

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION



OSHA NEEDS TO STRENGTHEN ITS PROCESS FOR AWARDING FUTURE EMERGENCY SUPPLEMENTAL FUNDS TO STATE PLANS

This report was prepared by GenTech Associates, Inc. under contract to the U.S. Department of Labor, Office of Inspector General, and, by acceptance, it becomes a report of the Office of Inspector General.

A handwritten signature in cursive script that reads "Carolyn R. Hantry".

U.S. Department of Labor
Assistant Inspector General for Audit

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REPORT NUMBER: 19-23-009-10-105



BRIEFLY...

OSHA NEEDS TO STRENGTHEN ITS PROCESS FOR AWARDING FUTURE EMERGENCY SUPPLEMENTAL FUNDS TO STATE PLANS

August 30, 2023

WHY OIG CONDUCTED THE AUDIT

On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA) into law, providing additional relief to address the continued impact of the COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses.

ARPA provided the Occupational Safety and Health Administration (OSHA) with no less than \$100 million in additional funding, of which no less than \$5 million was allotted for worker protection activities related to COVID-19. A prior audit identified concerns with the decreased level of COVID-19 inspections, leaving U.S. workers' safety at increased risk.

WHAT OIG DID

The Office of Inspector General (OIG) contracted with the independent certified public accounting firm of GenTech Associates, Inc. (GenTech) to conduct a performance audit to answer the following question:

Did OSHA appropriately budget and expend ARPA funds to carry out COVID-19 related worker protection activities?

To answer this question, GenTech reviewed guidance and public laws, conducted interviews, and analyzed financial and enforcement data.

WHAT OIG FOUND

GenTech determined OSHA appropriately budgeted ARPA funds to carry out COVID-19 related worker protection activities. Further, a review of 7 of 10 ARPA program areas found that, in general, OSHA appropriately expended ARPA funds. However, OSHA did not effectively manage the awarding process to maximize coverage across State Plans and had insufficient controls in place to expend funds designated for State Plan grants.

Specifically, OSHA neglected to adequately coordinate with the Departmental Budget Center regarding the time needed to afford State Plans the maximum opportunity to meet the grant matching requirement. Ultimately, only 5 of the 28 State Plans received ARPA funds. The limited time available to assess the grant opportunity, combined with the grant matching requirement, may have forced states to make decisions without sufficient analysis. As a result, states may have lost out on the opportunity to receive the appropriate federal assistance needed to ensure workers' safety in the COVID-19 environment.

OSHA also awarded \$7.5 million to a grantee with known financial and reporting issues without establishing mitigating controls to help ensure the appropriate use and reporting of funds. OSHA did not follow proper grant application procedures to determine if the state's financial system could track, account for, and report on expenditures before awarding the funds. These issues could hinder OSHA in detecting and preventing misuse of the grants, which were funded with taxpayer dollars.

WHAT OIG RECOMMENDED

GenTech made two recommendations to OSHA to develop a plan for future crises that affords State Plans the maximum opportunity to receive federal assistance and update its monitoring procedures to better respond to grantee noncompliance. OSHA agreed with the recommendations.

READ THE FULL REPORT

<http://www.oig.dol.gov/public/reports/oa/2023/19-23-009-10-105.pdf>

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INSPECTOR GENERAL'S REPORT

Douglas L. Parker
Assistant Secretary
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U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

The U.S. Department of Labor (DOL) Office of Inspector General (OIG) contracted with the independent certified public accounting firm of GenTech Associates, Inc. (GenTech) to conduct a performance audit of the Occupational Safety and Health Administration's (OSHA) American Rescue Plan Act of 2021 (ARPA) funds designated to carry out worker protection activities related to COVID-19.

The OIG monitored GenTech's work to ensure it met professional standards and contractual requirements. GenTech's independent audit was conducted in accordance with generally accepted government auditing standards.

GenTech was responsible for the auditors' evaluation and the conclusions expressed in the report, while the OIG reviewed GenTech's report and supporting documentation.

PURPOSE

OSHA is responsible for ensuring safe and healthful working conditions for millions of workers nationwide. On March 11, 2021, ARPA was signed into law, providing additional relief to address the continued impact of the COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses.

ARPA provided OSHA with no less than \$100 million in additional funding, of which no less than \$5 million was allotted for worker protection activities related to COVID-19 in high-risk workplace industries, including health care, meat and poultry processing facilities, agricultural workplaces, and correctional facilities.

This audit covered COVID-19 related worker protection activities carried out by OSHA with ARPA funds, focusing on the period of March 11, 2021, through October 31, 2021. GenTech conducted this performance audit to answer the following question:

Did OSHA appropriately budget and expend ARPA funds to carry out COVID-19 related worker protection activities?

To answer the audit objective, GenTech reviewed applicable laws, policies, procedures, documents, reports, and OSHA's management information system data. GenTech conducted interviews and assessed the reliability of OSHA management information system data by performing tests for completeness, accuracy, and consistency of the required data elements.

RESULTS

GenTech concluded that OSHA appropriately budgeted ARPA funds to carry out COVID-19 related worker protection activities. Further, GenTech reviewed 7 of the 10 ARPA program areas¹ and, in general, found OSHA appropriately expended ARPA funds. However, OSHA did not effectively manage the awarding process to maximize coverage across State Plans and had insufficient controls in place to expend funds designated for State Plan² grants.

