

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**



FEDERALLY OPERATED WHISTLEBLOWER PROTECTION PROGRAM COST

Date Issued: January 20, 2012
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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



January 20, 2012

Assistant Inspector General's Report

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The Honorable George W. Miller, then Chairman of the Committee on Education and Labor, and the Honorable Lynn Woolsey, then Chairwoman of the Subcommittee on Workforce Protections, requested comprehensive cost information for fiscal year (FY) 2010 on the Occupational Safety and Health Administration's (OSHA) Whistleblower Protection Program (Whistleblower Program). The request referenced a prior Office of Inspector General (OIG) report¹ and stated, "The report highlighted the excessive caseload imposed on OSHA whistleblower investigators due to understaffing." The request also noted, "In addition to assuring accountability over appropriated funds, a solid baseline cost estimate is now imperative because OSHA is actively exploring the idea of restructuring the program." Specifically, Congressman Miller and Congresswoman Woolsey requested that the Office of the Inspector General:

1. Compile and report the direct and indirect cost of operating the Whistleblower Program during FY 2010, and
2. Extrapolate what the direct and indirect cost of operating the Whistleblower Program during FY 2010 would have been had whistleblower investigators operated with an average caseload of six to eight open cases.

To ensure our results were as current as possible, we compiled the cost of operating the Whistleblower Program during FY 2010 and the 9-month period ended June 30, 2011, and used the more current period of FY 2011 when extrapolating the cost of operating the Whistleblower Program with an average investigator caseload of six to eight cases, as requested by Mr. Miller and Ms. Woolsey.

The OIG conducted this work based on this specific Committee request and does not have an opinion as to what the specific funding or staffing for this program should be.

¹ "Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program" - Report number 02-10-202-10-105, issued September 30, 2010.

Request #1: Cost of the federally operated Whistleblower Program for FY 2010 and the 9-month period ended June 30, 2011

Compiled costs for the federally operated Whistleblower Program totaled \$14.4 million for FY 2010 and \$12.2 million for the 9-month period ended June 30, 2011. For the details of the compiled costs, see Exhibit 1 through 1d of this report.

The compilation includes National and Regional office costs for salary and personnel benefits; travel; working capital fund; and other non-personnel costs (rent, Department of Homeland Security surcharge, postage, telecommunication, supplies and materials, and miscellaneous services). The compilation also includes costs associated with the Solicitor of Labor's office (SOL), which provides legal support to OSHA for whistleblower investigations. The compilation includes the cost of the federally operated Whistleblower Program only. It does not include Whistleblower Program costs incurred by 27 states that operate their own worker safety and health programs under grants from the Department of Labor. Twenty-two states conduct all whistleblower investigations under Section 11(c) of the *Occupational Safety and Health Act*, and five of the states provide 11 (c) investigations for public sector employees only. OSHA could not provide the costs incurred by these states, because it does not separately identify state grant funds based on specific programs, and the states do not separately report their use of grant funds by specific programs. The federally operated Whistleblower Program encompasses Section 11(c) investigations in all other states, as well as investigations of complaints filed under the 20 other whistleblower statutes within OSHA's jurisdiction in all states.

To compile these costs, we obtained information on salaries and benefits from the Department's payroll system. We obtained travel, working capital fund, other non-personnel and other direct costs from the Department's financial management system and OSHA national and regional office records. Legal costs were identified by SOL totaling \$1.85 million for FY 2010 and \$1.82 million for the 9-month period ended June 30, 2011.

OSHA did not separately track Whistleblower Program expenses for FY 2010 or for the 9-month period ended June 30, 2011. OSHA's costs for operating the Whistleblower Program were included with all other costs of operating its Enforcement Directorate. Accordingly, we compiled the federally operated Whistleblower Program costs from the best information available.

We performed certain procedures to determine the completeness and reasonableness of those costs, including performing analytical procedures and making inquiries of OSHA personnel. However, these procedures are substantially less in scope than a financial statement audit, the objective of which is the expression of an opinion regarding the fair presentation of the financial information presented taken as whole. Accordingly, we do not express such an opinion. However, based on the procedures we performed, we are not aware of any material modifications that should be made to the financial information presented in Exhibit 1 through 1d.

