

United States Senate
WASHINGTON, DC 20510

April 26, 2024

VIA ELECTRONIC TRANSMISSIONS

The Honorable Jennifer Granholm
Secretary
Department of Energy

Dear Secretary Granholm:

Whistleblowers are critical to improving how government works for the people and ensuring accountability. The Government Accountability Office (GAO) published a report in July 2016 regarding strengthening whistleblower protections at DOE titled, “*Department of Energy: Whistleblower Protections Need Strengthening*.”¹ Part of that report found that “DOE has infrequently used its enforcement authority to hold contractors accountable for unlawful retaliation, issuing two violation notices in the past 20 years.”² The report also noted unacceptable examples of brave contractors that came forward to disclose wrongdoing and were terminated.³ The GAO made six official recommendations in that report, and after nearly eight years, three remain open.⁴

GAO’s first open recommendation focuses on the need for “the Secretary [to] develop and implement an independent evaluation process for routinely and accurately measuring contract employees’ willingness to raise safety and other concerns without fear of retaliation.”⁵

¹ GAO, GAO-16-618, *Department of Energy: Whistleblower Protections Need Strengthening*, (July 11, 2016), <https://www.gao.gov/assets/gao-16-618.pdf>; see also Updates as to the status of the GAO recommendations <https://www.gao.gov/products/gao-16-618>.

² *Id.* The report also stated that “DOE officials provided GAO with examples where (1) little or nothing was done in response to intimidation of contractor employees who report safety and other concerns; (2) a subcontractor was terminated after reporting safety concerns; and (3) a contractor employee was terminated allegedly because she cooperated with GAO. DOE’s reluctance to hold contractors accountable may diminish contractor employee confidence in mechanisms for raising concerns and seeking whistleblower protection.”

³ *Id.*

⁴ *Id.* at 51-52.

⁵ *Id.* at 51; see also *supra* note 1, Updates as to the status of the GAO recommendations. GAO said, “DOE concurred with the recommendation. DOE has developed a plan to analyze tools utilized by site contractors to determine the viability of using the data to monitor the influence of work environment on employees’ willingness to raise safety concerns. DOE’s Office of Enterprise Assessments developed a process for completing evaluations that would include information on employees’ willingness to raise safety concerns. As of June 2023, we are continuing to work with DOE to better understand the process and schedule for completing evaluations.”

The second open recommendation tasks DOE with ensuring “that the organizational placement and practices of DOE – and contractor – provided Employee Concerns Programs (ECP) do not inhibit contractor employees from raising safety and other concerns...”⁶

GAO’s third open recommendation states that DOE should “improve DOE’s ability to take enforcement action against unlawful retaliation when appropriate and take action against contractors that create a chilled work environment...”⁷ This open recommendation is a priority recommendation for DOE.

It is imperative DOE cultivate an environment that allows for contractor whistleblowers to report allegations of waste, fraud, abuse, and other concerns without fear of reprisal. It’s also important that DOE ensures appropriate corrective actions are taken against all employees who retaliate against whistleblowers for showing the bravery to come forward and disclose wrongdoing. A failure to hold those accountable who engage in unlawful reprisal will have a chilling effect and discourage contractors from raising concerns. For Congress to better understand DOE’s progress in satisfying these open recommendations, please provide answers to the following by May 10, 2024:

1. What steps has DOE taken to close the open recommendations from the 2016 report? Provide all records.⁸
2. For each year since 2016, how many violation notices has DOE issued against contractors who engaged in whistleblower retaliation? What disciplinary action(s) was taken in all cases? Provide all records.

⁶ *Id.* at 51; *see also supra* note 1, Updates as to the status of the GAO recommendations. GAO said, “DOE concurred with the recommendation. DOE issued its revised order on the Employee Concerns Program (ECP) in January 2019. However, that order did not address all three issues raised in our recommendation. Specifically, the order states that it is a best practice for contractor ECP managers to report to a designated executive in the contractor management chain, but does not include information on concerns of independence. Additionally, there is instruction that ECP managers must assess programs and how often, but there is not specific criteria for overseeing and evaluating effectiveness or independence. As of April 2023, DOE officials told us the Office of Environment, Health, Safety, and Security (EHSS) is in the process of reviewing several policies and orders that will assist in addressing the issues related to this recommendation.”

⁷ *Id.* at 51; *see also supra* note 1, Updates as to the status of the GAO recommendations. GAO said, “DOE concurred with the recommendation. In January 2018, DOE issued a revision to DOE Policy 450.4A. The revised policy states that organizations should foster a culture that allows employees to ‘feel free to raise safety concerns without fear of retaliation...and supporting a questioning attitude concerning safety by all employees.’ However, the policy does not define the appropriate steps DOE should take to hold contractors accountable for creating a chilled work environment. As of April 2023, DOE officials told us the Office of Environment, Health, Safety, and Security (EHSS) was in the process of reviewing several policies and order that will assist in addressing the issues related to this recommendation.”

⁸ “Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether they resulted in final documents).

3. Will DOE revise DOE Policy 450.4A to address the steps DOE should take to hold contractors accountable for creating a chilled work environment? If not, why not? If so, when does DOE plan to finalize these revisions? Provide all records.

Thank you for your cooperation on this important matter. If you have any questions, please contact Tucker Akin of my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget