seminars and being proactive and all of this. But what I hear is that occasionally, especially new people to the business of inspecting will come in and assume the employer is a bad guy and the employer has resorted to leaving a few things around that they can find that won't be too—because they know they are going to get fined. That is the mentality that they have.

After a while people calm down, they become more familiar. They have more confidence in who they are dealing with, and that is a part of it too, I think, if there is not that confidence. Because, as you know, when OSHA started, people had to get search warrants to come into factories in a lot of places.

I don't know if you would like to comment on any of that, Dr. Barab.

Mr. BARAB. Yes. Let me just say, we, you know, we have, we do have a lot of new inspectors coming in. We invest an enormous amount of resources in training those inspectors. We have a training institute outside of Chicago. We bring put them in and we really put them through an almost 2-year course of different classes and instruction before they go out on their own, as it were.

So we really, again, try to focus on that consistency, making sure our inspectors are experts and professional in every way.

Mr. PETRI. Well, my time is just about up, but you haven't started putting in quotas again or they have got to find a certain number of things, or they get promoted if they do or they are called wimps if they don't, because that is what—

Mr. BARAB. Not only don't we do that, we are actually prohibited by law from doing that. We send our inspectors out to, you know, to find problems. Sometimes they find problems, sometimes they don't. But there is no kind of quota or anything like that.

Chairman WALBERG. I thank the gentleman for joining us today as a member of the full committee. We appreciate you taking interest in this.

At that, I will turn to my ranking member for closing comments.  
Ms. WOOLSEY. Thank you, Mr. Chairman.

Before I make my comments, I would like to point out that the letter that Mr. Layne put into the record, it was Mr. Layne—oh, Mr. Rokita placed in the record from the VPPPA, appears to contradict a press release that we received in October 2010. So I have that press release, and I would like to enter it into the record.

Chairman WALBERG. Without objection, so ordered.  
[The press release follows:]

#### **VPPPA Supports OSHA's Position on Incentive Programs**

FALLS CHURCH, VA.—The Voluntary Protection Programs Participants' Association, Inc. (VPPPA) supports the position of the Department of Labor's Occupational Safety and Health Administration (OSHA) that incentive programs must not encourage underreporting of injury and illnesses. The question of the merit of incentive programs resurfaced when OSHA, as part of its National Emphasis Program on Recordkeeping, suggested that the existence of incentive programs may qualify for deliberate under-reporting, raising a recordkeeping violation from "other-than-serious" to the willful level.

"We have found that incentive programs based primarily on injury and illness numbers often have the effect of discouraging workers from reporting an injury or illness," said OSHA Assistant Secretary Dr. David Michaels at the opening of the 26th Annual National VPPPA Conference in Orlando, Fla., in August. "We cannot tolerate programs that provide this kind of negative reinforcement and this type of program would keep a company out of the VPP until the program or practice is corrected."

However, Voluntary Protection Programs (VPP) participants, just like all other worksites, are free to use an incentive program as long as it's the right kind of program, reinforcing positive behavior. Specific questions during inspections and onsite evaluations have been designed to determine whether some employers are under-reporting injuries and how incentive programs affect the reporting of injuries and illnesses.

"Incentive programs are a useful and common means to motivate people and strive for improvement," said VPPPA Executive Director R. Davis Layne. "However, the association and its members disapprove of programs that discourage employees from reporting injuries because they want to receive a reward. Good incentive programs feature positive reinforcement for demonstrating safe work practices and taking active measures in hazard recognition, analysis and prevention."

OSHA depends on VPPPA members and VPP participants in general to ensure that the nation's workforce is safe and healthy on the job. VPP sites have countless success stories of best practices in incentive programs and are ready to support Secretary of Labor Hilda Solis' vision of good jobs.

VPPPA, Inc., a nonprofit 501(c)(3) charitable organization, is dedicated to promoting advances in worker safety and health excellence through cooperation among communities, workers, industries and governments. The nearly 2,100 VPPPA member sites primarily consist of worksites that have been approved, or are seeking approval, into VPP as administered by OSHA, state-plan OSHA and the Department of Energy.