Request #2: Extrapolated costs for the federally operated Whistleblower Program for FY 2011 assuming whistleblower investigators operated with an average caseload of eight, seven, and six cases

The requestors asked that we extrapolate what the cost of operating the Whistleblower Program would have been had whistleblower investigators operated with an average caseload of six to eight cases. It is imperative to reiterate that the OIG does not have an opinion as to what the funding or staffing levels should be for this program.

Based on the total number of cases in FY 2011 and our extrapolation of costs, reducing the caseload to 8 per investigator would have required 49 additional investigators and increased funding by approximately \$6.5 million. Reducing the average caseload to 7 would have required an additional 53 investigators and increased funding by approximately \$7 million. Finally, reducing the caseload to 6 would have required an additional 58 investigators and additional funding by approximately \$7.7 million. The extrapolation shows that in order to reach a caseload of 6 per investigator, the Whistleblower Program would have needed a total of 146 investigators in addition to the 10 regional supervisory investigators and 5 national office staff. For details of the computation of extrapolated costs, see Exhibit 2.

The extrapolation of additional full time equivalent (FTE) investigator positions to meet the various case load levels specified by the requestors was based on the following assumptions:

1. The number of cases OSHA receives remains the same as the number received in FY 2011.
2. The distribution of case types among the 21 different whistleblower statutes under OSHA's jurisdiction remains the same as it was in FY 2011.
3. The distribution of case completion types (e.g., withdrawn, dismissed, settled, or merit) remains the same as it was in FY 2011.
4. No additional whistleblower statutes are added to OSHA's jurisdiction.
5. All investigators, including those newly hired, would be able to complete the same average number of cases.
6. No additional OSHA staff would be needed in the national office and no additional supervisory investigators would be needed in the regional offices.
7. SOL costs would remain at a constant level based on costs for the 9-month period ended June 30, 2011. We made this assumption because there was insufficient information to determine the effect an increase in the rate of

completing whistleblower case investigations would have on the need for legal assistance.

8. Training costs would remain at a constant level based on cost for the 9-month period ended June 30, 2011. We made this assumption because there was insufficient information to determine the amount of additional training costs that may be required for new investigators.
9. The average time expended on a case remains the same as it was in FY 2011.

The assumptions are discussed in Appendix B of this report. Any changes in these assumptions could have a material effect on the extrapolated costs.

We conducted this performance audit using generally accepted government auditing standards for performance audits. Our objectives, scope, methodology, and criteria are detailed in Appendix B.

In response to our draft report, the Assistant Secretary for Occupational Safety and Health stated that OSHA concurred with the report and the extrapolation of the cost data. OSHA's response is included as Appendix E to this report.

We appreciate the cooperation and courtesies that OSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix F.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibits

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Exhibit 1**Federally Operated Whistleblower Program Total Compiled Cost**

	FY 2010	9 Months Ended June 2011
Salary (see Exhibit 1a)	\$ 8,132,810	\$ 6,724,855
Benefits (see Exhibit 1a)	2,270,237	1,924,543
Travel (see Exhibit 1b)	495,064	327,299
Working Capital Fund (see Exhibit 1c)	567,617	673,112
Other Non-Personnel (see Exhibit 1d)	1,015,379	659,966
Other Direct	100,000	100,000
SOL	1,850,000	1,820,000
Total Compiled Cost	\$14,431,107	\$12,229,775

Source: Costs for FY 2010 and the 9-month period ended June 30, 2011, were compiled from OSHA and Departmental records. See Appendix B for methodology.

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Exhibit 1a**Federally Operated Whistleblower Program Compiled Salary and Personnel Benefits**

Region	FY 2010			9 Months Ended June 2011		
	FTE	Salary	Personnel Benefits	FTE	Salary	Personnel Benefits
1	8	\$ 758,094	\$ 210,494	9	\$ 641,865	\$ 174,898
2	12	976,612	288,436	13	766,305	225,941
3	7	522,208	156,413	8	446,224	131,521
4	14	1,236,697	305,735	14	922,128	240,861
5	16	1,371,199	397,452	19	1,205,052	351,104
6	8	708,710	203,073	10	632,334	184,727
7	6	477,327	133,381	7	421,348	126,749
8	6	500,722	150,758	7	445,370	136,307
9	6	568,659	156,051	6	448,270	129,067
10	4	369,976	106,885	5	341,468	101,980
National Office	5	642,606	161,559	5	454,491	121,388
Total	92	\$8,132,810	\$2,270,237	103	\$6,724,855	\$1,924,543

Source: Costs for FY 2010 and the 9-month period ended June 30, 2011, were compiled from OSHA and Departmental records. See Appendix B for methodology.