Specifically, OSHA only awarded ARPA funds to 5 of 28 State Plans (18 percent) because OSHA neglected to adequately coordinate with the Departmental Budget Center regarding the time needed to afford State Plans the maximum opportunity to meet the grant matching requirement. These 5 states were awarded \$12.4 million out of the \$16 million apportioned for all State Plans for Fiscal Year 2021.

Of the \$12.4 million, OSHA awarded \$7.5 million to a grantee with known financial and reporting issues without establishing mitigating controls to help

¹ The seven ARPA program areas were: Standards, Enforcement, Whistleblower Protection, State Plan Grants, Technical Support, Compliance Assistance – Federal, and Susan Harwood Training Grants.

² The term "State Plans" refers to those states with an OSHA-approved workplace safety and health program. State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses, and deaths.

ensure the appropriate use and reporting of funds. OSHA did not follow proper grant application procedures to determine if the state's financial system could track, account for, and report on expenditures before awarding ARPA funds.

We appreciate the cooperation and courtesies OSHA extended to us during this audit.



Carolyn R. Hantz
Assistant Inspector General for Audit

CONTRACTOR PERFORMANCE AUDIT REPORT



Independent Auditors' Performance Audit Report on the Occupational Safety and Health Administration's Plans and Use of Funds Provided under the American Rescue Plan Act of 2021

Douglas L. Parker
Assistant Secretary
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We were engaged by the U.S. Department of Labor (DOL) Office of Inspector General (OIG) to conduct an independent performance audit of the Occupational Safety and Health Administration's (OSHA) plans and use of funds provided under the American Rescue Plan Act of 2021 (ARPA) to carry out worker protection activities related to COVID-19. This report presents the results of our work.

On March 11, 2021, ARPA was signed into law, providing additional relief to address the continued impact of the COVID-19 pandemic on the economy, public health, state and local governments, individuals, and businesses. ARPA provided funding for various agencies within DOL to conduct worker protection activities with respect to COVID-19. The allocated amount to OSHA was as follows:

Not less than \$100,000,000 shall be for the Occupational Safety and Health Administration, of which \$10,000,000 shall be for Susan Harwood training grants, and not less than \$5,000,000 shall be for enforcement activities related to COVID-19 at high-risk workplaces,

including health care, meat and poultry processing facilities, agricultural workplaces, and correctional facilities.³

OSHA allocated the ARPA funding for creating standards, enhancing enforcement activities, purchasing technical equipment, and announcing funding opportunities for State Plan grants and Susan Harwood grants, which are defined⁴ as follows:

- State Plan grants provide funding for State Plans to ensure they have adequate resources to maintain standards and the ability to enforce those standards and protect workers from retaliation in an “at least as effective” manner as OSHA.
- Susan Harwood grants support the development of training for employees and employers on identifying and addressing hazards associated with COVID-19 and other infectious diseases.

We conducted this performance audit to answer the following question:

Did OSHA appropriately budget and expend ARPA funds to carry out COVID-19 related worker protection activities?

To accomplish our audit objective, we interviewed OSHA personnel to assess the design of their internal controls for program design and monitoring. This included reviewing policies and procedures for the budget preparation and disbursement of the funds. We also statistically selected and tested a sample of OSHA transactions related to the use of ARPA funds to determine if the controls were effectively implemented to protect workers from COVID-19 and for compliance with laws and regulations.⁵ For small populations with less than 50 items, such as grants and equipment purchases, we reviewed the entire population. We also obtained and reviewed the spending plans developed by OSHA for using ARPA funds to carry out COVID-19 related worker protection activities. In addition, our assessment included the processes to award and manage the Susan Harwood and State Plan grant programs.

³ ARPA, Subtitle B, Sec. 2101(b)

⁴ American Rescue Plan – FY 2022 Worker Protection Supplemental Appropriation, available at: <https://www.dol.gov/general/american-rescue-plan/FY2022-worker-protection-supplemental-appropriation>

⁵ Transactions and activity tested were selected from the following ARPA program areas: Standards, Enforcement, Whistleblower Protection, State Plan Grants, Technical Support, Compliance Assistance – Federal, and Susan Harwood Training Grants. These seven areas represented approximately 98.4 percent of the original amount of \$100 million requested in the Issue Paper OSHA provided to the Departmental Budget Center.

We determined OSHA appropriately budgeted ARPA funds to carry out COVID-19 related worker protection activities. Further, we reviewed 7 of the 10 ARPA program areas and, in general, found OSHA appropriately expended ARPA funds. We also determined OSHA did not effectively manage the awarding process to maximize coverage across State Plans and had insufficient controls in place to expend funds designated for State Plan grants.

We conducted this performance audit 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our scope, methodology, and criteria are detailed in Appendix A.

RESULTS

We determined OSHA appropriately budgeted ARPA funds to carry out COVID-19 related worker protection activities. We reviewed 7 of the 10 ARPA program areas and, in general, found OSHA appropriately expended ARPA funds. However, OSHA did not effectively manage the awarding process to maximize coverage across State Plans and had insufficient controls in place to expend funds designated for State Plan grants.

We found OSHA neglected to adequately coordinate with the Departmental Budget Center⁶ regarding the time needed to afford State Plans the maximum opportunity to meet the grant matching requirement. As a result, only 5 of the 28 State Plans received grant funding. Further, of the \$12.4 million awarded, \$7.5 million was given to a grantee with known financial and reporting issues without establishing mitigating controls to help ensure the appropriate use and reporting of funds. Based on these findings, we determined OSHA did not appropriately award the ARPA grants, which were funded with taxpayer dollars.