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Ms. WOOLSEY. All right. Thank you very much.

So, Mr. Chairman, thank you for holding today's hearing. As Professor Levine has made very clear, inspections are effective for reducing injuries and reducing workers' compensation costs, so this is good for both the workers and the employers, and we have to stop saying that it isn't.

Savings on workers' compensation is amazing when employers realize what they get out of this. We also know that resources for safety inspections are already limited. OSHA's budget allows it to inspect each worksite every 131 years. I mean, that is just appalling, but it does mean that to help fill the resources gap, the re-

source gap, OSHA counts on workers because they have to be the other set of eyes and ears.

But they can only do this and fill that role if there is an effective whistleblower protection for them, because, today, OSHA faces a massive backlog of over 2,000 whistleblower complaints, and they have to be investigated in addition to the new cases that have to be dealt with every day.

So we have to put that forward. If we are not going to hire lots and lots of inspectors, we should be able to trust the workers, and they have to go have a whistleblower committee, I mean, an agency, where they can safely bring their complaints or their concerns.

So, Mr. Chairman, thank you. We have so much to do, this has been good. I mean, I am telling you, Mr. Lee, every company in this country should be like yours, and then we don't even need OSHA, but we do need OSHA because somebody has got to investigate.

Chairman WALBERG. May I quote the first statement?

Ms. WOOLSEY. Yes, but, no, not the second half of it. You have to do the whole thing, Mr. Chairman. You are fair, I know you will.

So, but we do need—I mean OSHA is so important to us because they fill in all the gaps and employers really can't do on their own, but now thank you for being an example of how VPP can work and thank you, Jordan, for doing all that you do. Thank you, and thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentlelady, and I want to thank all the witnesses for being here. I wish that America wasn't in a situation where we had to hang on the words of nine people today waiting for an answer. A lot of other things kind of went by the wayside, but we appreciate the willingness of people to move up the time period to start this at 9:30, as opposed to our identified time originally, because I think this information was necessary to hear.

There is no disagreement, I think, by either side of this dais that we want safe workplaces. Safe workplaces are productive workplaces. Productive workplaces make money, and in our society that is a necessity to continue on the leadership in the world that we have, to have jobs that people can be accountable to, as well as responsible for, and succeed in and ultimately be able to do for themselves what they can and should do as well in this country to care for others, and they genuinely need help around the world as well as in our United States.

That all goes together, and a safe workplace helps to do that. But we also know a safe workplace must be a workplace that continues a second day, third day, fourth day, fifth day, that provides jobs in a consistent framework where people can count on it, unlike some of our policies sadly here in government at times, and we can continue to try to work that out.

There is a place for OSHA, and I don't say that jokingly at all. I believe there is a place for OSHA, and I believe there is a place for——

Ms. WOOLSEY. May I put that in the record?

Chairman WALBERG. You can put that on the record. It is on the record.



There is a place for State OSHAs as well, as in Michigan, and we know that it works in many cases very well. We know there are horror stories also. Humans come with horror stories.

We just want to make sure that we have settings that work better as a result of ownership that comes from partnership. I think that is what I have been pushing for as chairman of the subcommittee that we see more partnerships develop in a proactive way, as opposed to regulation by shaming or, on the other side of the ledger, trying to get under the radar and do things that are not productive or good.

So if we can come to the middle and devote ourselves to partnerships where we have businesses that have best practices that they can develop—and I think that is one of the things I hear from the VPP programs—is that best practices are promoted. When we talk about whistleblowers, what better whistleblower is there than a Mr. Henson, who has complete authorization within his corporation as an employee to sing out loud and proud when there is a problem, but also sing out loud and proud when there is something that works for all concerned and makes the product better, makes the outcome better but also makes sure there is safety in the workplace.

That says to me that the design of this country, that said the best way we can police ourselves is by policing the ourselves, and being people who understand true morality, understand responsibility and understand accountability, that we work together as opposed to hiding things or working in competition with each other.

So I appreciate this hearing today, and I appreciate the lengths to which you came to provide not only insights, personal testimonies, but the facts of the situation from a broad perspective.

