

August 2010

WHISTLEBLOWER PROTECTION

Sustained Management Attention Needed to Address Long-standing Program Weaknesses



GAO

Accountability * Integrity * Reliability

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Abbreviations

FTE	full-time equivalent
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration
Labor	Department of Labor
STAA	Surface Transportation Assistance Act of 1982

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United States Government Accountability Office
Washington, DC 20548

August 17, 2010

Congressional Requesters

Workers who “blow the whistle” on prohibited or unlawful practices that they discover during their employment can play an important role in the enforcement of federal laws. However, these whistleblowers may also risk reprisals from their employers, sometimes being demoted, reassigned, or fired. Federal laws establish whistleblower protection processes, whereby workers who believe that they have faced retaliation for blowing the whistle can report their allegations to the appropriate federal agency, which then determines the merit of their claims. The Whistleblower Protection Program at the Department of Labor’s (Labor) Occupational Safety and Health Administration (OSHA) is responsible for receiving and investigating most whistleblower complaints filed by nonfederal workers.

For over 20 years, we have reported that OSHA has focused too little attention on the whistleblower program.¹ Most recently, in January 2009, we reported that OSHA has struggled to provide investigators with the skills and resources they need to do their jobs, and has not developed adequate internal controls to ensure that criteria and standards for investigating complaints are consistently followed across its regions. At that time, we recommended that OSHA take several actions, including ensuring that investigators have necessary equipment and enhancing its audit program to provide for independence and accountability.

In this context, you asked us to update our review of the program and report on OSHA’s efforts to make improvements, including implementing our recommendations. We addressed the following research questions: (1) What steps have been taken to ensure that whistleblower investigators have the necessary training and equipment to do their jobs? (2) To what extent does the whistleblower program have adequate internal controls to ensure effective and efficient investigations?

On June 15, 2010, we briefed your staff on the results of our analysis. This report formally conveys the information provided during this briefing (see

¹GAO, *Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency*, [GAO-09-106](#) (Washington, D.C.: Jan. 27, 2009); and *Whistleblowers: Management of the Program to Protect Trucking Company Employees Against Reprisal*, [GAO/GGD-88-123](#) (Washington, D.C.: Sept. 22, 1988).

app. I for the briefing slides and attachments). In summary, we found that OSHA has done little to ensure that investigators have the necessary training and equipment to do their jobs, and that it lacks sufficient internal controls to ensure that the whistleblower program operates as intended. More specifically, we found the following:

- OSHA enhanced its whistleblower training, establishing two mandatory 2-week courses between 2007 and 2008, but has not ensured attendance or taken steps to ensure that investigators have necessary equipment to do their jobs. Nearly all investigators have been credited with taking the first mandatory course, but just over 60 percent has taken or registered for the second mandatory course. Additional training on specific, complex statutes has not been developed because of resource constraints, according to OSHA officials. Our last review found that many investigators lacked basic equipment, such as portable printers, to do their jobs. OSHA officials have not implemented our prior recommendation to establish minimum equipment and software standards, citing resource constraints.
- OSHA lacks sufficient internal controls to ensure that the whistleblower program operates as intended due to several factors, including inconsistent program operations, inadequate tracking of program expenses, and insufficient performance monitoring. Program operations vary by region in significant ways, as exemplified by differing standards used to screen out complaints, and by some regions not having formally trained supervisors who approve investigation decisions. The whistleblower program's national office lacks mechanisms, such as access to accurate data and actual case files, to monitor compliance with policies and procedures. Although each region operates within a budget allocation for personnel slots (also known as full-time equivalents or FTEs) and other expenses, they have wide latitude in how they deploy resources across programs, in part because they do not report whistleblower expenses separately from other programs. Finally, OSHA has not made assessing program performance a priority, as evidenced by the lack of program-specific goals or measures in key performance documents.

We used several methodologies to develop our findings. To describe OSHA's efforts to ensure that investigators have the necessary training and equipment to do their jobs, we reviewed program guidance and prior GAO studies, spoke with OSHA officials about training and equipment for investigators, and analyzed OSHA training data. To assess the reliability of the data, we spoke with program officials about how the training records were developed and checked the data with a variety of regional officials, who generally corroborated the information. We found the data to be

sufficiently reliable for this report. To assess the extent to which the whistleblower program has adequate internal controls, we reviewed OSHA audit guidance and studies of the program as well as GAO's standards for internal controls in the federal government,² queried all OSHA regional administrators on investigator hiring status, and analyzed OSHA organizational charts. In addition, to help address both objectives, we interviewed OSHA officials in its headquarters and four regional offices at various levels of management. We selected regions on the basis of their varying size and geography, and chose interviewees who were knowledgeable about ongoing initiatives.

We conducted this performance audit from March 2010 to August 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Recommendations for Executive Action

To improve program performance and oversight, we are recommending that the Secretary of Labor require OSHA to take several actions:

- Ensure that all investigators complete mandatory training.
- Require staff who supervise investigators to complete the mandatory investigator training.
- Track whistleblower program expenses, including FTEs, separately from other OSHA programs, and annually report these expenses to Congress.
- Develop an action plan, with specific milestones, for addressing identified internal control weaknesses. This plan should include mechanisms for strengthening the whistleblower national office's control over the program.
- Incorporate strategic goals specifically for the whistleblower program into Labor's strategic plan, and develop performance measures to track progress in achieving these goals.

²GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#), (Washington, D.C.: November 1999).

Agency Comments and Our Evaluation

We provided a draft of this report to OSHA for its review and comment. OSHA provided written comments, which are reproduced in appendix II. In its response, OSHA concurred with two of our recommendations and cited ongoing activities in areas covered by the other three. OSHA also expressed concern with some of our findings.

Regarding our recommendations that all investigators and their supervisors complete mandatory investigator training, OSHA agreed and said that it was taking steps to ensure that this training was completed within the next 18 months.

