



Testimony of
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On Behalf of the
National Association of Home Builders

Before the
United States House of Representatives
Committee on Education and the Workforce
Subcommittee on Workforce Protections

Hearing on
**“A More Effective and Collaborative OSHA:
A View from Stakeholders”**

February 27, 2018

On behalf of the approximately 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to testify today on how the Occupational Safety and Health Administration (OSHA) can better work with employers to improve the safety of their operations—particularly through the expansion of small business compliance assistance.

My name is J. Gary Hill, and I am President of J. Gary Hill LLC., a home builder, land development consultant, and realtor based in Greensboro, North Carolina. I have 47 years of experience in the residential construction industry as a single-family custom builder, working for a large-volume production builder, and helping guide a multistate mutual insurance company that provides workers' compensation coverage and workplace safety services to its clients. I also serve as the 2018 Chairman of the NAHB Construction Safety and Health Committee.

NAHB is a Washington, D.C.-based trade association that represents builders, developers, remodelers, and housing-related industries. Our members are engaged in a variety of construction types, including single-family homes, affordable and market-rate rental apartments. About one-third of our members are builders and remodelers; the other two-thirds work in closely related specialties, such as sales and marketing, insurance, and financial services. NAHB's members construct approximately 80 percent of all new housing in the United States each year.

Reforming and improving how OSHA operates remains one of the housing industry's top priorities, just as it ranks highly for so many other small businesses across the United States. In recent years, OSHA has unleashed a "regulatory tsunami" on the construction industry—a significant growth in the number and scope of regulations, along with the associated costs of these regulations—and the process by which many of OSHA's compliance inspections were undertaken has raised concerns from our members about OSHA's heavy-handed enforcement practices and procedures.

As an industry, we recognize the legal and moral obligation to provide our employees with a safe workplace. As a business owner, I take the health and safety of all workers on my build site seriously. It is one of my most important jobs. We want OSHA to be a partner, not an adversary.

Since the residential construction industry is overwhelmingly comprised of small businesses, understanding how to comply with OSHA regulations is a massive challenge for the typical home builder. NAHB's members want to ensure they are compliant with existing standards, but it is not always clear what the regulatory requirements are, especially when coupled with all of the other regulations that apply to the home building industry. If OSHA's goal is truly to ensure

worker safety rather than the collection of fines, it must reorient away from its emphasis on enforcement and promulgation of new standards and focus more on compliance assistance to businesses subject to its regulations.

There are several ways to improve OSHA's operating procedures that would make regulatory compliance more cost-effective and user-friendly for small businesses while improving both housing affordability and worker safety.

Small Businesses Dominate the Home Building Industry

Like most of the construction sector, home building is dominated by small firms like my own. More than 95 percent of NAHB builder members meet the federal definition of a "small entity," as defined by the U.S. Small Business Administration.

More than 80 percent of NAHB's builder member's build fewer than 25 homes per year and more than half build fewer than 10 homes per year. A typical NAHB builder member firm is truly a small business, employing fewer than 14 workers.

In most small home building companies, the owner is the president or chief executive officer or, in my case, the sole proprietor. Many firms are a family affair with husband-and-wife teams, brothers, sisters, or children frequently involved in the business. Often, owners employ only a few workers and view them as family, regularly working in the same conditions as their employees.

The staff and owners of these small companies wear many hats. These can include: investor—responsible for funding construction projects; salesman—meeting with prospective home buyers; purchasing manager—in charge of ordering construction materials and supplies; marketing manager—promoting the company and its products; accountant—ensuring creditors and employees are paid; construction manager—ensuring that the home gets built on time and within budget; and construction worker—swinging the hammer to ensure a quality product.

One of the reasons for maintaining relatively small construction worker payrolls is a high degree of specialization in residential construction. Home builders typically subcontract out a significant portion of their construction work to specialty trade subcontractors who can more efficiently perform specific construction activities. Consequently, builders rely on an average of 22 subcontracting firms to build a home, including framers, roofers, electricians and other types of specialty trades. The various specialty trade subcontractors needed to build homes are also typically small businesses who employ fewer than 10 workers. Without trade subcontractors,

many companies and other family-owned home building firms like them would simply cease to be viable operations.

Regulatory Burden Faced by Home Builders

The home building industry is one of the most heavily regulated industries in the country, and these small employers typically do not possess expert comprehension of every detailed regulation to which they are subject. Numerous OSHA regulations are complex and hard to understand.

While understanding one OSHA regulation on its own may not be significantly onerous or problematic, small home builders are often subject to a layering effect, where numerous regulations are stacked on top of one another. Sufficient guidance is not always available and when it is, it is hard to find—and in some cases, so voluminous and technical that it poses a challenge to small business owners who are not regulatory or legal experts.

