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September 16, 2015

The Honorable Roy Blunt
Chairman, Subcommittee on Labor, Health & Human Services, Education, &
Related Agencies
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member, Subcommittee on Labor, Health and Human Services,
Education, & Related Agencies
Committee on Appropriations
U.S. Senate
Washington, DC 20510

The Honorable Tom Cole
Chairman, Subcommittee on Labor, Health & Human Services, Education, &
Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member, Subcommittee on Labor, Health & Human Services,
Education, & Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

RE: ASSE Comments on Proposed FY 2016
Appropriations for OSHA, NIOSH and MSHA

Dear Chairman Blunt, Ranking Member Murray, Chairman Cole and Ranking
Member DeLauro:

The American Society of Safety Engineers (ASSE) represents the professional interests of over 37,000 occupational safety, health and environmental (SH&E) professionals in every state, every industry and, increasingly, across the globe. Our members are committed to working with employers to protect workers from on-the-job risks that might otherwise keep them from going home each day safe and healthy to their families. Our members have a direct interest in the

appropriate funding and oversight Congress provides the federal agencies that support workplace safety and health, including the Occupational Safety and Health Administration (OSHA), the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA). ASSE has long called for full and, as needed, increased funding for each of these agencies.

However, our members know that overreliance on one single approach to keeping workers safe is not effective. Adequate and meaningful enforcement is important but so are the cooperative resources OSHA and MSHA provide employers to help them manage workplace risks and avoid injuries, illnesses and fatalities that threaten their ability to be in business. New and updated safety and health standards can be appropriate when they reflect the best practices our members develop through their own training and experience and through the considerable research and education resources NIOSH provides. Based on our members' appreciation of the role these agencies play in backing their work, ASSE urges the FY 2016 budget conferees for Labor, Health and Human Services, Education and Related Agencies to consider the following comments.

OSHA

ASSE has already joined with the National Safety Council and the American Industrial Hygiene Association to urge funding for OSHA at a minimum of the \$592.1 million included in the President's budget. ASSE, therefore, strongly opposes the proposed funding reductions from OSHA's current \$552.8 million budget in both the Senate and House Appropriations bills – \$28.3 in the Senate and \$17.8 million dollars in the House.

Unfortunately, discussions about OSHA's value seem to take place only in the context of regulatory burden. Our members, too, oppose OSHA policies that do not efficiently and effectively advance workplace safety. However, OSHA's value also must be considered in the context of the role the agency plays in influencing employers to take responsibility for protecting workers, which provides US employers a payoff in billions of dollars in savings each year. ASSE's Business of Safety Resource Center documents the return on investment achieved through workplace safety and health. Our members' leadership in risk management influences companies to achieve safety from within, but OSHA's role in influencing employers from the outside is important, too. Yet, with nearly 7.5 million US workplaces – most of them small businesses – and only about 2,200 OSHA and state plan inspectors to oversee almost 116 million workers, even a small cut in OSHA funding is a relatively large reduction in the nation's ability help see that employers manage the risks that undercut our nation's competitiveness. As much as our members appreciate efforts to limit the cost of government, the proposed cuts to OSHA may be penny wise but are pound foolish. We urge you to reject them.

As to the riders adopted in the reports that accompany the Senate and House appropriations bills, ASSE offers the following comments:

Enforcement vs. compliance assistance – The House Appropriations Committee stated that, “The Committee directs OSHA to reorient its approach and refocus its efforts and resources on helping companies to comply with workforce safety laws thereby freeing up funds being used for inspections and fines to create new jobs.” ASSE typically respects the difficult decision each

Administration makes in dividing OSHA's inadequate resources between enforcement and cooperative efforts. But we share the Committee's concern that OSHA in recent years apparently has decreased resources available for the Voluntary Protection Program (VPP), the alliance and partnership programs and other cooperative efforts. So, ASSE supports the Committee's direction to increase compliance assistance by \$7.8 million.

However, we cannot support the Committee's direction to lower spending on enforcement by \$15 million. As indicated above, reducing already inadequate inspection resources will only reward those employers who already fail to protect their workers. By increasing OSHA's budget as the President has requested and as we urge, Congress could avoid the unintended consequence of sending a message that the nation's commitment to safe, healthy and competitive workplaces is diminished.