On the remaining recommendations, OSHA did not agree or disagree, noting instead its relevant ongoing activities:

- Regarding our recommendation to track whistleblower program expenses, including FTEs, separately and report these to Congress, OSHA commented that it currently tracks hiring and staffing in the whistleblower program, but OSHA was silent on the recommendation to report expenses separately to Congress. In our review, we learned that OSHA's budget office maintains a database of OSHA personnel, but it does not track whistleblower program expenses separately. Given the wide latitude that regions have in deploying resources among programs, without centralized tracking of expenses, the budget office is not well positioned to ensure that resources intended for the whistleblower program are being used accordingly. Having such information is essential for effective program management and for safeguarding resources. Reporting this information to Congress would inform decision making about OSHA's budgetary needs.
- Regarding our recommendation that OSHA develop an action plan, with milestones, for addressing internal control weaknesses, officials commented that OSHA plans more study before taking action. Officials noted that they are exploring a variety of issues, including internal control weaknesses, through its ongoing review of the whistleblower program. They expect this review to culminate in recommendations to improve program delivery and consistency. Given several reviews of the whistleblower program conducted over the past 20 years, OSHA's management already has the information it needs to address many of its internal control weaknesses. It is important that OSHA begin to make progress in addressing these issues.
- Regarding our recommendation to develop strategic goals and performance measures specifically for the whistleblower program, OSHA commented that it is currently developing the fiscal year 2011-2016 strategic plan. Officials noted that the plan will contain an outcome goal

related to ensuring workers have voice in the workplace, and that they will incorporate related performance measures in OSHA's operating plan. However, it is not clear from the agency's comments what role the whistleblower program would play in these efforts. We urge OSHA to specifically cite the program in the final strategic plan and to include appropriate whistleblower performance measures in its operating plan.

OSHA also provided the following comments on some of our findings:

- In our characterization of OSHA's organizational structure for the national office, officials noted that the whistleblower program reports directly to the Director of Enforcement Programs. However, documents we obtained from OSHA in follow-up confirm a structure as we reported it. As a result, we have not modified our report to reflect the requested change.
- On meeting investigators' equipment needs, OSHA stated in its comments that it will be providing new computers to all field staff, including whistleblower investigators, by the end of the first quarter of fiscal year 2011. Purchasing new computers is a good first step, but doing so does not go far enough in addressing some of the basic equipment needs of investigators. We urge OSHA to establish minimum standards for equipment and computer software and ensure that these standards are met as soon as possible, as we recommended in our January 2009 report.
- On transparency, OSHA disagreed with our finding that the process it used to allocate the 25 FTEs was not transparent, citing the multistep approach it used in arriving at the final allocation. OSHA officials noted that the approach they used and the final allocation were explained to all Regional Administrators after the Assistant Secretary of Labor for OSHA made the final decision. OSHA officials have not provided documents to support this assertion, and the documents received from OSHA during our review support the finding that the process was not transparent. Moreover, as we noted in our report, some of the regional officials with whom we spoke during our review, including Regional Administrators, did not know how the final decision was made.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Labor, and other interested parties. The report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-7215 or scottg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "George A. Scott". The signature is written in a cursive style with a large initial "G".

George A. Scott
Director, Education, Workforce,
and Income Security Issues

List of Requesters

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Patty Murray
Chairman
Subcommittee on Employment and Workplace Safety
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Lynn Woolsey
Chairwoman
Subcommittee on Workforce Protections
Committee on Education and Labor
House of Representatives



Whistleblower Protection: Sustained Management Attention Needed to Address Long-standing Program Weaknesses

Briefing for Congressional Requesters

June 15, 2010

1



Overview

- Introduction
 - Objectives
 - Scope and Methodology
 - Summary of Findings
 - Background
 - Findings
 - Conclusions
 - Recommendations
-



Introduction

- The Whistleblower Protection Program is intended to provide non-federal workers with protection from retaliatory action when they identify prohibited practices at their employers' businesses.
- For over 20 years, we have reported that OSHA focused too little attention on the program.* Most recently, we reported that OSHA:
 - Has struggled to provide investigators with the skills and resources they need to effectively do their jobs
 - Has focused too little attention on developing internal controls to ensure that criteria and standards for investigating complaints are consistently followed
- We recommended that OSHA take several actions including ensuring investigators have necessary equipment and establishing an audit program that provides for independence and accountability.**

*See GAO, *Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency*, GAO-09-106 (Washington, D.C.: Jan. 27, 2009) and GAO, *Whistleblowers: Management of the Program to Protect Trucking Company Employees Against Reprisal*, GAO/GGD-88-123 (Washington, D.C.: Sept. 22, 1988). **See attachment I for recommendations made in January 2009.



Objectives

- You asked us to update our earlier review of the program and report on efforts to make improvements, including the status of OSHA’s efforts to implement our recommendations.

 - We addressed the following research objectives:
 - (1) What steps have been taken to ensure that whistleblower investigators have the necessary training and equipment to do their jobs?

 - (2) To what extent does the whistleblower program have adequate internal controls to ensure effective and efficient investigations?
-



Scope and Methodology

To address our objectives, we:

- Reviewed program guidance, and OSHA and GAO studies of the program;
 - Interviewed OSHA officials in its headquarters and four regional offices at various levels of management;
 - We selected regions based on their varying size and geography, and chose interviewees who were knowledgeable about ongoing initiatives
 - Queried all OSHA regional administrators on investigator hiring status;
 - Analyzed organizational charts and staffing and training data; and
 - Reviewed GAO's standards for internal control in the federal government.
-



Scope and Methodology

We conducted this performance audit from March to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Summary of Findings and Recommendations

1. OSHA established training curricula for investigators, but has done little to ensure that investigators attend training or have the necessary tools to do their jobs.
 2. OSHA lacks sufficient internal controls to ensure that the whistleblower program operates as intended.
 3. We recommend that OSHA ensure investigators and their supervisors complete mandatory training, track program expenses, develop strategic goals and performance measures that are specific to the whistleblower program, and develop an action plan for addressing internal control weaknesses.
-