Due to OSHA's failure to sufficiently manage the awards and provide the maximum amount of supplemental financial assistance, states may have lost out on the opportunity to receive the additional federal assistance needed to ensure workers' safety in the COVID-19 environment. In addition, the inability of a grantee's financial-management system to provide past expense reconciliations

⁶ The Departmental Budget Center provides DOL with direction, policy advice, technical assistance, and related services concerning budget formulation, justification, and execution.

or submit prompt and accurate reports may have hindered OSHA in detecting and preventing misuse of funds timely.

OSHA APPROPRIATELY BUDGETED ARPA FUNDS TO CARRY OUT COVID-19 WORKER PROTECTION ACTIVITIES

We determined that OSHA appropriately budgeted ARPA funds to carry out COVID-19 worker protection activities. This was based on our analysis of OSHA’s policy and procedures as well as the justification OSHA provided to the Departmental Budget Center. Funds budgeted were to be spent from Fiscal Year (FY) 2021 to FY 2022, and our analysis indicated that OSHA’s policies and procedures were suitable to guide OSHA’s management to develop and implement the budget for the ARPA funds.

According to the Office of Management and Budget’s Apportionment⁷ documents we reviewed, OSHA received \$100,280,883⁸ in ARPA funds to be used through September 30, 2023. OSHA received justified requests and budgeted the ARPA funds among 10 program areas, which amounted to more than \$43.4 million for FY 2021 while reserving \$34.1 million for FY 2022 and \$22.8 million for FY 2023.⁹ The FY 2022 budgeted amounts benefitted from the \$8.6 million in unused funds from FY 2021 to help bolster its FY 2022 Apportionment from \$34.1 million to \$42.7 million (see Table 1).

⁷ An apportionment is a plan approved by the Office of Management and Budget to use budgetary resources. It typically limits the obligations that may be incurred for specified time periods, programs, activities, projects, objects, or any combination thereof. An apportionment is legally binding, and obligations and expenditures (disbursements) that exceed an apportionment are a violation of and are subject to reporting under the Anti-Deficiency Act.

⁸ The initial request of \$100,278,383 was increased by \$2,500 for Emergency Paid Leave to \$100,280,883.

⁹ The budgeted funds for FY 2022 included funds specifically budgeted for FY 2022 as well as funds not expended in FY 2021.

Table 1: OSHA Budgeted Funds Allocated by Program Area

Program Area	FY 2021	FY 2022
Standards	\$2,199,640	\$4,846,790
Whistleblower Protection	\$2,470,141	\$8,782,746
Enforcement	\$12,937,074	\$18,666,785
Technical Support	\$1,777,776	\$3,772,438
Compliance Assistance - Federal	\$904,200	\$2,286,913
Statistics	\$500,000	\$315,548
Executive Direction	\$169,760	\$742,700
State Plan Grants	\$12,421,046	\$0.00
Training Grants	\$10,000,000	\$3,257,710
Emergency Paid Leave	\$2,500	\$0.00
Total	\$43,382,137	\$42,671,630

Source: Apportionment information from OSHA for FY 2021 and FY 2022

As of June 21, 2023, OSHA expended approximately \$62.8 million, leaving about \$37.2 million to be expended by September 30, 2023. This funding will be affected by the Fiscal Responsibility Act of 2023,¹⁰ which OSHA estimates will require approximately \$17 million to be rescinded. Exhibit 1 provides a high-level summary of the ARPA funds expended by OSHA from FY 2021 through FY 2023.

OSHA DID NOT SUFFICIENTLY MANAGE THE GRANT AWARDING PROCESS TO MAXIMIZE COVERAGE

OSHA did not sufficiently manage the \$12.4 million apportioned for State Plan grants. Notably, concerns were identified regarding the award of the State Plan grants. OSHA only awarded ARPA funds to 5 of 28 State Plans (18 percent) through the State Plan grants. This occurred because OSHA neglected to adequately coordinate with the Departmental Budget Center regarding the time needed to afford State Plans a better opportunity to meet the grant matching requirement.

¹⁰ The Fiscal Responsibility Act of 2023 increased the federal debt limit, established new discretionary spending limits, rescinded unobligated funds, expanded work requirements for federal programs, and modified other requirements related to the federal budget process.