VPP – ASSE agrees in general with the support for the Voluntary Protection Program voiced in both the Senate and House Appropriations Committee reports. While we can support Senate language requiring funding and barring reductions in staff and resources for VPP, we urge consideration of the House's proposal for a report from OSHA assessing the participation, costs and effectiveness of the program. ASSE has long supported codification of VPP, and a study of its effectiveness may provide needed support for that effort, thereby benefiting the program for the long run.

Whistleblower program – ASSE supports a \$2.5 million increase in OSHA's whistleblower program. The widely supported recommitment by Congress and this Administration to provide more adequate resources for OSHA to administer whistleblower complaints is an important element in helping ensure safe and healthy workplaces.

Funding for state programs – ASSE is particularly encouraged by the proposed increase of \$2.1 million to state programs. State programs oversee roughly half of the nation's employers and workers, yet the federal government's responsibility to fund half of the costs of state plans is not being met. ASSE applauds the House Appropriations Committee's effort to begin to correct the burden this lack of funding places on the plans.

Harwood Training Grants – ASSE opposes the House proposal to eliminate the Harwood Training Grant Program. Worker training is an essential element in any workplace safety effort. These grants help workers where training is typically not otherwise available. If recipients are inappropriately using grants for "capacity building," OSHA should be directed to establish better procedures and be more transparent, as the Committee indicates. Eliminating the grant program entirely only makes workers less safe and healthy. We are also concerned with the Senate Appropriations Committee's direction that OSHA focus grants on nail salon worker training. Raising attention to the issue is important, but OSHA should be allowed to determine how best to utilize its variety of resources to address the issue, not just training grants.

Standards Development in Face of Reduced Injury and Illness Rates – The House Appropriations Committee report questions the need for OSHA to develop standards when injury and illness rates are declining. ASSE urges the conferees to consider that our economy is exiting a prolonged period of recession. With increased construction and manufacturing as the economy

improves, these rates are expected to increase again, unfortunately. Also important is that, in European nations with which US employers compete, these rates are much lower, perhaps even half US rates in certain industry sectors (<http://www.bls.gov/opub/mlr/2014/article/pdf/comparing-fatal-work-injuries-us-eu.pdf>). A RAND study funded by ASSE indicates that United Kingdom workplace fatality rates could be as little as 20 percent of the US (<http://onlinelibrary.wiley.com/doi/10.1002/ajim.22258/abstract;jsessionid=A832460019AD85E2A5CD4A92C9A41A5C.f03t01>). While a variety of factors support this discrepancy, OSHA's outdated standards only contribute to this nation's inability to keep up with competitors whose costs from unmanaged risks are so much lower.

Instead of limiting OSHA's ability to develop standards, Congress needs to provide OSHA help and direction in developing more functional standards that reflect the best safety practices and better regulatory approaches. The RAND study gives initial indications that the factor driving the UK's better rates may be the UK's reliance on risk-based regulatory approaches as compared to OSHA's pre-1970s' prescriptive one-size-fits-all standards. The House report included concern over OSHA's intent to establish an injury and illness prevention program (I2P2) standard. ASSE, too, is concerned that such a standard, if not appropriately drafted, will not be effective. Yet, if such a standard could support a new risk-based approach to regulating safety and health – much like California's current I2P2 standard – employers and OSHA inspectors could move towards a more cooperative inspection process focused on significant risks and away from the nitpicking confrontation that employers and OSHA too often experience now. ASSE encourages the Committee to look more deeply into the game-changing potential of a truly risk-based I2P2 standard, and we offer the expertise of our members who implement successful I2P2s for employers on a daily basis to help the Committee do so.

National/Regional/Local Emphasis Programs – ASSE shares the House Appropriations Committee's concern that OSHA emphasis programs should rely on “improved use of statistical analysis and other strategies to ensure that employers with excellent safety records are not subject to lengthy and costly inspections and enforcement processes without warrant.” Our members, too, voice concern that OSHA is not directing their resources towards truly bad actors. We also understand, though, how OSHA's lack of adequate resources impacts its ability to do even more work to better target employers who need targeting. We urge reconsideration of the requirement in the FY 2015 Appropriations Act that directed OSHA to notify the House and Senate Appropriations Committees 10 days before the announcement of any new emphasis program. As in any business, reporting burdens only take away from the agency's ability to find ways to better target OSHA resources.

Crystalline Silica – With minor suggestions for changes, ASSE supported OSHA's proposed rule to establish a new crystalline silica standard, an action that remains long overdue. ASSE opposes any measure by Congress to dictate the provisions of the standard or cause any further delay in bringing a difficult process that has afforded all stakeholders a fair opportunity to comment to an end.