Background



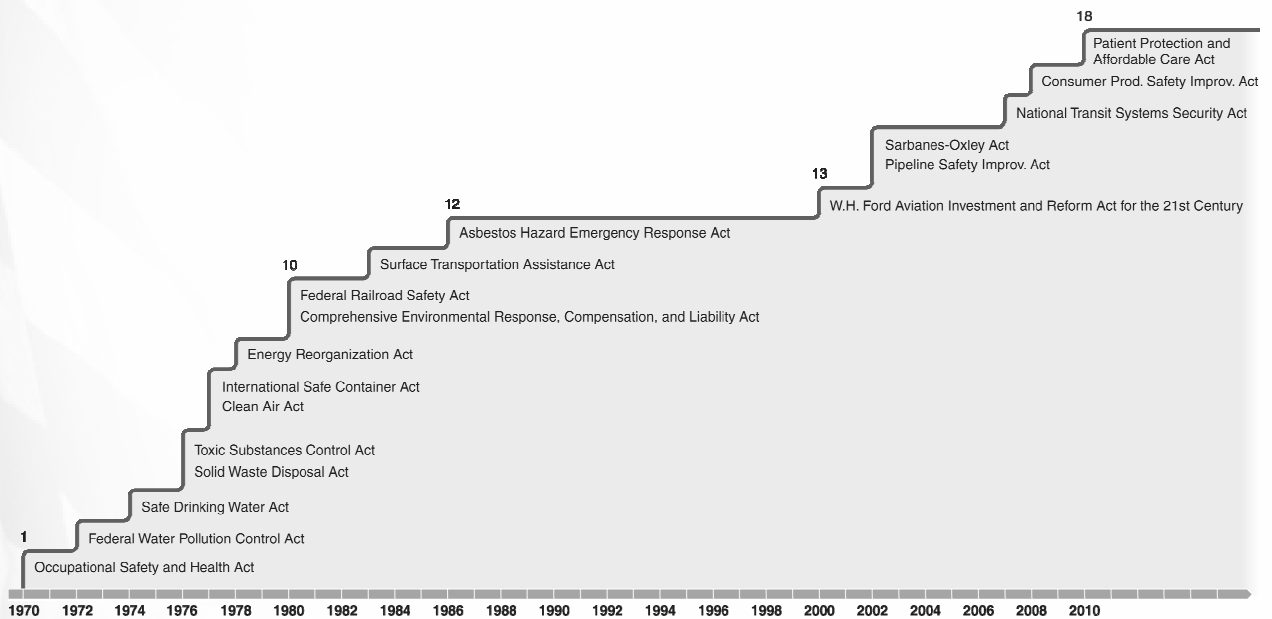
OSHA Investigates Whistleblower Complaints Across a Broad Array of Industries

- OSHA currently has responsibility for investigating whistleblower complaints under 18 different statutes.
 - About two-thirds of complaints arise under the Occupational Safety and Health Act of 1970 (OSH Act).
 - Many of the other complaints arise under a broad array of other statutes that cover industries such as nuclear power, transportation, pipeline infrastructure, consumer product safety, securities, and several environmental areas.
 - To be effective, investigators must have a general understanding of the underlying working environment in the broad range of industries, as well as substantive provisions in each statute, according to program officials.

Background



OSHA's Responsibility for Whistleblower Complaints Has Grown Over Time...



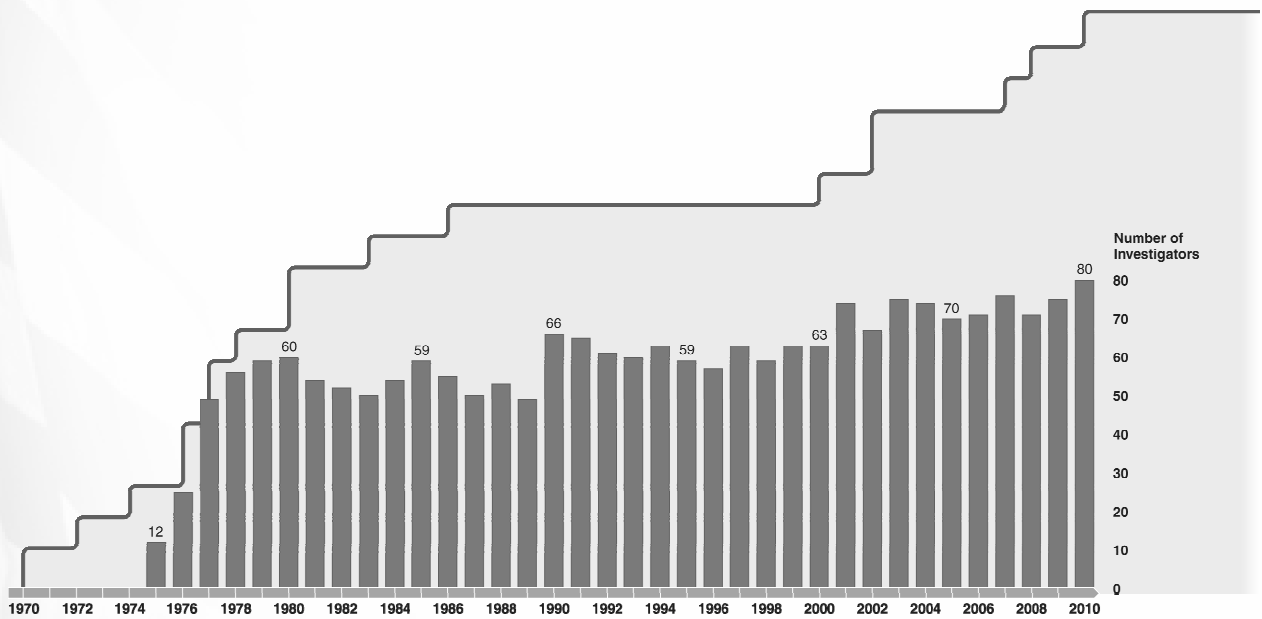
Note: These years represent the date that the whistleblower provisions were added to the relevant statutes, and not necessarily the date of the original enactment of the statutes themselves, or the date that OSHA was given responsibility for enforcement.

Source: GAO analysis of relevant statutes.