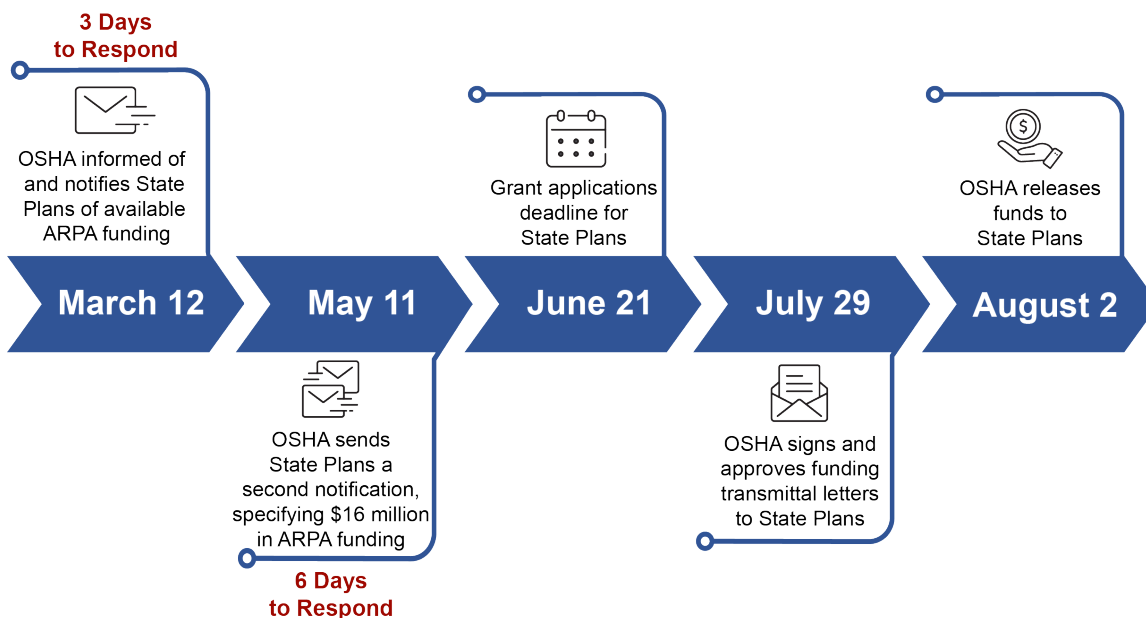
The additional funding was provided to ensure State Plans' COVID-19 response efforts were "at least as effective as" OSHA in protecting workers and in preventing work-related injuries, illnesses, and deaths. These grants were intended to provide State Plans with funds to assist in administering and enforcing occupational safety and health programs. The Occupational Safety and Health Act of 1970, Section 23(g), requires that the federal share for each state grant not exceed 50 percent of the total cost to the state. Therefore, in order to receive the ARPA funds, State Plans need to be able to match and obligate the amount they request from OSHA.

On March 12, 2021, OSHA first notified the 28 State Plans of the availability of supplemental ARPA funding. In its email, OSHA requested that State Plans respond by March 15, 2021 (within 3 days), with the amount, if any, that the State Plans could match and obligate by September 30, 2023. OSHA stated that the request period was limited to 3 days to enable it to respond to a Departmental Budget Center deliverable that was due March 17, 2021. Of the 28 State Plans initially contacted, all 28 states responded, with 7 states expressing interest and 21 states declining the supplemental funding. According to OSHA, the Departmental Budget Center gave it only 5 days to submit the justification of the resources needed for COVID-19 related worker protection activities. OSHA indicated it had no flexibility to extend the 5-day deadline. However, OSHA was unable to provide documentation to verify they were unable to negotiate the timeframe.

On May 11, 2021, OSHA sent a follow-up email with additional information to the State Plans—specifying the availability of \$16 million¹¹ in supplemental funding for COVID-19 related activities—with the intent to provide the states an opportunity to reconsider their initial response and offer states the opportunity to confirm or revise their reply. However, OSHA did not previously notify the states that a follow-up email, providing additional time to respond, would be sent to them after the initial March deadline. In this second communication, OSHA indicated that some State Plans wanted to reconsider their initial response, and this was their opportunity to do so. OSHA allowed the State Plans to provide their responses until May 17, 2021 (within 6 days). Figure 1 shows OSHA's funding timeline for State Plans, detailing the timeframe from the initial notice of available funds to the release of funds.

¹¹ OSHA initially apportioned \$16 million for State Plan grants, which was later reduced to \$12.4 million.

Figure 1: OSHA’s 2021 Funding Timeline for State Plan Grants



Source: OSHA procedures, memoranda, and transmittal letters

After the follow-up email in May 2021, only five of the initial seven states that had expressed interest chose to apply for the grants (see Table 2).¹² Overall, OSHA provided the 28 State Plans a total of 9 days during the period March 12, 2021, through May 17, 2021, to plan for and request ARPA funds. Ultimately, OSHA awarded \$12.4 million out of \$16 million apportioned for FY 2021 to only 5 states.

Table 2: States That Received Funding

State	Initial Amount Requested	Final Amount Received
California	\$7,500,000	\$7,500,000
Maryland	\$150,000	\$150,000
Nevada	\$251,623	\$246,046
New York	\$1,625,000	\$1,625,000
Oregon	\$2,900,000	\$2,900,000
Total	\$12,426,623	\$12,421,046

Source: OSHA Directorate of Cooperative and State Programs

¹² Of the seven states expressing an initial interest in the ARPA grants, two states, Minnesota and New Mexico, chose not to apply. Minnesota officials stated that they had received an influx of funds from their state while no explanation of New Mexico’s withdrawal was provided.

Some of the states that declined the supplemental funding expressed concerns about the limited time they were given to respond to the initial notification—particularly because they needed to respond with the amount of funding they could match and obligate. For example, in March 2021, a State Plan expressed interest but subsequently rescinded, and three other State Plans chose not to apply for the grants (see Table 3). In addition, a fifth state (North Carolina) questioned the grant matching requirement.