I appreciate research, and I appreciate those that are objects of research that promote it from the real life, living, practicing world.

Ms. WOOLSEY. Mr. Chairman, I have one more thing to ask be included in the record. It is the OSHA whistleblower investigation data dated June of 2012 that shows the average days pending for whistleblower cases, 359 days. I am sorry, I should have done that when I was talking about it, and I missed that.

Chairman WALBERG. Without objection, so ordered.

[The data follows:]

#### OSHA WHISTLEBLOWER PROTECTION PROGRAM

[Investigation data 10/1/11–6/15/12]

Cases	Cases received	Cases completed	% Timely completed	Average days to complete	Pending cases	% Pending cases over age	Average days pending
ACA .....	11	11	55	127	6	83	183
AHERA .....	3	1	0	70	6	83	343
AIR21 .....	37	41	20	381	86	87	535
CFPA .....	5	6	50	68	2	50	83
CPSIA .....	4	3	33	411	3	67	162
EPA .....	36	32	34	284	45	78	396
ERA .....	35	38	8	426	53	79	365
FRSA .....	234	191	22	331	413	87	375
FSMA .....	11	9	22	168	15	73	218
ISCA .....	0	0	0	0	0	0	0
NTSSA .....	11	7	14	319	21	81	457
OSHA .....	1153	1079	27	248	1431	80	340

## OSHA WHISTLEBLOWER PROTECTION PROGRAM—Continued

[Investigation data 10/1/11–6/15/12]

Cases	Cases received	Cases completed	% Timely completed	Average days to complete	Pending cases	% Pending cases over age	Average days pending
PSIA .....	1	1	0	248	6	83	398
SOX .....	108	108	31	352	153	81	402
SPA .....	7	7	43	134	5	80	336
STAA .....	216	205	29	284	280	84	354
Totals .....	1,872	1,739	26	273	2,525	82	359

Note: This report contains sensitive information that may not be appropriate for distribution outside OSHA. Local office should review the information BEFORE it is provided to outside requestor.

Chairman WALBERG. Having said that, again, thank you for being here. There is no further business to come before the committee, and so this committee stands adjourned.

[The statement of Mr. Petri follows:]

**Prepared Statement of Hon. Thomas E. Petri, a Representative in Congress  
From the State of Wisconsin**

Thank you, Mr. Chairman, for allowing me to sit in on this very important hearing. I meet with companies from my district all the time, both large and small, and I hear a very common theme with respect to OSHA. Many are very frustrated by the agency's approach to its relationship with business—they feel as if there is a kind of “GOTCHA” attitude instead of one that seeks to help them to be in compliance with the law. Oftentimes, they say, inspectors seem to look for mere paperwork violations instead of actual threats to worker safety.

While enforcement of our worker safety laws is important, I think the Voluntary Protection Program (VPP) provides an opportunity for the agency to work with companies that demonstrate a willingness to put in place—in cooperation with their workforce—a comprehensive worker safety and health system—and hopefully to encourage others to do the same. That is why I introduced H.R. 1511 along with Representative Gene Green from Texas.

I thank you again, Mr. Chairman, for holding this important hearing.

[Additional submission of Mr. Walberg follows:]

*June 28, 2012.*

Hon. TIM WALBERG, *Chairman*; Hon. LYNN WOOLSEY, *Ranking Member*,  
*Subcommittee on Workforce Protections, Committee on Education and the Workforce,*  
*U.S. House of Representatives, Washington, DC 20515.*

DEAR CHAIRMAN WALBERG AND RANKING MEMBER WOOLSEY: On behalf of Associated Builders and Contractors (ABC), a national association with 74 chapters representing more than 22,000 merit shop construction and construction-related firms, I am writing in regard to the subcommittee hearing titled, “Promoting Safe Workplaces Through Voluntary Protection Programs.”

As builders of our country's communities and infrastructure, ABC knows that a premium must be placed on jobsite safety. Safe workplaces are essential to the success of our businesses, and we take seriously our moral obligation to provide employees with safe and healthy environments in which to work. Thousands of ABC companies have implemented safety programs that are among the best in the industry, often far exceeding OSHA requirements.

ABC members have grown increasingly concerned with OSHA's emphasis on, and promotion of, its aggressive enforcement agenda. The agency has increased fines and penalties across the board and continues to publicly shame employers before enforcement decisions are made final. To make things worse, the agency is engaging in these activities while simultaneously deemphasizing positive engagement with employers and cooperative tools like the Voluntary Protection Program (VPP).

OSHA's fiscal year 2013 budget calls for significant cuts to the agency's federal compliance assistance programs, including VPP. Indeed, the program has already seen funding and staff reductions, which in turn have slowed the application process and limited the number of new program participants. ABC strongly believes that

resources dedicated to VPP and other cooperative programs should not be diminished.

During the 112th Congress, ABC has supported the Voluntary Protection Program Act (H.R. 1511), introduced by Rep. Tom Petri (R-Wis.), which would codify VPP, expand it to include more small businesses and incorporate recent recommendations for program improvements. ABC strongly believes that the road to zero-incident jobsites starts with a cooperative effort from both OSHA and employers to understand the rules in place to maintain a safe workplace, and to develop the methods to achieve them. We urge the subcommittee to take up this much-needed legislation.

We appreciate your attention to this important matter and look forward to working with the subcommittee to ensure that OSHA reaffirms its dedication to working with employers and viewing them as partners in achieving safer workplaces.

Sincerely,

KRISTEN A. SWEARINGEN,  
*Senior Director, Legislative Affairs.*

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[Questions submitted for the record and their responses follow:]

U.S. CONGRESS,  
*Washington, DC, July 12, 2012.*

JORDAN BARAB, *Deputy Assistant Secretary of Labor,  
Occupational Safety and Health Administration, U.S. Department of Labor, 200  
Constitution Avenue, NW, Washington, DC 20210.*

DEAR MR. BARAB: Thank you for testifying at the Subcommittee on Workforce Protection's hearing on "Promoting Safe Workplaces Through Voluntary Protection Programs," held on June 28. I appreciate your participation.

Enclosed are additional questions for the record submitted following the hearing. Please provide written responses no later than July 26 for inclusion in the official hearing record. Responses should be sent to Ryan Kearney of the Committee staff who may be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the Committee.

Sincerely,

TIM WALBERG,  
*Chairman*

QUESTION FROM REPRESENTATIVE WOOLSEY

1. To be recognized under the Voluntary Protection Program, employers must put in place effective "safety management systems." This requires a program to regularly identify workplace hazards and fix them. Isn't this exactly the same approach to safety that OSHA is pursuing with its "Injury and Illness Prevention Program" rule that is now under development?

U.S. Department of Labor

Assistant Secretary for  
Congressional and Intergovernmental Affairs  
Washington, D.C. 20210



September 27, 2012

The Honorable Tim Walberg  
U.S. House Committee on Education and the Workforce  
Subcommittee on Workforce Protections  
2181 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Walberg:

Please find enclosed the answer to the Question for the Record submitted to Deputy Assistant Secretary of the Occupational Safety and Health Administration Jordan Barab after the Subcommittee on Workforce Protection's hearing on June 28, 2012 entitled "Promoting Safe Workplaces Through Voluntary Protection Programs."

Thank you again for inviting Mr. Barab to testify at the hearing. Please feel free to contact me at 202-693-4600 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian V. Kennedy", is written over the typed name.

Brian V. Kennedy

Enclosure

**Committee on Education and the Workforce - Subcommittee on Workforce Protections**

**“Promoting Safe Workplaces Through Voluntary Protection Programs.”**

Q: To be recognized under the Voluntary Protection Program, employers must put in place effective “safety management systems.” This requires a program to regularly identify workplace hazards and fix them. Isn’t this exactly the same approach to safety that OSHA is pursuing with its “Injury and Illness Prevention Program” rule that is now under development?

A: OSHA’s Voluntary Protection Programs (VPP) was established in July, 1982 to recognize and promote effective worksite-based safety and health management systems. VPP’s Policies and Procedures Manual requires all VPP participants to have a Comprehensive Safety and Health Management system which includes management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training.