Background



...But the Number of Whistleblower Investigators Has Remained Relatively Flat



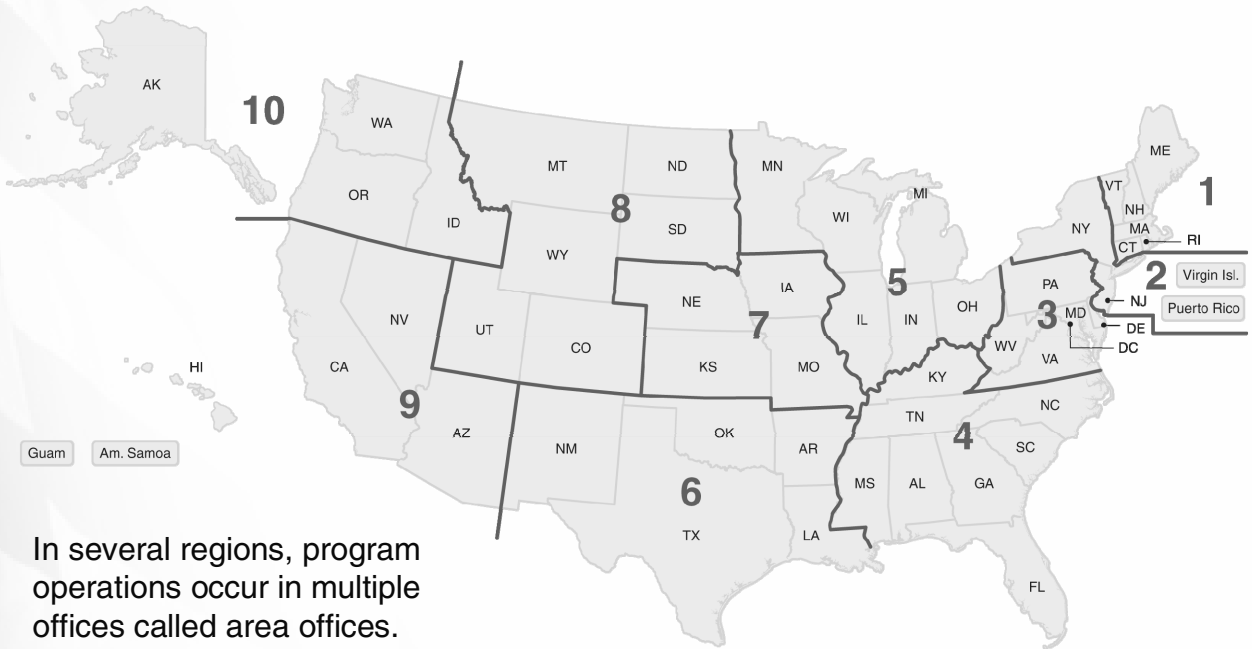
Note: Data since 1978 include regional supervisory investigators. Number for 2010 is as of April 1, 2010.

Source: OSHA administrative data.

Background



OSHA Operates the Whistleblower Program Through Ten Separate Regions

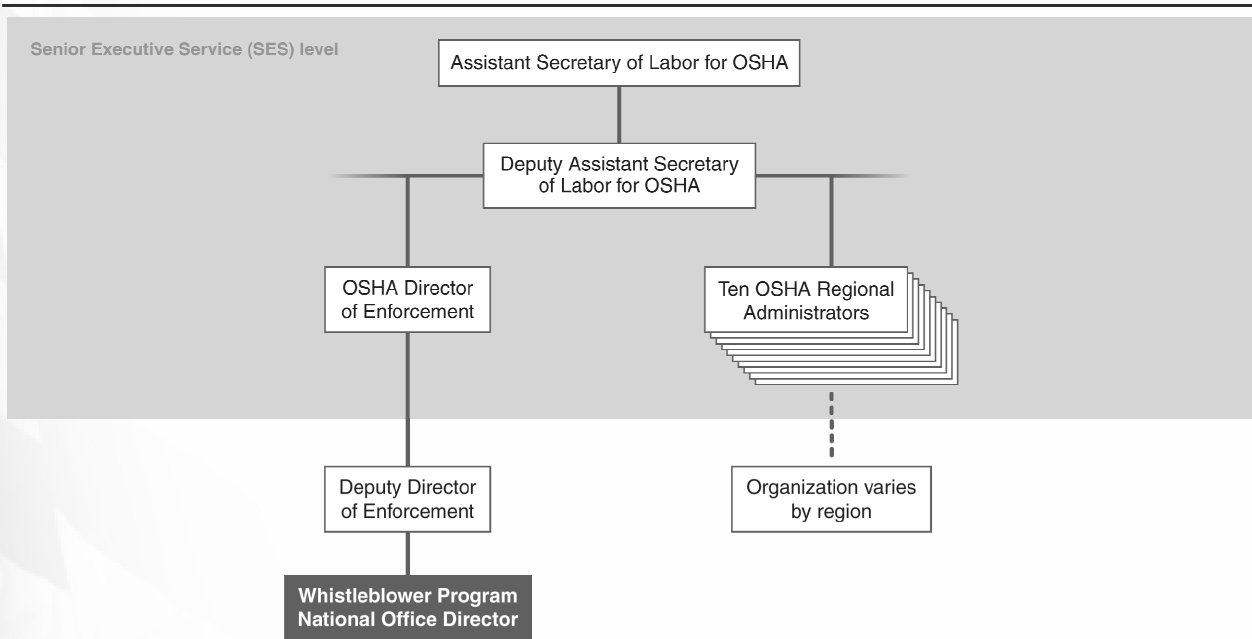


Source: OSHA.

Background



OSHA's Organizational Structure Includes a National Office that Sets Whistleblower Policies



Source: GAO analysis of OSHA documents.

Background



Internal Controls Are Key to Achieving Desired Results

- Internal controls* are an integral part of an agency's efforts to ensure:
 - Effectiveness and efficiency of operations
 - Reliability of financial reporting
 - Compliance with applicable laws and regulations
- The internal control standards include a focus on:
 - Management's commitment to a positive, disciplined work environment and staff competence
 - Activities or mechanisms to enforce management's directives
 - Monitoring to assess the quality of performance over time

*See GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1, (Washington, D.C.: November 1999).



