



FOR IMMEDIATE RELEASE
February 9, 2010

CONTACT: Ben Somberg or Matt Freeman
bsomberg@progressivereform.org
mfreeman@progressivereform.org
202.747.0698

***New CPR White Paper:
OSHA 'Dysfunction' Leaves Workers at Risk***

Washington, DC ---- A new white paper from the Center for Progressive Reform describes the Occupational Safety and Health Administration (OSHA) as a “study of regulatory dysfunction,” starved of the resources it needs to live up to its statutory mandate of protecting the nation’s workers, and encumbered by “so many analytical requirements that it takes more than a decade to implement a single new standard.” The [white paper](#) was released a day before a scheduled “OSHA Listens” public hearing in Washington, to have been convened by Assistant Secretary of Labor David Michaels. (The meeting was canceled due to weather, and had not yet been rescheduled at the time of this release.)

“David Michaels is a talented and committed public servant,” said CPR President Rena Steinzor, a co-author of the white paper and professor of law at the University of Maryland, “but he’s inherited an agency that has been hobbled by a combination of neglect and hostility. He’s going to get an earful at tomorrow’s listening session, but my hunch is that’s exactly what he’s expecting and hoping for.”

The white paper, [Workers at Risk: Regulatory Dysfunction at OSHA](#), describes OSHA’s descent into dysfunction:

In its early years, OSHA acted with great vigor, establishing important standards for occupational health and safety that have prevented hundreds of thousands of injuries and illnesses. But the agency has not aged gracefully. Today its enforcement staff is stretched thin and the rulemaking staff struggle to produce health and safety standards that can withstand industry legal challenges. In short, OSHA is a picture of regulatory dysfunction....

OSHA’s current leadership – Assistant Secretary David Michaels and Deputy Assistant Secretary Jordan Barab – are committed to revitalizing the embattled agency by turning it into a professional regulator and competent enforcement agency. But Michaels and Barab have inherited a resource-starved agency

operating under a statute that has been enfeebled by 30 years of troubling appellate court decisions and White House initiatives that substantially increase the time and effort needed to implement a proactive regulatory agenda.

Steinzor's co-authors on the white paper are CPR Member Scholars Thomas McGarity (law professor, University of Texas) and Sidney Shapiro (law professor, Wake Forest University), and CPR Policy Analyst Matthew Shultz.

The white paper notes that in the last decade, "OSHA has dropped more standards from its regulatory agenda than it has finalized," attributing OSHA's failure to regulate to a lack of sufficient budget authority. At the same time, the authors write, "the agency's enforcement program has assessed such paltry fines for even fatality-related violations of the law that many employers see no incentive in addressing hazards, much less developing precautionary health and safety programs."

One major problem with enforcement is the lack of inspectors. OSHA employs 1,100 inspectors, and supports another 1,300 inspectors in the 27 states that receive OSHA funding to enforce occupational safety through OSHA-approved state plans. Those 2,400 inspectors must cover 8.6 million workplaces across the nation. As a result, the authors write, "federal and state officials cannot be expected to inspect even a small fraction of U.S. worksites in any given year."

The white paper also notes that OSHA's enforcement structure relies on a toothless set of fines – limiting most fines to just \$7,000 per violation and capping criminal penalties on the most egregious violations – willful noncompliance that leads to a worker's death – at \$250,000 and six months in prison (\$500,000 for a corporation). To make matters worse, OSHA routinely discounts its fines.

The white paper calls for a series of reforms to enforcement, rulemaking and record-keeping. According to the authors, OSHA should:

- End the practice of regularly discounting penalties before they're even proposed.
- Publish all negotiated settlement proposals for public comment.
- Conduct a rigorous analysis of what resources would be required to make the OSHA inspection program a credible threat for employers chronically out of compliance, restoring the efficacy of deterrence-based enforcement throughout the agency.
- Improve training to promote criminal referrals and work with state and local prosecutors to prompt criminal indictments in certain cases.
- Use the "general duty clause" to protect workers exposed to chemicals that lack OSHA-derived Permissible Exposure Levels. The "general duty clause" requires that employers

have a general duty to protect workers from known hazards likely to cause death or serious harm.

- Seek additional resources to increase rulemaking staff.
- Reexamine the heavy risk analysis requirements OSHA imposes on itself in the wake of a Supreme Court decision several years ago.
- Avoid negotiated rulemaking, a process where stakeholders in a prospective rule meet to negotiate a standard with guidance from OSHA. The objective is to avoid litigation, but the approach simply hasn't worked.
- Improve transparency with respect to the White House Office of Management and Budget's interaction with the agency.

The white paper is available online at

http://www.progressivereform.org/articles/OSHA_1003.pdf.

The Center for Progressive Reform is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org and read CPRBlog at www.progressivereform.org/cprblog.