Both small home builders and specialty trade subcontractors are often puzzled by the complexity and range of OSHA requirements imposed upon them. For example, more than 61,000 pages of regulations appeared in the Federal Register in 2017, with the annual cost of these regulations reaching trillions of dollars. Because of the lack of compliance assistance from OSHA, when multiple rules and regulations are imposed at the same time, smaller companies typically must rely on expensive outside professional consultants (e.g., lawyers, accountants, etc.) to help them demonstrate compliance with technical regulations and reporting requirements.

A safe and productive workforce is crucial to any company, particularly a small one. And it should be stressed again that these employers want jobsites free of dangerous hazards. However, small businesses in the United States bear a disproportionate share of the cost of the nation's regulatory burden. According to the Small Business Administration, federal regulations cost small businesses 60 percent more per employee than large businesses, and compliance with these existing regulations can be very expensive at approximately \$8,000 per employee.¹ And by NAHB's own research, regulations imposed by government at all levels account for almost a quarter of the final price of a new single-family home.²

¹ [https://www.sba.gov/sites/default/files/The Impact of Regulatory Costs on Small Firms \(Full\).pdf](https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20(Full).pdf)

² <http://nahbnow.com/2016/05/regulations-add-a-whopping-84671-to-new-home-prices/>

OSHA has the statutory authority and obligation to issue standards and regulations that are reasonably necessary and appropriate to protect the safety and health of workers. However, what we have experienced in the past is a proliferation of regulatory initiatives that are technologically or economically infeasible to comply with. At the same time, they place significant new burdens on businesses, disproportionately so on smaller ones. Accordingly, NAHB urges the agency to focus its efforts on providing employers with compliance assistance and training for existing regulations and standards so that OSHA is not needlessly piling on regulatory burdens that small businesses cannot effectively meet.

Opportunities for Transforming How OSHA Works

OSHA can—and must—reestablish its focus and efforts on compliance assistance to employers to help them understand their duties under the numerous safety laws and regulations. This should be accomplished through a multi-pronged approach to reach small businesses by working with trade associations and their members, developing new and innovative ways to partner with employers to achieve compliance, and modernizing methods to disseminate compliance assistance information.

First, OSHA should pursue a collaborative relationship with trade associations and their members to inform and educate employers of the responsibilities specified in OSHA standards and regulations. OSHA should recognize the knowledge and expertise that trade associations possess, and leverage this capability to help employers operate safe jobsites, improve compliance, and reduce workplace injuries and illnesses.

NAHB has successfully collaborated with OSHA in the past to advance jobsite safety throughout the home building industry. These cooperative efforts have helped home builders work more safely, which in turn has helped businesses retain workers and saved time and money—savings which builders can pass on to home buyers. Some of the collaborative efforts between NAHB and OSHA that have had a positive impact on construction safety in the home building industry include:

- Participation in the OSHA Alliance program, where NAHB and OSHA combined their collective resources and focused attention on addressing the safety educational needs of the home building industry workforce. This Alliance was vitally important to increasing the awareness at OSHA, and among OSHA inspectors, of the differences between residential and commercial construction jobsites, and the often crucial differences between “best practices” at residential versus commercial build sites. Through the OSHA

Alliance program, NAHB developed and delivered the “Building a House” training program that provided OSHA compliance assistance specialists (CAS) a basic knowledge of the home building process and the key safety hazards typical to residential construction. This added value to OSHA’s On-Site Consultation Program that offers free and confidential safety advice to small and medium-sized businesses.

- Development of a list of general compliance questions and answers. OSHA’s Fact Sheet on Confined Spaces in Residential Construction and accompanying Frequently Asked Questions (FAQs) clarify the standard’s provisions and their application to residential construction work. These materials are useful for small home builders and trade contractors in understanding their obligations and should be replicated for other OSHA regulations.
- Development of the NAHB/OSHA Jobsite Safety Handbook and the “Selected Construction Regulations for the Home Building Industry” (SCOR). The safety handbook was the first cooperative effort between NAHB and OSHA in 1996 that easily explains what home builders can do to comply with safe work practices and requirements. The SCOR book was published in 1997 to assist residential construction employers in identifying safety standards applicable to the most serious hazards found on home building work sites. The goal of these materials was to focus builders on those issues most likely to have a significant positive impact on workplace safety in the industry.

Second, OSHA must develop new and innovative ways to partner with employers to achieve compliance. OSHA offers a number of cooperative programs under which employers, businesses, labor groups, and trade associations can work cooperatively with the agency to help ensure a safe and healthful workplace. These include the Alliance Program, Strategic Partnership Program, Voluntary Protection Programs (VPP), Challenge Program, and On-site Consultation Program’s Safety and Health Achievement Recognition Program (SHARP). However, in recent years, OSHA has moved away from many of these cooperative programs. Instead, the agency now relies disproportionately on traditional enforcement and levying significant monetary penalties.