Objective 1: OSHA Has Done Little to Ensure that Investigators Have Necessary Tools

- **Training:** OSHA established training curricula for investigators, but has done little to ensure that investigators attend mandatory training.
- **Equipment:** OSHA has not ensured that investigators have the necessary tools to do their jobs.

Objective 1: Training



OSHA Established Mandatory Training but Attendance has not been Enforced

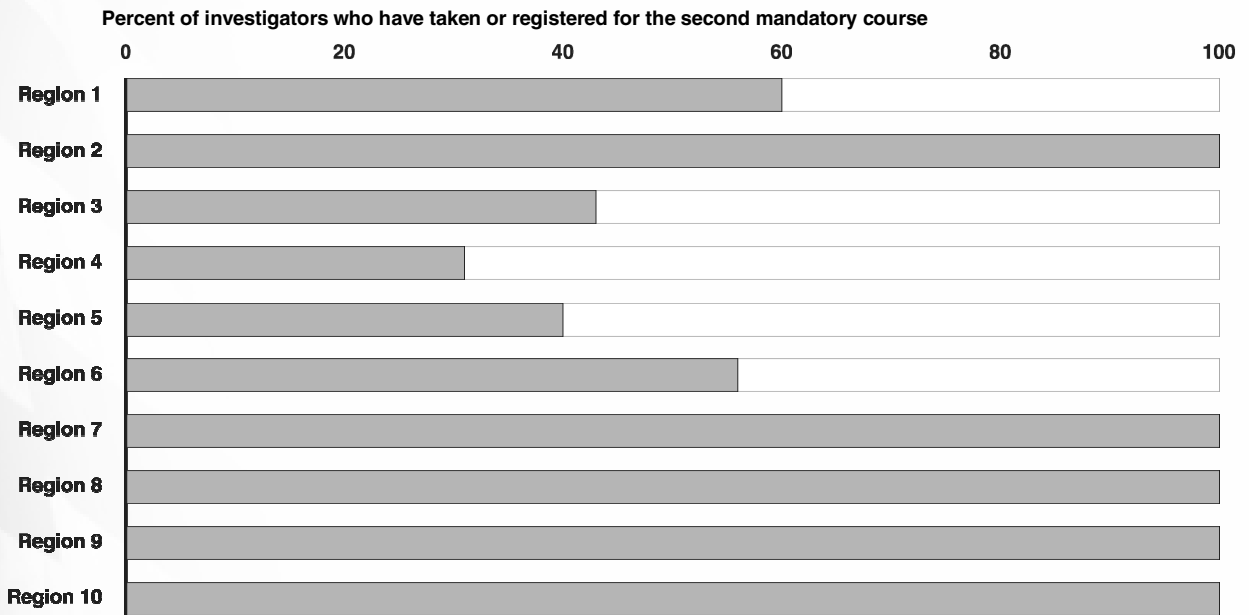
- OSHA enhanced its whistleblower training, establishing two mandatory 2-week courses between 2007 and 2008.
 - Nearly all investigators have been credited with taking the first course, which covers basic investigation skills for OSH Act complaints.
 - Just over 60 percent* of investigators have taken or are registered for the second course, which covers how to investigate complaints filed under non-OSH Act statutes.
- Despite developing the mandatory courses, OSHA has not taken steps to ensure that all investigators attend the training.

* As of June 10, 2010.

Objective 1: Training



Attendance in the Second Training Course is Low in Some Regions



Source: GAO analysis of OSHA data as of June 10, 2010. Note: To assess the reliability of the data, we spoke with program officials about how the training records were developed and spoke with a variety of regional officials who generally corroborated the data. We found the data to be sufficiently reliable for this report. 16

Objective 1: Training



Investigators Have Identified the Need for Additional Training

- Investigators have identified—and officials have agreed—the need for more training, particularly for some of the complex statutes where specialized knowledge is required. For example,
 - The subject matter of one statute necessitates that investigators understand complex securities and navigate complicated legal issues in order to conduct an investigation.
- Yet, specialized training on specific, complex statutes has not been developed due to resource constraints, according to officials.

Objective 1: Training



OSHA's Lack of Focus on Training May Jeopardize the Quality and Consistency of Investigations

- Ensuring that staff are sufficiently trained to do their jobs is a key component of good internal controls.
- Program officials have been unsuccessful in ensuring participation in mandatory training and have not made developing more training a priority.
- According to one senior official, some regions are unwilling to send investigators to mandatory training, citing a lack of need for such training.
 - Complexity of some investigations has increased, particularly given the addition of responsibilities under some complex statutes enacted since 2002.
 - Relying solely on informal training, such as that obtained on the job, cannot ensure that all investigators consistently acquire needed knowledge to do their jobs.

Objective 1: Equipment



OSHA Has Not Developed Plans to Address Equipment Needs

- Our last review found that many investigators lacked necessary basic equipment, such as portable printers, and software to do their jobs.
- These unmet needs varied by region.
- We recommended that OSHA establish minimum standards for equipment and computer software and ensure that these standards are met.
- OSHA has not developed such standards and has no plans to do so, citing resource constraints.
 - Officials told us that new laptops will be distributed to staff but could not tell us when.



Objective 2: OSHA Lacks Sufficient Controls to Ensure Whistleblower Program Operates as Intended

- **Oversight and Accountability:** OSHA lacks effective mechanisms to hold regions accountable for compliance with program policies.
- **Tracking Resources:** OSHA does not track whistleblower program resources.
- **Assessing Performance:** OSHA has not made assessing program performance a priority.

