

# United States Senate

WASHINGTON, DC 20510

April 29, 2014

## VIA ELECTRONIC TRANSMISSION

The Honorable David Michaels  
Assistant Secretary of Labor  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Dr. Michaels:

In 2009 and 2010, both the Government Accountability Office (GAO) and the Office of Inspector General (OIG) for the Department of Labor recommended changes to the Department of Labor's Whistleblower Protection Program, which is administered by the Occupational Safety and Health Administration (OSHA).

In January 2009, GAO released a report titled "Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency." GAO issued a follow-up report in August 2010 titled "Whistleblower Protection: Sustained Management Attention Needed to Address Long-standing Program Weaknesses." That was followed on September 30, 2010, by the OIG's report, titled "Complainants Did Not Always Receive Appropriate Investigations Under The Whistleblower Protection Program."

We understand that OSHA has made many changes to its whistleblower program in the last four years. However, we have questions about how the program is functioning at this stage.

The 2010 OIG audit included six recommendations for executive action. The OIG informs us that the fourth recommendation, "Develop and monitor specific performance measures or indicators to ensure the whistleblower program is working as intended," has not been completed to its satisfaction. However, we understand that in order to evaluate whether the recommendation is still necessary, the OIG will be assessing whether investigations are following the Whistleblower Investigations Manual. Given that OSHA released its new manual in September 2011, the OIG's assessment will be helpful in understanding how OSHA's whistleblower investigations were impacted in 2012 and 2013.

GAO closes its recommendations out after a four-year period regardless of whether or not they are completed. In 2013, GAO closed out three of the eight recommendations from its 2009 report as "Closed – Not Implemented." Those included:

- #6: "In order to ensure the quality and consistency of the whistleblower program and to ensure that OSHA has reliable information to use to monitor the program, the Secretary of Labor should direct the Assistant Secretary of OSHA to develop interim audit milestones that regions must meet in order to ensure that audits are completed within specified timeframes."
- #8: "The Secretary of Labor should direct the Administrative Review Board [ARB] to 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."

Although we understand that OSHA revised its audit procedures in 2010 and 2011, it is not clear what interim audit milestones have been implemented. Similarly, although we understand that ARB has adopted a new docket system, it is not clear why it has not conducted independent reviews of its case tracking system as recommended by GAO.

OSHA's website provides some insight into other issues. For instance, data is available on the number of whistleblower cases received and completed each fiscal year since 2005, sorted by the statute under which the case was submitted. However, OSHA's website does not appear to detail how long OSHA takes to investigate before completing these cases.

In order to help us to have a better picture of how the Whistleblower Protection Program is functioning, please respond to the following:

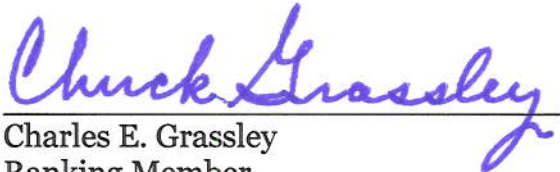
1. Please provide a copy of the current audit timeline procedures and requirements.
2. Why has the ARB not conducted independent reviews of its case tracking system?
3. Please provide a copy of any regional audits OSHA's National Office has conducted to date under the revised Management Accountability Program (MAP).
4. Please list all performance measurements used to track whistleblower caseload management at both the regional and the National Office levels.
5. If available, please provide the number of cases received under each statute for the first two quarters of FY 2014.
6. For each fiscal year since 2005, including numbers for the first two quarters of FY 2014 if available, and for each statute, please provide:
  - a. The average number of days to complete the new whistleblower complaint screening process.
  - b. The average age of pending whistleblower investigations.
  - c. The number of open whistleblower cases pending longer than 90 days.



- d. The number of open whistleblower cases pending longer than 120 days.
  - e. The number of open whistleblower cases pending longer than 150 days.
  - f. The number of open whistleblower cases pending longer than 180 days.
  - g. The number of open whistleblower cases pending longer than 210 days.
  - h. The average length of time that each whistleblower case ultimately determined to be meritorious had been pending.
7. Please provide the total expenses of the Whistleblower Protection Program for FY 2012-2014, including FTEs, as well as the proposed expenses for FY 2015.

We look forward to your prompt response. Should you have any questions, please contact Tristan Leavitt of Ranking Member Grassley's staff or Kristin Nelson of Ranking Member Alexander's staff.

Sincerely,



Charles E. Grassley  
Ranking Member  
Senate Committee on the Judiciary



Lamar Alexander  
Ranking Member  
Senate Committee on Health,  
Education, Labor and Pensions

cc: The Honorable Scott Dahl  
Inspector General  
Department of Labor