This requirement is based on OSHA’s voluntary “Safety and Health Program Management Guidelines” (the Guidelines) in January, 1989, which were developed based on lessons learned and experience with VPP and other programs. These Guidelines present effective criteria for organizing a managed safety and health program. In January, 2001, to maintain consistency in OSHA’s approach to safety and health program management, the Agency reorganized the VPP criteria to conform more closely to the Guidelines. Since that time, a considerable body of information has developed that describe the effectiveness of managed safety and health programs; OSHA recently summarized much of this information in its Injury and Illness Prevention Program White Paper (<http://www.osha.gov/dsg/InjuryIllnessPreventionProgramsWhitePaper.html>).

OSHA’s current injury and illness prevention program initiative is based on the same core elements found in OSHA’s VPP and more recently described in the Agency’s White Paper. These basic elements include management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training, as well as program evaluation and improvement.

U.S. CONGRESS,  
Washington, DC, July 12, 2012.

R. DAVIS LAYNE, *Executive Director*,  
Voluntary Protection Programs Participants’ Association, 7600-E Leesburg Pike,  
Suite 100, Falls Church, VA 22043.

DEAR MR. LAYNE: Thank you for testifying at the Subcommittee on Workforce Protection’s hearing on “Promoting Safe Workplaces Through Voluntary Protection Programs” held on June 28. I appreciate your participation.

Enclosed are additional questions for the record submitted following the hearing. Please provide written responses no later than July 26 for inclusion in the official hearing record. Responses should be sent to Ryan Kearney of the Committee staff who may be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the Committee.

Sincerely,

TIM WALBERG,  
*Chairman*

QUESTIONS FROM REPRESENTATIVE WOOLSEY

1. Of the 2374 sites recognized through the federal and state OSHA Voluntary Protection Programs, how many of these VPP-approved sites are also members of the Voluntary Protection Program Participants Association?

2. Is Pactiv Corporation a member of the VPPPA?



*Voluntary Protection Programs Participants' Association, Inc.*

July 25, 2012

The Honorable Tim Walberg  
Chairman, Subcommittee on Workforce Protections  
U.S. House of Representatives  
2181 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Walberg,

Thank you for allowing R. Davis Layne the opportunity to testify before the subcommittee on behalf of the Voluntary Protection Programs Participants' Association, Inc. (VPPPA) during the June 28, 2012, hearing entitled "Promoting Safe Workplaces Through Voluntary Protection Programs." Mr. Layne has subsequently moved to a senior advisory role with the association, and as Acting Executive Director, I am authorized by the association's board of directors to respond to the questions for the record submitted by the subcommittee.

Please accept the following responses on behalf of VPPPA. If you have any questions at all, please do not hesitate to contact me at (703) 761-1146 or [switt@vpppa.org](mailto:switt@vpppa.org).

Sincerely,

Steven F. Witt  
Acting Executive Director  
VPPPA, Inc.

VPPPA, Inc., a nonprofit 501(c)(3) charitable organization, is dedicated to promoting advances in worker safety and health excellence through cooperation among communities, workers, industries and governments. The approximately 2,000 VPPPA member sites primarily consist of worksites that have been approved, or are seeking approval, into VPP as administered by the Occupational Safety and Health Administration (OSHA), state-plan OSHA and DOE.

7600-E Leesburg Pike • Suite 100 • Falls Church, VA 22043 • Phone: (703) 761-1146 • Fax: (703) 761-1148 • [www.vpppa.org](http://www.vpppa.org)

#### Questions from Ranking Member Woolsey

1. Of the 2,374 sites recognized through the federal and state OSHA Voluntary Protection Programs, how many of these VPP-approved sites are also members of the Voluntary Protection Program Participants' Association?

Currently, 1,174 VPP sites are members of VPPPA.

2. Is Pactiv Corporation a member of the VPPPA?

Yes, three Pactiv VPP sites in Illinois are members of the association.

[Whereupon, at 10:43 a.m., the subcommittee was adjourned.]