Objective 2: Oversight and Accountability

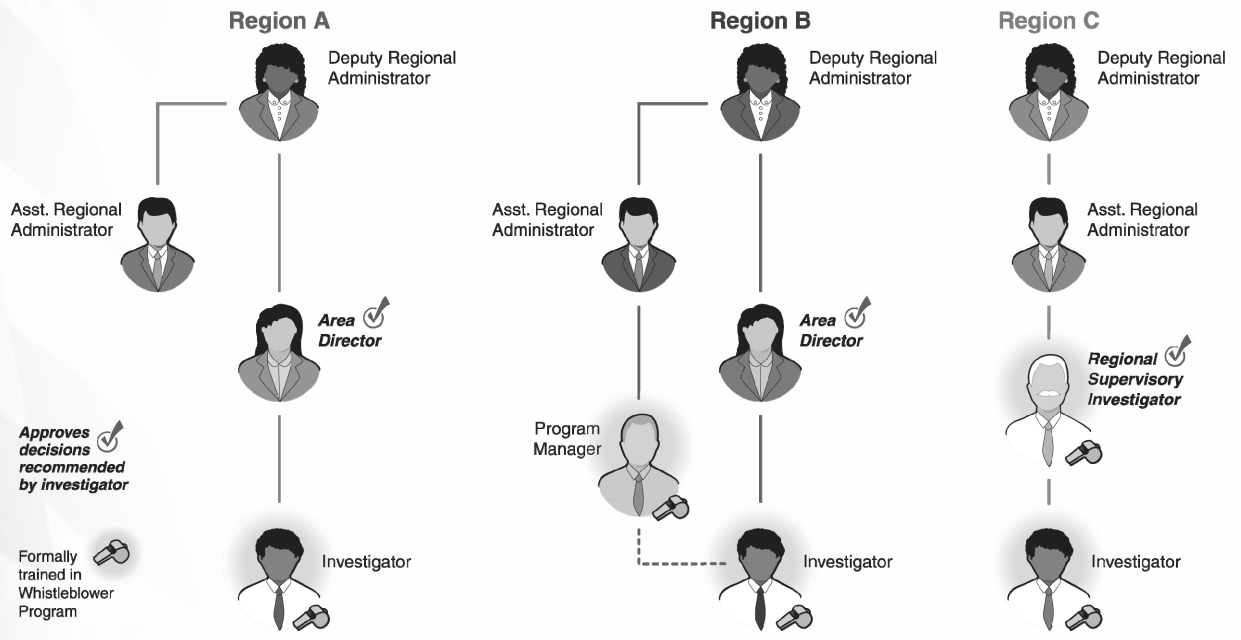


Program Operations Vary by Region

- OSHA's 10 regions operate autonomously and are able to make key decisions with only limited oversight and accountability, including...
 - How to investigate and process cases, such as
 - Screening complaints
 - Docketing cases in the program's tracking system
 - Deciding case outcomes
 - How to allocate resources
 - How investigators are supervised
- We previously found that regional variation in the standards used to screen out complaints, for example, may have led to differing outcomes for whistleblowers.

Objective 2: Oversight and Accountability

Supervisors Approving Investigation Decisions in At Least Two Regions Lack Formal Whistleblower Training



Source: GAO analysis of OSHA documents.

Objective 2: Oversight and Accountability



OSHA Lacks a Consistent Appeals Process for OSH Act Complaints

- No statutory process exists for appeals under the OSH Act, but the whistleblower manual provides for the national office to decide such appeals.
- To improve the timeliness of appeal decisions, three regions are piloting a process in which OSH Act appeals are decided within the region, each using different methods.
 - Region 4: The Area Director who approved the original decision drafts a response to the appeal for the regional administrator's consideration
 - Region 5: A committee of regional and area office management reviews the case and decides the appeal
 - Region 6: The region's solicitor reviews the appeal and recommends a decision to the regional administrator
- Some OSHA officials questioned whether appeals receive an independent review when decided within the region that conducted the investigation.

Objective 2: Oversight and Accountability



The Program's National Office Has Little Ability to Ensure Regional Compliance with Policies

- The whistleblower program's national office lacks the mechanisms, such as access to accurate data and actual case files, to ensure compliance with program policies and procedures.
 - Electronic data on cases exist, but we reported in 2009 that the data on outcomes and processing times are often inaccurate.
 - We recommended that OSHA develop a mechanism to ensure that the data on cases are accurate and that regions are held accountable for data accuracy.
- OSHA has proposed triennial reviews of each region's cases to improve data accuracy and regional compliance with program policies, but has not established plans for implementing such reviews.

Objective 2: Oversight and Accountability



We Previously Found that OSHA's Audit Program Does Not Hold Regions Accountable for the Quality and Consistency of Investigations

More than one year ago, we found:

- The whistleblower program was not routinely or consistently audited
- Audits, when performed, lacked independence
- Audit guidance lacked clear criteria
- Complete audit findings were not routinely communicated to OSHA headquarters
- No mechanism existed for ensuring audit findings were addressed.

Objective 2: Oversight and Accountability



OSHA's Audit Program Remains Ineffective

- We made several recommendations to OSHA to bring the audit system in line with government standards.
- Audits are central in any effort to ensure that criteria and standards for investigating complaints are consistently followed.
- While OSHA has made minor changes to the audit program, the steps taken have not fully addressed our prior recommendations.

Objective 2: Tracking Resources



Few Safeguards Exist to Ensure that Resources are Used as Intended

- Neither OSHA’s regions nor its central budget office track whistleblower expenses separately from other programs.
 - Although each region operates within a budget allocation for personnel slots (FTE) and other expenses, they have wide latitude in how they deploy resources across programs.
 - OSHA received funding that supported 25 additional FTEs for whistleblower investigators in fiscal year 2010, but some program officials have expressed concern that the new allocation may be used for non-whistleblower activities.
 - OSHA’s budget office does not monitor whether new FTEs intended for the whistleblower program are being used for other programs.

Objective 2: Tracking Resources



The Process Used to Allocate the 25 New FTEs was Not Transparent

- OSHA's Directorate of Enforcement developed a proposal for allocating the new FTEs that was based on average caseloads and case complexity. This allocation was endorsed by the Assistant Secretary.
- The final FTE allocation was markedly different from the one endorsed by the Assistant Secretary.*
 - Some regions received as many as 3 fewer investigators than proposed, and another as many as 3 more.
 - Some regional officials have expressed confusion about how the final decision was made.

*See attachment II for detailed information on FTE allocations by region.