Table 3: States’ Concerns about Time Constraints

State	Notes/Remarks
Alaska	“Alaska is unable to accept these supplemental funds at this time. Our legislative process has not concluded, and we are still unable to definitively state whether or not we will have an increase in our FY22 budget at this time.”
Connecticut	“Has asked for ‘a few more days’; Provided \$50,000 as a placeholder; Rescinded its request on 03/30/2021.”
Indiana	“With such a tight turnaround, we cannot speak with the Indiana Office of Management and Budget to determine feasibility. Such a tight turnaround time presents a challenge.”
Vermont	“Unable to pull anything together on this short notice.”

Source: OSHA Directorate of Cooperative and State Programs

At the Occupational Safety and Health State Plan Association Conferences in May 2021 and February 2023, OSHA mentioned that supplemental grant awards would be made available through ARPA funding. However, OSHA provided no evidence that it afforded State Plans additional opportunities to apply for ARPA funds, despite the fact that the money was to remain available until September 30, 2023.

The limited time available to assess the grant opportunity, combined with the grant matching requirement, may have forced states to make decisions without sufficient analysis. Due to OSHA’s failure to sufficiently manage the awarding process and provide the maximum amount of supplemental financial assistance, states may have lost out on the opportunity to receive the additional federal assistance needed to ensure workers’ safety in the COVID-19 environment.

OSHA AWARDED \$7.5 MILLION TO A GRANTEE WITH KNOWN FINANCIAL AND REPORTING ISSUES WITHOUT ESTABLISHING MITIGATING CONTROLS

On July 29, 2021, OSHA awarded \$7.5 million in ARPA funds to California without thoroughly assessing the state’s ability to report on the funding received¹³. As part of the grant requirements, California needed to track, account for, and report ARPA grant spending separately from all other funds. In addition, the state was required to submit to OSHA a Federal Financial Report 30 days after the end of each federal fiscal quarter.¹⁴ During a meeting with California officials on November 3, 2021, OSHA noted that California did not disclose any expenditure information in its Federal Financial Report dated October 30, 2021. This was approximately 3 months after the state received ARPA funding.

We determined that this was not the first time OSHA learned about California’s noncompliance with the required reporting of financial information related to awards. Through its participation in various State Plan grant programs, California receives grant funds from OSHA on an annual basis. As part of the oversight of these funds, OSHA conducts a Federal Annual Monitoring Evaluation (FAME) of the state. OSHA noted financial system issues with California’s reporting in its FY 2019 and FY 2020 FAME reports.

In the FY 2019 FAME Report, OSHA noted delays in the grant closeout financial reports.¹⁵ Then, in the FY 2020 Follow-Up Report, OSHA noted similar delays in the grant closeout reports.¹⁶ These delays were attributed to a new statewide

¹³ 2 C.F.R. § 200.206(b) provides that the federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive federal awards and that the criteria to be evaluated must be described in the announcement of the funding opportunity.

¹⁴ ARPA, OSHA 23(g) State Plans Grant Application Instructions state that all funds received to support the ARPA grant must be tracked, accounted for, and reported separately from all other funds.

¹⁵ FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report for the California Department of Industrial Relations, page 4, stated “for the past two years, the closeout financial reports were not closed within ninety (90) days after the end of the grant’s performance period due to a new accounting system. A closeout extension was requested and approved to allow more time to ensure the accuracy of the grant financial data.”

¹⁶ FY 2020 Follow-up Federal Annual Monitoring Evaluation (FAME) Report for the California Department of Industrial Relations, page 4, stated “the FY 2019 financial closeout reports were not submitted timely, within ninety (90) days after the end of the grant’s performance period, due to issues encountered with a financial system and a shortfall in administrative staff needed for the conversion, which was not addressed until July 1, 2020. This was the second year that a closeout

financial-management system and a shortfall in administrative staff needed for the conversion.

Despite these prior issues, OSHA awarded California the \$7.5 million in ARPA funds, the full amount requested by the state, without mitigating controls. According to information provided by OSHA, the state spent approximately \$4.6 million of the awarded funding as of September 6, 2022. However, this amount had not gone through California’s reconciliation process. Thus, we could not validate the accuracy of the amount.

OSHA did not follow grant application procedures when evaluating California’s ability to properly track, account for, and report on expenditures before awarding ARPA funds. Additionally, based on our review of OSHA’s documentation, we could not determine if OSHA assessed the risk of misuse of funds when evaluating the California grant application. California has been unable to provide accurate quarterly Federal Financial Reports due to issues with the state’s financial-management system during the audit period. However, OSHA has advised that the issue is resolved.¹⁷

The inability of California’s financial-management system to provide past expense reconciliations or submit timely and accurate Federal Financial Reports and narrative reports violated the terms of the grant award, which limited OSHA’s ability to determine that the awarded funds have been used to protect workers from COVID-19 and may have hindered OSHA from detecting and preventing misuse of funds timely.

extension was requested and approved to allow more time to ensure the accuracy of the financial data included in the grant. The closeout extension for the FY 2020 grant was March 31, 2021.”

¹⁷ After the audit work had been completed, OSHA informed GenTech that the California reporting issues had been resolved by June 30, 2022. A copy of the Federal Financial Reports for the quarters ending December 31, 2022, and March 31, 2023 were provided; however, GenTech was unable to validate the information since it was provided after the period of time covered by the audit.

