

Congress of the United States  
Washington, DC 20515

April 5, 2011

The Honorable Jack Lew  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street NW  
Washington, DC 20503

Dear Director Lew:

As members of committees with jurisdiction over the Occupational Safety and Health Act, we write to express dismay that the President's FY 12 budget request zeroed out two effective worker safety and health programs in the National Institute for Occupational Safety and Health (NIOSH) based on faulty justifications.

The budget proposes to zero out the NIOSH Agriculture, Fishing and Forestry (AFF) program, a \$23 million program which reduces occupational injury and illness in three very high-risk industries, and the NIOSH Education and Research Centers, a \$24.3 million program which funds occupational medicine residency and training programs, pursuant to a mandate in Section 21 of the Occupational Safety and Health Act of 1970 (OSHAct).

**AFF Program:** The need for the AFF program is clear. Logging, fishing and forestry have amongst the highest rates of occupational injury and death. Fishermen have a fatality rate 37 times greater than average, and logging workers have a fatality rate 23 times greater.

To justify the elimination of the program, the budget justification cites a 2007 National Academy of Science (NAS) review which found that, while NIOSH's work was highly relevant, its impact, while extremely strong for the commercial fishing industry, could use augmentation and better coordination for forestry and farming. Since then NIOSH has reorganized the program with tangible results.

The entire expert panel who wrote this 2007 NAS report recently wrote to Congress: "we were shocked to discover that only a small selective portion of our assessment of the [AFF] program was cited as the basis for the zero budget proposal. Upon careful reading of the President's budget justification narrative, it became clear to us that its authors have misunderstood our panel's findings and misconstrued our conclusions."

Moreover, the President's budget justification incorrectly asserts that both the Occupational Safety and Health Administration (OSHA) and the U.S. Department of Agriculture (USDA) "have more direct programs" to carry out this work. Pursuant to the OSHA Act, NIOSH is charged with conducting safety and health research, while OSHA promulgates standards, conducts enforcement and provides compliance assistance. Unless the OSHA Act is amended, such research is outside OSHA's authority. USDA has no occupational safety and health prevention programs; these were terminated in the mid-1970s.

**Education and Research Centers:** The OSHA Act directs the Secretary of Health and Human Services to "conduct, by grants or contracts, education programs to provide an adequate supply of qualified personnel to carry out" the law. To fulfill this mandate, NIOSH established Education and Research Centers (ERC) to support occupational medicine residency programs. The Institute of Medicine (IOM) has found that occupational medicine needs more specialists with formal training.

To justify zeroing out the ERC funding, the President's budget justification asserts that the "original programmatic plan was to provide money for five years for institutions to develop and/or expand existing occupational programs and for the grantees to become self sustaining over time." Congress never intended for this program to be a seed program to be eliminated in five years. As reflected in the legislative authorization, Congress intended to continue these training programs until there was "an adequate supply" of occupational doctors, industrial hygienists and other related professionals.

The budget justification incorrectly contends that the original "programmatic plan" from the 1970s intended that this was a time-limited program. We have now learned that OMB staff never reviewed this original programmatic plan, which may explain why the justification misinforms Congress that this was a short duration program intended to be sunsetted after 5 years.

Further, the justification asserts that the program is unable to track the ultimate employment of the graduates from this program. NIOSH has provided Congress with extensive detail on the employment outcomes, and data is posted on its web site.

The budget justification also contends that OSHA can provide this same training, and therefore NIOSH should be defunded. This is erroneous. OSHA's Training Institute provides short term training for federal and state inspectors on OSHA's enforcement and compliance assistance programs. OSHA also offers continuing education courses to enable its staff to maintain professional certifications. OSHA does not provide occupational medicine residency programs, or basic training in industrial hygiene or related disciplines.

NIOSH is the only federal agency responsible for funding training programs for occupational physicians and allied occupational health providers and conducting research and making recommendations for the prevention of work-related illness and injury. Unlike almost every

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other major medical specialty, occupational medicine does not receive residency funding support from the Centers for Medicare and Medicaid Services. If the ERC's lose their funding, there is simply no other source of support, and they will close.

We certainly understand the need for fiscal discipline in these difficult times and if the Administration wants to terminate a duplicative or underperforming program, we will be more than willing to cooperate in that effort. However, the rationale provided by the President's FY 12 request does not support these two program cuts.

While the budget request commendably increases resources for the two main workplace safety agencies—OSHA and MSHA—at a time of declining discretionary funding, it is puzzling that the President would choose to zero out funding for NIOSH programs that provide the scientific basis for safety and health regulation.

In view of these plainly defective budget justifications, we would ask that you:

- 1) Direct a review of these two budget justifications, in consultation with NIOSH;
- 2) Take appropriate action, including submission of a budget amendment; and
- 3) In the meantime, hold these programs harmless from cuts as part of the FY 11 continuing resolution.

We would be pleased to discuss this in more depth with you or your staff. Please contact Mike Waske at 202-224-2570 or Richard Miller at 202-225-3735, if you would like to discuss this further.

Sincerely,



**GEORGE MILLER**  
Senior Democratic Member  
Committee on Education and  
the Workforce



**PATTY MURRAY**  
Chair  
Subcommittee on Employment  
and Workplace Safety

cc: The Honorable Kathleen Sebelius