Objective 2: Assessing Performance



OSHA Has Not Made Assessing Whistleblower Program Performance a High Priority

- Key performance documents do not contain specific goals or measures for the whistleblower program. These include:
 - OSHA’s portion of Department of Labor’s strategic plan
 - Budget justifications.
- Timeliness is the only performance measure OSHA tracks for the program, yet such measurement has significant limitations.
 - We previously found that OSHA’s data on investigation timeliness are unreliable.
 - Measuring timeliness alone may provide incentive to close cases prematurely.

Objective 2: Assessing Performance



OSHA Is Planning a Review of Whistleblower Program Operations

- OSHA officials recently stated that they would conduct a “top-to-bottom” review of the program before addressing any of the long-standing issues in the whistleblower program, despite the several reviews already completed.
- Three OSHA mid-level employees with program familiarity are conducting the review in addition to their regular work.
- Senior officials expect the review to cover operations in the program’s national office and in the regions.
- A final report, which may contain recommendations for improvement, may be ready by this fall, according to officials.



Conclusions

- For over 20 years, we have repeatedly found that OSHA lacks sufficient internal controls to ensure that standards for investigating whistleblower complaints are consistently followed.
- Little progress has been made in implementing our recommendations* and significant internal control problems remain.
- In general, “top-to-bottom” reviews can be helpful in understanding what needs improvement. But, OSHA management already has much of the information it needs to move forward.
- The problems we have identified appear systemic and sustained management attention is needed to address them.

*See attachment I for status of recommendations made in January 2009.



Conclusions

- Without further action, whistleblowers will continue to have little assurance that a complaint filed in one region would have the same outcome if it were filed in another.
 - Serious questions remain about whether the whistleblower program is appropriately structured or that the national office has sufficient control mechanisms to ensure the quality and consistency of investigations.
 - In addition, without improved accountability for program resources, it may be difficult for OSHA to demonstrate that it is using the resources as Congress intended.
 - Further, absent goals specifically related to the whistleblower program, OSHA will continue to lack the ability to gauge program performance.
-



Recommendations

- To improve performance and oversight of the whistleblower program, the Secretary of the Department of Labor should require OSHA to:
 - Ensure that all investigators complete mandatory training;
 - Require area directors who supervise investigators to complete the mandatory investigator training;
 - Track whistleblower program expenses, including FTEs, separately from other OSHA programs, and annually report these expenses to Congress;
 - Develop an action plan, with specific milestones, for addressing internal control weaknesses that have been identified. This should include developing mechanisms to strengthen the national office's control over the program; and
 - Incorporate strategic goals specifically for the whistleblower program into Labor's strategic plan and develop performance measures to track progress in achieving them.
-

Attachment I: Status of Implementing GAO Recommendations*

GAO Recommendation (January 2009)	Department of Labor's Response (April 2009)	Status
OSHA should ensure that its new information system for tracking whistleblower complaints includes information on cases that are screened-out before they are investigated and the reasons for being screened-out.	OSHA is launching a new information system by the end of 2010 that will enable staff to enter screen outs and their accompanying reasons.	In progress
OSHA should establish a mechanism to ensure the data on whistleblower complaints are accurate and require that the National Office of the Whistleblower Protection Program holds regions accountable for the accuracy of the data.	OSHA plans to retrain users on the correct entry of data with the deployment of its new information system and is developing a quality control program.	No action yet
OSHA should revise its field audit directive to clarify the criteria that regions must use in conducting focused and comprehensive audits.	OSHA will revise the field audit directive to clarify the criteria that regions must use in conducting focused and comprehensive field audits.	Action taken does not satisfy recommendation
OSHA should revise its field audit directive to require that the audit be conducted by an entity outside the control of the regional administrator whose programs are being audited to ensure independence.	This recommendation has significant resource implications. OSHA will examine alternatives to ensure independence of audits.	No action
OSHA should revise its field audit directive to require that regions submit complete reports of the audit findings and recommendations to OSHA's national office upon completion of an audit, along with periodic updates on corrective actions taken.	OSHA will revise the field audit directive to require that complete audit reports are submitted to the national office. OSHA will reexamine its approach to tracking corrective actions including having regions submit periodic status reports.	No action
OSHA should develop interim audit milestones that regions must meet in order to ensure that audits are completed within specified time frames.	Until an automatic tracking system is developed, OSHA will enhance its monitoring of the timely completion of audits by, for example, contacting regions at the halfway mark to request an update.	No action
OSHA should establish minimum standards for equipment and computer software that investigators need to do their jobs, and develop a mechanism to ensure these needs are met.	This recommendation has significant resource implications and, in the coming months, OSHA will weigh options to meet investigators' equipment and software needs.	No action
The Administrative Review Board should conduct routine, systematic, independent reviews of its case tracking system in order to ensure that it has accurate and reliable information to use to monitor the program.	The cost effectiveness of an independent review is questionable. Improved data validity has been obtained through in-house efforts such as additional training.	Action taken does not satisfy recommendation

Source: GAO analysis.

* From GAO, *Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency*, [GAO-09-106](#), (Washington, D.C.: January 2009).

Attachment II: Data on FTE Allocation by Region

Region	New complaints in FY09	Percent of complaints that are not OSH Act or STAA (%)	On board investigators (January 2010)	New complaints in FY09 per on board investigator (January 2010)	Proposed allocation of new FTE (January 2010)	Allocation of new FTE according to OSHA Administration (February 2010)	Allocation of new FTE according to OSHA Regions (April 2010)
1	158	27	7	23	1	1	2
2	245	40	11	22	5	2	2
3	168	24	5	34	1	1	1
4	442	19	12	37	4	4	4
5	467	16	14	33	3	4	3
6	218	33	7	31	1	4	4
7	124	14	3	41	1	3	3
8	132	20	3	44	2	3	3
9	122	69	4	31	5	2	2
10	84	43	3	28	2	1	1
All Regions	2160	27	69	31	25	25	25

Sources: OSHA, except for "New Complaints in FY09 per on board investigator" which is GAO analysis of OSHA data.

Note: STAA is the Surface Transportation Assistance Act of 1982.

