

**APPENDIX E: OSHA'S RESPONSE TO THE REPORT**

U.S. Department of Labor

Occupational Safety and Health Administration  
Washington, D.C. 20210



September 18, 2020

MEMORANDUM FOR: ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: LOREN E. SWEATT *Loren Sweatt*  
Principal Deputy Assistant Secretary

SUBJECT: Response to the Office of the Inspector General's Draft Audit  
Report No. 02-21-001-10-105, *Region IX Whistleblower  
Protection Program Complaints Were Not Complete or Timely*

This memorandum is in response to your September 3, 2020, transmittal of the Office of the Inspector General's (OIG) Draft Audit Report No. 02-21-001-10-105, *Region IX Whistleblower Protection Program Complaints Were Not Complete or Timely*. The Occupational Safety and Health Administration (OSHA) appreciates this opportunity to provide comments on the findings and recommendations in the draft report.

Strengthening the Whistleblower Protection Program (WPP) continues to be one of OSHA's top priorities. I appreciate the OIG's confirmation that the agency did not engage in misconduct or violations of law, rule, regulation, or gross mismanagement in the operations of the WPP in Region IX. I also recognize the ongoing challenge the agency faces, across regions, in completing whistleblower complaint investigations in a timely manner. The agency is actively working on improving operations to promote a heightened balance between the dual goals of timeliness and completeness of investigations. The upcoming revisions to the Whistleblower Investigations Manual (WIM), along with other strategies, some of which are outlined in this memorandum, will help OSHA achieve this reasonable balance.

OSHA concurs with each of the four recommendations presented in the OIG's report. The following responses set forth OSHA's planned actions regarding these recommendations.

**OIG Recommendation 1: Explore solutions to improve case management, including tracking completion of the essential elements and alerting the investigator and supervisor when there are periods of inactivity on an investigation.**

**OSHA Response:** OSHA agrees with this recommendation and is actively working to establish this balance. The agency has been focused on creating a more equitable case management and workload distribution system across regions as well as ensuring that all essential elements in a whistleblower investigation are completed. To this end, in January 2020, OSHA began a process of reassigning cases across regional boundaries to establish a more reasonable workload balance throughout the regions. This project includes assessing regional caseload and reassigning cases from regions with heavy caseloads to regions with lesser caseloads. This process will continue until a reasonable balance exists across all regions.

In addition, the agency developed and distributed a “Whistleblower Investigation Checklist” to be used in all investigations to ensure that all essential elements are properly addressed, resulting in a quality investigation. This checklist was distributed to the regions in February 2020.

Finally, OSHA whistleblower managers are working closely with their investigators and using available management tools, such as database reports, to monitor the progress of investigations in order to reduce the periods of inactivity during investigations. This will ensure investigative activity will remain dynamic throughout the entire investigative process and ensure professional development of investigators, especially those new to the agency. In addition, OSHA’s Directorate of Whistleblower Protection Programs (DWPP) plans to develop and transition to a new whistleblower module in the Occupational Safety and Health Information System that will function as both a database and a case management system.

**OIG Recommendation 2: Develop and implement a system to track and monitor the work performed by FTEs to better allocate personnel costs by program and ensure resources are used as intended.**

**OSHA Response:** OSHA agrees with this recommendation and is using new tools to work toward appropriate allocation of personnel and cost. The agency will continue to use its database reports to track and monitor performance by individual FTE and will use this information to better allocate resources for its WPP. The agency currently uses the “Performance Measures and Key Indicators Report (Dashboard)” to track individual FTE performance. Moving forward, the National Office will use this report in its analyses for allocating personnel costs and other essential resources to maximize effective utilization.

**OIG Recommendation 3: Continue efforts to find solutions to developing a reasonable balance between timeliness and completeness of investigations.**

**OSHA Response:** OSHA agrees with this recommendation and, as the report notes, is working to find these solutions. The agency continues to look for ways to improve its overall balance between the timely response to complaints and the completeness of investigations. One strategy includes the overhauled and streamlined WIM that promotes this reasonable balance, without compromising investigative quality. Another strategy, as mentioned in the report, involves the reassignment of cases from regions with higher caseloads per investigator to regions with lower caseloads per investigator. This will improve case file lapse time and completion rates. In addition, as indicated above, OSHA developed an investigative checklist that field managers are using to ensure essential elements of an investigation are followed, which will assist in obtaining more complete and thorough investigations. Finally, DWPP continues to encourage the development and implementation of regional pilot programs to explore increased investigative and procedural efficiencies.

**OIG Recommendation 4: Ensure OSHA issues an updated WIM by the end of FY 2020 and completes desk guides for all applicable statutes.**

**OSHA Response:** OSHA agrees with this recommendation and the agency is close to completing the revised WIM. The process included a comprehensive review by a field workgroup, followed by a National Office team of subject matter experts in DWPP and the Office of the Solicitor. Hundreds of comments were submitted by the field offices, requiring extensive review and discussion. The agency’s goal is to implement the revised WIM in FY 2021.

In addition, OSHA has completed desk aids for 12 statutes. OSHA anticipates publishing the Pipeline Safety Improvement Act and Consumer Product Safety Improvement Act desk aids very soon. OSHA is also currently developing an additional four desk aids, which will cover the Energy Reorganization Act, the Environmental Protection Agency (six statutes), the Taxpayer First Act, and the Affordable Care Act. The agency plans to have these final desk aids completed by the end of FY 2021.