In NAHB’s view, this shift from proactive compliance assistance to reactive penalties is a mistake, particularly when employers are struggling to understand the requirements. Instead, small employers need help understanding the complex OSHA regulatory regime and want assistance prioritizing the most effective steps for mitigating jobsite hazards. Accordingly, OSHA should devote additional resources to its cooperative programs and develop new and innovative

approaches that work for employers, including embracing the following as part of their compliance assistance offerings:

- NAHB has developed a free, comprehensive model Safety & Health Program for its members that is designed for small to medium-sized home builders and general contractors. It contains the materials needed to set up a successful, company-wide safety program and can also be customized to reflect the particular circumstances of each jobsite. OSHA already recognizes the value of safety and health programs that includes a systematic approach to finding and fixing hazards, and should work with NAHB and other construction associations to ensure that these safety programs align with what OSHA views to be the most critical workplace safety and health issues for the industry.
- The OSHA Focused Inspection Program, started in 1994, is a significant departure from how the agency had previously conducted construction inspections. It recognizes the efforts of responsible construction contractors who have implemented effective safety and health programs and encourages other companies to adopt similar programs. Focused inspections are a procedure for construction safety inspections that specifically look at four types of hazards (e.g., falls, struck-by, caught-in-between, and electrical). An employer is eligible for a focused inspection if they have a complete safety and health program that includes employee training and participation. OSHA should recommit and reinvest in the focused inspection program by working with industry stakeholders to promote and encourage adoption of successful safety and health programs that can proactively identify and manage the most significant workplace hazards.
- Section 18 of the Occupational Safety and Health Act (OSH Act) establishes the framework for state-plan jurisdiction. It allows states to develop and enforce their own occupational safety and health standards, provided OSHA determines the state-run programs to be “at least as effective as” the federal standards. The state plans do not, and should not, operate in a manner identical to OSHA. State plans are laboratories for innovation and creative approaches to reducing work-related accidents. Recently, OSHA conducted enhanced monitoring of state programs with an emphasis on greater alignment to federal OSHA. However, this approach directly conflicts with and defeats the intent of the OSH Act. OSHA must learn from and utilize the successes stemming from states’ alternative and innovative approaches.

- OSHA's Advisory Committee on Construction Safety and Health (ACCSH) is made up of construction industry safety experts who volunteer their time to provide advice and assistance in construction standards and policy matters to OSHA. ACCSH has an open line of direct communication with OSHA and can be an efficient and effective means for the agency to gain expert advice on complex, technical safety and health issues from key construction stakeholders in a balanced and transparent manner. However, the influence of ACCSH recommendations is often limited. OSHA should regularly convene and solicit input from ACCSH to solve pressing workplace safety issues. In the past, NAHB members have served on ACCSH and are committed to remaining engaged on improving workplace safety.
- OSHA should allow warnings in lieu of citations for lesser violations such as paperwork or administrative tasks.
- OSHA should provide penalty relief and compliance assistance for small businesses that make good faith efforts to comply.
- OSHA should reduce the amount of time to issue citations for violations at residential construction sites from six months to a more reasonable timeframe, with a goal of not more than 15 days from the date of the site inspection. Receiving a fine long after the project is finished does not allow an employer to take steps to improve that work site's safety practices.
- Small businesses should be allowed to recover attorney's fees if they prevail in an appeal of an OSHA citation.

Third, OSHA must modernize methods to disseminate compliance assistance information. Currently, OSHA's website contains so much information that if a small builder is not familiar with the content, or how to search for specifically what he or she needs, that builder will be hard-pressed to find useful information. Accordingly, OSHA should update compliance information to incorporate different information delivery methods to include video based education segments, compliance assistance applications, and checklists viewable from a variety of platforms including computers, tablets, and smartphones.

One area of improvement that would be extremely beneficial for small business employers is for OSHA to streamline its small business assistance materials. Many of the materials are extremely lengthy, which ultimately defeats the purpose of developing the assistance materials in the first place. For example, OSHA's Small Entity Compliance Guide for the Respirable Crystalline Silica Standard for Construction is 101 pages. The standard itself is a fraction of that

length. Guidance documents can be overwhelming for a small business to wade through, undermining the overall effectiveness of these materials.

Conclusion

Builders know that creating a safe work environment makes good business sense. It is no secret that safety saves lives and money—money saved through reduced workers' compensation costs, lost time due to worker injuries, and less time spent on accident claims. It is also no surprise that a safe jobsite is also the key to retaining good employees and hiring new ones.

We have a shared goal of improving worker safety. OSHA should be a partner, not an enemy. NAHB urges Congress to reexamine how the agency fundamentally approaches and implements its programs, starting with adoption of a more consultative approach that promotes a mutually-beneficial relationship between OSHA and the regulated community.

We look forward to working with this Committee, Congress, and the Administration to ensure a more effective and collaborative OSHA.

I thank the Chairman and Members of the Subcommittee for the opportunity to testify today.