Solid Ammonium Nitrate – ASSE's members share the concern voiced both by the Senate and House Appropriations Committees that OSHA's PSM Standard not be expanded to include

ammonium nitrate storage. Many of the employers affected by such a change are small employers, and PSM is a far more complex standard requiring highly trained professionals to ensure effective compliance. Our expert members do not see enough added benefit from such a change that cannot be affected through a more focused commitment from OSHA and other agencies to enforcement and cooperative measures to encourage greater understanding and adherence to current standards.

NIOSH

ASSE has joined with nearly 200 other organizations as the Friends of NIOSH to call for funding NIOSH at least at the FY 2015 level of \$334.863 million. ASSE applauds the House Appropriations Committee for proposing an increase in NIOSH's FY 2016 funding to \$341 million and strongly opposes the Senate Appropriation Committee's proposed \$18 million cut. We also fully support the House proposal to continue funding for Education and Resource Centers as well as the research conducted under NIOSH's Agriculture, Forestry and Fishing (AgFF) Program, which the Senate proposes to cut. The Administration has proposed eliminating these programs repeatedly but without success.

NIOSH is the sole resource for occupational safety and health research and education. Our members rely on its resources and its assistance to students and educational programs to help them help employers achieve safe and healthy workplaces. The AgFF research program addresses risks in some of the most dangerous occupations. Cutting research where it is most needed has made no sense from the beginning of the Administration's effort to eliminate it and makes no sense now. As in previous years, the AgFF research program needs to be included in any final budget

MSHA

From the current \$375.9 million budget for MSHA, the House Appropriations Committee has proposed a \$4.887 million cut and the Senate Appropriations Committee a little more than \$19 million cut, both of which are unacceptable to ASSE and the members of its Mining Practice Specialty. We urge funding MSHA at least at the FY 2015 level of \$375.887 million. Progress in limiting fatalities and injuries in mining has been relatively positive in recent years. But that progress should indicate the need for continued full funding of MSHA, not a reduction.

ASSE shares the Senate Appropriation Committee's concern with MSHA's "overreliance on an enforcement-focused strategy that disproportionately impacts small businesses" and that "the Department should do everything possible to assist companies with training and technical support to comply with health and safety standards." Given MSHA's responsibility for frequent inspections and the attention it is asked to give enforcement, we do not see how MSHA can move forward more cooperative efforts without full funding.

The following addresses the riders in the Senate and House reports:

State assistance training grants – ASSE fully supports the \$8.441 million the House directs to support state assistance training grants. As with Harwood grants, our members see the impact these resources have on miners' ability to receive training that otherwise may not be provided by some mine operators.

Mining VPP – ASSE applauds the House Appropriations Committee’s idea to establish a VPP for mining employers. ASSE members are strong supporters of the impetus VPP gives employers to engage with labor and SH&E professionals to drive company commitment to safety and health to higher levels. What our members know works for other industries can also work for the mining industry. If ASSE’s members who lead VPP sites can be helpful to Congress and MSHA in the development of such a program, ASSE would be happy to facilitate their assistance.

Extension of enforcement of respirable dust standard – The House Appropriations Committee’s raising the issues of extending enforcement of MSHA’s final rule to lower miners’ exposure to respirable coal dust is appropriate. Our members understand that various factors within the mine environment, including equipment operator’s behavior, impact dust exposure. Continuous monitoring of dust, no doubt, will yield data useful in instructing mine operators on how best to limit employee dust exposure. Depending on what is learned and the time it takes for MSHA and industry to develop resources based on the data, extension of enforcement dates may very well be appropriate.

Conclusion

ASSE and its members are increasingly engaged in conversations with SH&E professionals in other nations, including nations where occupational safety and health is a still an idea under development. When nations do not have established and fully functioning agencies like OSHA, NIOSH and MSHA with highly professional staffs committed to their missions as we have in this country, it is obvious that workers die, factories and parts of towns disappear in explosions and economies are harmed. We lose track of that larger picture at times when regulations cross a line of usefulness or human limitations become apparent in inspections and administrative judgement. While those of us in occupational safety and health may quibble over individual decisions made in the difficult process of constructing a federal budget, ASSE appreciates that Congress and the Appropriation Committees recognize the value of these agencies to this nation’s overall welfare and continue to support their missions.

Thank you for your attention to our thoughts and concerns.

Sincerely,



Michael Belcher, CSP
President