RECOMMENDATIONS

To strengthen OSHA's process for awarding future emergency supplemental funds to State Plans, we recommend the Assistant Secretary for Occupational Safety and Health:

1. Develop a plan for future crises (e.g., pandemic) to coordinate with the Departmental Budget Center on the time needed to afford State Plans the maximum opportunity to receive the appropriate federal assistance needed to ensure workers' safety.
2. Update OSHA's monitoring procedures to temporarily impose restrictions, request monthly expense reports, and implement other noncompliance remedies if grantees fail to submit accurate Federal Financial Reports until the expense reconciliation issue is resolved.

SUMMARY OF OSHA'S RESPONSE

In its response to the report, OSHA agreed with the report's recommendations and provided information regarding how it intends to address them. Although OSHA took the opportunity to express its concerns related to the findings, its comments did not change the report's conclusions.

For the first recommendation, regarding OSHA's handling of ARPA funds and coordination with the Departmental Budget Office, OSHA expressed concern with the characterizations of its management and oversight of ARPA activities related to State Plan grants. OSHA stated that it cannot control when it learns the funds are available, nor does it control the date by which it must designate how the funds will be used. Additionally, OSHA stated it does not control how much time grantees have to respond to Emergency Supplemental funding opportunity announcements, and indicated it provided State Plans with several opportunities to apply for the funds.

As stated in our report, OSHA could enhance collaboration with the Departmental Budget Office to ensure State Plans have sufficient time for decisions during critical funding opportunities. In particular, we noted that ARPA did not impose time limits on the grant award process, which should afford some flexibility within the process. While OSHA stated it provided additional opportunities for State Plans to apply for grant funds, as we stated in our report, those opportunities again afforded State Plans with little time to respond, including time to address the matching requirement. Finally, these additional opportunities did not result in

an increase in State Plan participation in the grants, raising questions about the extent of OSHA's efforts to ensure broader access.

OSHA's response further stated that the OIG did not acknowledge that OSHA's State Plans are accustomed to its processes for awarding Emergency Supplemental funding, including the tight timeframes inherent in such funding opportunities, given their past experiences with supplemental funding opportunity announcements. However, we discourage the past trend of providing State Plans with limited time to respond to such opportunities and instead encourage OSHA to proactively plan ahead and explore opportunities to enhance its process moving forward.

For the second recommendation, OSHA expressed concerns related to the report statement that OSHA did not follow grant application procedures when evaluating California's ability to properly track, account for, and report on expenditures before awarding ARPA funds. OSHA explained that the California State Plan may have experienced delays in reporting due to it implementing a new financial management system at the time of the audit, but that the State Plan has a long history of managing OSHA grants, and, to date, there have not been any concerns with misuse of funds. However, 2 C.F.R. § 200.206(b) requires a federal awarding agency to have in place a framework for evaluating the risks posed by applicants before they receive federal awards. OSHA did not provide documentation to support the risk evaluation performed on the California application process before the award. If OSHA knew of California's new system implementation, it should have documented the issue and submitted a waiver allowing California to submit manual quarterly financial reports until the completion of the new system.

We appreciate that OSHA will propose corrective action plans to address the report recommendations, including closely coordinating with the Departmental Budget Center during any future emergency in which supplemental funding is provided, and advising grantees of restrictions and consequences if they are unable to conduct the timely and accurate reporting of federal awards in the future.

Management's response to the draft report is included in its entirety in Appendix B.

We value the cooperation and courtesies OSHA extended to us during this audit.

A handwritten signature in blue ink, appearing to read "Thomas Byers", with a long horizontal flourish extending to the right.

Thomas Byers
Senior Vice President and Managing Director
GenTech Associates, Inc.
Indianapolis, IN
August 30, 2023

EXHIBIT 1: ARPA FUNDS EXPENDED BY OSHA

Table 4 provides a high-level summary of the ARPA funds expended by OSHA for FY 2021, FY 2022, and through June 21, 2023.

Table 4: OSHA Expenditure Report from FY 2021 through June 21, 2023

Program Area	FY 2021	FY 2022	FY 2023	Total
Standards	\$1,473,614	\$3,211,571	\$2,469,040	\$7,154,225
Whistleblower Protection	\$787,132	\$2,092,445	\$218,818	\$3,098,395
Enforcement	\$14,001,660	\$12,574,171	(\$644,935)	\$25,930,896
Technical Support	\$1,224,459	\$1,318,704	\$61,789	\$2,604,952
Compliance Assistance – Federal	\$842,655	\$1,521,616	\$116,762	\$2,481,033
Compliance Assistance – State	\$0.00	\$0.00	\$4,712,400	\$4,712,400
Statistics	\$68,201	\$1,618	\$307	\$70,126
State Program Grants	\$178,111	\$6,926,616	\$2,752,889	\$9,857,616
Susan Harwood Training Grants	\$190,430	\$3,590,564	\$3,101,707	\$6,882,702
Emergency Paid Leave	\$946	\$2,699	\$0.00	\$3,645
Executive Direction	\$0.00	\$13,387	\$0.00	\$13,387
Total	\$18,767,207	\$31,253,392	\$12,788,778	\$62,809,377

Source: Department of Labor Financial Management System

APPENDIX A: SCOPE, METHODOLOGY, AND CRITERIA

SCOPE

This audit covered COVID-19 related worker protection activities carried out by OSHA with ARPA funds. The audit scope period is March 11, 2021, through October 31, 2021.

METHODOLOGY

We conducted this performance audit 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.