Appendix II: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



JUL 16 2010

Mr. George A. Scott, Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Scott:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) proposed report, *Whistleblower Protection: Sustained Management Attention Needed to Address Long-Standing Program Weaknesses*. The following comments are submitted on behalf of the Department of Labor's Occupational Safety and Health Administration (OSHA).

OSHA appreciates the time and effort that GAO placed in its evaluation. OSHA agrees with most of the recommendations and will continue the progress made in the year between issuance of the January 2009 report and the initiation of this current report. The following represents the Agency's initial response to the GAO recommendations as well as a few concerns and disagreements raised with the GAO findings.

GAO Recommendations and OSHA Responses

GAO Recommendation: Ensure that all investigators complete mandatory training.

OSHA Response: OSHA agrees with this recommendation and will ensure that all investigators complete the second-level training within the next 18 months.

GAO Recommendation: Require staff who supervise investigators to complete the mandatory investigator training.

OSHA Response: The Agency plans during the next 18 months that all Area Directors who have not yet taken the mandatory training will receive such training.

GAO Recommendation: Track Whistleblower Program expenses, including FTEs, separately from other OSHA Programs, and annually report these expenses to Congress.

OSHA Response: OSHA does currently track hiring and staffing in the Whistleblower Program. The Department is currently analyzing the impact of the landmark Patient

Protection and Affordable Care Act on the Whistleblower Program, and is exploring program improvements in connection to the FY 2012 budget.

GAO Recommendation: Develop an Action Plan, with specific milestones, for addressing identified internal control weaknesses. This plan should include mechanisms for strengthening the whistleblower National Office's control over the program.

OSHA Response: The Deputy Assistant Secretary for Enforcement and Field Operations in OSHA is exploring a variety of issues, including internal control weaknesses. For example, the Agency is looking at restructuring the office to assure better training and regional oversight. Currently, an evaluation team is conducting an in depth program evaluation assessment of the Whistleblower Program in the field and National Office. Their charge is to make recommendations to the Assistant Secretary on programmatic changes to assure that there is consistency and program delivery is greatly improved.

GAO Recommendation: Incorporate strategic goals specifically for the Whistleblower Program into Labor's strategic plan and develop performance measures to track progress in achieving them.

OSHA Response: The Department is currently in the process of developing the FY 2011 – 2016 Strategic Plan. One of the outcome goals in the strategic plan is to “ensure worker voice in the workplace.” The Whistleblower Program currently plays an important part in the Department's worker voice efforts. In an effort to more fully implement the strategic plan when published, OSHA will develop and incorporate related performance measures in its Fiscal Year 2011 Operating Plan.

Additional Issues Raised by the GAO Report

Organizational Structure: The chart labeled “OSHA's Organizational Structure Includes a National Office that sets Whistleblower Policies,” has the Whistleblower Program National Office Director reporting to the Deputy Director of Enforcement Programs. This line of reporting is not correct. All Office Directors in the Directorate of Enforcement Programs report directly to the Director of Enforcement Programs.

Equipment: In the previous GAO investigation of the Whistleblower Program as well as this current report, GAO maintains that OSHA has not ensured that investigators have the necessary tools to do their jobs. The lack of laptop computers and docking stations is a general and well-recognized problem for OSHA's compliance officers and whistleblower investigators. Purchasing new computers for the entire field staff has been a significant fiscal issue. The purchase of new computers to provide to field staff is currently underway and will be completed over the first quarter of FY 2011.

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Consistency: The GAO has pointed out that the Whistleblower Program operations vary by Region. To address this concern by the GAO, an evaluation team is conducting an in-depth program evaluation assessment of the Whistleblower Program in the field and National Office. Their charge is to make recommendations to the Assistant Secretary on programmatic changes to assure that there is consistency and program delivery is greatly improved. The audit program and the Whistleblower Program office case file review will then assure that the OSHA Regions are consistent in their approach to program management. Additionally, once the new Whistleblower Program manual is completed and goes into effect, all investigators and supervisors will be trained on the manual.

Transparency: The GAO maintains that the process used to allocate the 25 new FTEs was not transparent. OSHA disagrees with this assertion. Various options were developed and shared with the Whistleblower Program Office and the Regional Administrators before a final decision was made by the Assistant Secretary. In order to fairly allocate the new FTE's, the Agency utilized a computer program similar to that used to assign new compliance officers. The program evaluated the number of cases, the number of complaints, on-board investigators, percent of complaints received that were not under Section 11(c) of the Act, and other factors to assign the whistleblower FTEs to each of the Regions. This model was shared with the Whistleblower Program Office which provided input and the program was modified. The new allocation was then shared with the Regional Administrators who provided additional input. The different options were shared with the Assistant Secretary who made a final decision on allocation of the whistleblower FTEs. This decision was then explained to all of the Regional Administrators. The document referenced in the report that was signed by the Assistant Secretary was a general program overview, not the official allocation that had been authorized previously.

OSHA appreciates the opportunity to review and respond to GAO's draft report.

Sincerely,



David Michaels, PhD, MPH

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

George A. Scott, (202) 512-7215 or scottg@gao.gov

Staff Acknowledgments

In addition to the contact named above, Dianne Blank (Assistant Director) and Joel Green (Analyst-in-Charge) supervised the development of this product. Nancy Cosentino and Rachel Frisk helped with data collection. In addition, Carol Henn and Melissa Wolf helped with conceptual development of our study; Michele Fejfar helped assess data reliability; James Bennett provided graphic assistance; Susannah Compton provided writing assistance; Alex Galuten provided legal support; and Amy Sweet and Kathy White verified our findings.

Related GAO Products

Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency. [GAO-09-106](#). Washington, D.C.: January 27, 2009.

Internal Control Management and Evaluation Tool. [GAO-01-1008G](#). Washington, D.C.: August 2001.

Standards for Internal Control in the Federal Government. [GAO/AIMD-00-21.3.1](#). Washington, D.C.: November 1999.

Whistleblowers: Management of the Program to Protect Trucking Company Employees Against Reprisal. [GAO/GGD-88-123](#). Washington, D.C.: September 22, 1988.

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