To accomplish our audit objectives, we reviewed applicable laws, policies, procedures, documents, reports, financial and enforcement data, and OSHA's management information system data. We assessed the reliability of OSHA management information system data by: (1) performing tests for completeness, accuracy, and consistency of the required data elements; and (2) reviewing existing information about the data. We determined the data were sufficiently reliable for the purposes of this report.

We evaluated OSHA's policies and procedures and performed interviews to determine if OSHA adequately developed and executed ARPA plans to carry out COVID-19 related worker protection activities, including in high-risk industries. Adequately developed means that OSHA developed sound policies and procedures for the budget preparation and disbursement of the funds that, when implemented, will ensure OSHA did accurately and timely budget and disburse the funds. We reviewed the budget justification, which outlined the various program areas covered by ARPA, to determine that the amount requested for each program area was justified and that the total amount requested was at least \$100 million in accordance with the guidelines of ARPA.

INTERNAL CONTROL

In performing the audit, we evaluated internal controls used by OSHA for reasonable assurance that the ARPA funds were administrated (budgeted and expended) in accordance with federal and internal requirements.

We interviewed OSHA personnel to assess the design of their internal controls over program monitoring and reporting of performance results. We also statistically selected and tested a sample of OSHA transactions related to the use of ARPA funds, to determine if the controls were effectively implemented to protect workers from COVID-19 and compliant with laws and regulations. Transactions and activity tested were selected from the following ARPA program areas: Standards, Enforcement, Whistleblower Protection, State Plan Grants, Technical Support, Compliance Assistance – Federal, and Susan Harwood Training Grants. These seven areas represented approximately 98.4 percent of the original amount of \$100 million requested in the Issue Paper OSHA provided to the Departmental Budget Center. For small populations with less than 50 items, such as grants and equipment purchases, we reviewed the entire population.

Our consideration of internal controls would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

Because this was a performance audit, our audit was not designed to provide an opinion on the internal controls of OSHA. Accordingly, we provide no such opinions.

CRITERIA

- American Rescue Plan Act of 2021
- Occupational Safety and Health Act of 1970
- 2 C.F.R. Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

PRIOR RELEVANT COVERAGE

During the last 2 years, the OIG has issued two reports of significant relevance to the subject of this report. Those reports are the following:

1. COVID-19: OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards, Report No. 19-23-001-10-105 (October 31, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2023/19-23-001-10-105.pdf>; and

2. COVID-19: Increased Worksite Complaints and Reduced OSHA Inspections Leave U.S. Workers' Safety at Increased Risk, Report No. 19-21-003-10-105 (February 25, 2021), available at:
<https://www.oig.dol.gov/public/reports/oa/2021/19-21-003-10-105.pdf>.

Additionally, a relevant May 25, 2022, GAO report (No. GAO-22-105711) entitled "Workplace Safety and Health: Data and Enforcement Challenges Limit OSHA's Ability to Protect Workers during a Crisis" is available at:
<https://www.gao.gov/products/gao-22-105711>.

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

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



August 08, 2023

MEMORANDUM FOR: CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM: James Frederick
Deputy Assistant Secretary

A handwritten signature in black ink, appearing to read "J. Frederick", is placed to the right of the typed name and title.

SUBJECT: Response to the Office of Inspector General's Draft Report, "OSHA's Adequacy of Plans and Use of Funds Provided Under the ARP Act"

This memorandum is in response to your transmittal of the Office of the Inspector General (OIG) Draft Report, "OSHA's Adequacy of Plans and Use of Funds Provided Under the ARP Act." The Occupational Safety and Health Administration (OSHA) accepts the recommendations and appreciates this opportunity to provide information regarding how it intends to address them. However, OSHA continues to have concerns with OIG's characterizations of OSHA's management and oversight of the American Rescue Plan Act of 2021 (ARPA) activities with respect to State Plans grant opportunities. These concerns are detailed below, followed by OSHA's plans to address OIG's recommendations.

Throughout the report, OIG maintains that "OSHA did not effectively manage the awarding process to maximize coverage across State Plans and had insufficient controls in place to expend funds designated for State Plan grants." OSHA recognizes that to ensure State Plans are able to receive federal assistance, it is critical to provide them with the maximum time possible to apply. Similarly, to ensure that taxpayer dollars are spent in the manner in which Congress intended, OSHA agrees that it is important to maintain and implement appropriate controls for funds awarded to the State Plans. However, the way in which OIG's report describes OSHA's award process and its controls fails to appropriately reflect the circumstances surrounding the award process—circumstances which OSHA explained to OIG during the audit.

First, regarding the time needed to afford grantees the maximum opportunity to receive federal assistance, OSHA does not control when it learns that funds are available, nor does it control the date by which it must designate how the funds will be used. Those timeframes are governed by the Office of Management and Budget (OMB) and the U.S. Department of Labor (Department). *See, e.g., American Rescue Plan Act of 2021 Supplemental Apportionment.* Consequently, OSHA does not control how long grantees have to respond to Emergency Supplemental funding opportunity announcements.

In the case of the ARPA funds, OMB, the Department, and indeed the entire Executive Branch were working quickly and tirelessly to respond to the pandemic, including by awarding funds as soon as possible. In keeping with this goal, the Department provided OSHA with five days

between the original instruction on March 12, 2021 (one day after President Biden signed ARPA into law), until the agency's "Spend Plan" for ARPA funds was due to the Departmental Budget Center (DBC) on March 17, 2021. As OSHA explained to OIG during the audit, there was no flexibility with the deadline in this instance. However, importantly and as discussed in more detail below, this five-day period was not the only opportunity State Plans had to request ARPA funds. DBC provided, and OSHA advised, the State Plans of other opportunities to request funds on at least two other occasions over the course of the next year. Additionally, OSHA managed the process equitably, following the Department's instructions.

Second, although OIG's report acknowledges certain key facts surrounding the award process, its findings and conclusions fail to appropriately take those facts into account. For example, Congress did not provide a separate funding authority without the traditional requirement for the grantees to match funds awarded. Therefore, OSHA could only distribute funds under the authority of Section 23(g) of the OSH Act, which imposes a matching requirement. This requirement prevented many State Plans from claiming funds regardless of the time provided to make a decision. Further, OIG failed to acknowledge that OSHA's State Plans are accustomed to its processes for awarding Emergency Supplemental funding, including the tight timelines inherent in such funding opportunities, given their past experience with supplemental funding opportunity announcements.

As we have repeatedly stated, the timeframes for the grant process were outside of OSHA's control and OSHA had no authority to change them. Likewise, going forward, OSHA cannot change timeframes and/or requirements established by Congress or the Department.

Third, the draft report states, "Some of the states that declined the supplemental funding expressed concerns about the limited time they were given to respond to the initial notification - particularly because they needed to respond with the amount of funding they could match and obligate." Again, OIG's findings and conclusions fail to appropriately reflect the facts surrounding the State Plans' statements. During the audit, OSHA explained to OIG that grantees were given additional opportunities to request ARPA funding after the initial grant award notification. Specifically, at the Occupational Safety and Health State Plan Association Conferences in May 2021 and February 2023, OSHA notified the State Plans that supplemental ARPA grant funding was still available and could be awarded upon request. The draft audit report asserts that OSHA provided no evidence that it afforded grantees additional opportunities to apply for ARPA funds. However, OSHA provided the auditors PowerPoint presentations from the conferences that included ARPA discussion topics and advised OIG that grantees were verbally reminded of available funding during the ARPA-related discussions at those conferences.

Finally, OSHA objects to OIG's statement that "OSHA did not follow grant application procedures when evaluating California's ability to properly track, account for, and report on expenditures before awarding ARPA funds" and its finding that "[B]ased on [its] review of OSHA's documentation, [OIG] could not determine if OSHA assessed the risk of misuse of funds when evaluating the California grant application." As OSHA explained to OIG during the audit, the California State Plan was implementing a new financial management system at the time of the audit and experienced delays in reporting. OSHA was aware of the circumstances

surrounding California's delayed report and the grantee submitted the Federal Financial Reports after the auditor's review period. There was no evidence of misuse of grant funds. The grantee has a long history managing OSHA grants and to date, there has been no evidence of misuse of grant funds. Furthermore, the grantee's State Single Audit Report did not reveal misuse of grant funds.

Related to the individual recommendations provided in the report, OSHA proposes the below action plans:

Recommendation 1: Develop a plan for a future crisis (e.g., pandemic) to coordinate with the Departmental Budget Center on the time needed to afford State Plans the maximum opportunity to receive the appropriate federal assistance needed to ensure workers' safety.

Responsible Party: Directorate of Administrative Programs

OSHA Response:

OSHA will closely coordinate with DBC during any future emergency that provides supplemental funding to the agency to ensure grantees have the information and time to assess their needs and make decisions about accepting supplemental funding. The agency will work with DBC to set up a clear and reasonable timeline for such decisions, consistent with Congressional, OMB, and Departmental requirements.

As noted above, in some instances, OMB may impose deadlines related to supplemental funding (e.g., American Rescue Plan Act of 2021 Supplemental Apportionment) with which DBC and OSHA must comply.

Recommendation 2: Update OSHA's monitoring procedures to temporarily impose restrictions, request monthly expense reports, and implement other noncompliance remedies if grantees fail to submit accurate Federal Financial Reports until the expense reconciliation issue is resolved.

Responsible Party: Directorate of Administrative Programs

OSHA's Response:

It is each grantee's responsibility to adhere to all Federal award requirements set forth in the award agreements. Each grantee signs assurances and certifications that the grantee will comply with all terms and conditions of the grant awards, which includes timely, accurate, and complete submission of all documentation required, including quarterly Federal Financial Reports for the purpose of monitoring financial activities throughout the performance period of the grant.

Each grantee will be advised that they will be at risk of facing multiple consequences if they are unable to conduct the timely and accurate reporting of Federal awards in the future. Refusal to submit accurate documents prior to the established deadline will result in a violation of the Grants Oversight and New Efficiency Act ("GONE Act") of 2016 (Public Law 114-117). When a grantee does not submit all required and accurate documents by the due date stated, the grantee

will be at risk of being placed on the list of grant recipients submitted to Congress in accordance with the GONE Act.

When appropriate, OSHA will place a grantee on the temporary restrictions mode in the Payment Management System. The restrictions mode will require all drawdown requests to include a written description of the need for the drawdown request, including deliverables and supplemental information such as monthly expense reports. Any such drawdown requests will be reviewed by the OSHA Regional and National Office for consideration. The restriction mode will be in place until a grantee commits to the timely submission of the reports and the expense reconciliation issues are resolved. OSHA has used this method previously and found it to be effective.

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