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Exhibit 1b

Federally Operated Whistleblower Program Compiled Travel Costs

Region	Travel	
	FY 2010	9 Months Ended June 2011
1	\$ 29,013	\$ 12,098
2	27,191	15,065
3	75,085	61,326
4	70,000	44,518
5	73,012	75,398
6	58,253	46,696
7	47,000	18,788
8	34,676	14,992
9	27,203	10,481
10	32,160	15,210
National Office	21,471	12,727
Total	\$ 495,064	\$ 327,299

Source: Costs for FY 2010 and the 9-month period ended June 30, 2011, were compiled from OSHA and Departmental records. See Appendix B for methodology.

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Exhibit 1c

Federally Operated Whistleblower Program Compiled Working Capital Fund Costs

Region	Working Capital Fund ²	
	FY 2010	9 Months Ended June 2011
1	\$ 49,358	\$ 58,816
2	74,037	84,956
3	43,188	52,281
4	86,376	91,491
5	98,716	124,166
6	49,358	65,351
7	37,019	45,746
8	37,019	45,746
9	37,019	39,210
10	24,679	32,675
National Office	30,848	32,674
Total	\$ 567,617	\$ 673,112

Source: Costs for FY 2010 and the 9-month period ended June 30, 2011, were compiled from OSHA and Departmental records. See Appendix B for methodology.

² The Working Capital Fund maintains and operates a program of centralized services in the national office and the field. The Fund is paid in advance by the agencies, bureaus, and offices for which centralized services are provided at rates which return the full cost of operations.

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Exhibit 1d

Federally Operated Whistleblower Program Compiled Other Non-Personnel Costs

Region	Other Non-Personnel ³	
	FY 2010	9 Months Ended June 2011
1	\$ 54,026	\$ 59,328
2	84,963	86,404
3	41,394	49,524
4	73,525	64,680
5	93,626	95,223
6	60,867	58,878
7	37,767	41,377
8	39,997	36,331
9	70,912	52,333
10	38,444	39,098
National Office	419,858*	76,790
Total	\$ 1,015,379	\$ 659,966

Source: Costs for FY 2010 and the 9-month period ended June 30, 2011, were compiled from OSHA and Departmental records. National Office costs for FY 2010 include a \$314,226 allocation of a one-time \$6.5 million OSHA Information System development contract specific to the Enforcement Directorate. See Appendix B for methodology.

Other Non-Personnel Costs:

1. Rental to General Services Administration
2. Department of Homeland Security Surcharge
3. Postage
4. Telecommunication
5. Supplies and Materials
6. Miscellaneous Services

³ OSHA's Whistleblower Program was included as part of the Enforcement Directorate for FY 2010 and for the 9 months ended June 30, 2011. Whistleblower Program other non-personnel costs were estimated based on the number of Whistleblower Program FTE multiplied by the average other non-personnel costs per Enforcement Directorate FTE.

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Exhibit 2**Extrapolation of Federally Operated Whistleblower Program Costs FY 2011**

Description	FY 2011	Caseload		
		6	7	8
Total FY 2011 Cost ¹	\$ 16,306,367	\$ 16,306,367	\$ 16,306,367	\$ 16,306,367
Less: National Office Cost	930,761			
Less: SOL Cost	2,426,667			
Total Regional Cost	\$ 12,948,939			
FY 2011 Regional FTE	98			
Cost Per FTE	\$ 132,132	\$ 132,132	\$ 132,132	\$ 132,132
Additional FTE		x 58	x 53	x 49
Additional Cost		\$ 7,663,656	\$ 7,002,996	\$ 6,474,468
Compiled Program Cost at Specified Caseloads		\$ 23,970,023	\$ 23,309,363	\$ 22,780,835
Calculation of Additional FTE Required				
Caseload per Investigator		6	7	8
Total FY 2011 Caseload ²		4,100	4,100	4,100
Average Number of Cases Completed Per Investigator ³	22	22	22	22
Total FTE Required	x 146	x 141	x 137	
Total Cases Completed		3,212	3,102	3,014
Ending Caseload		888	998	1,086
Current Investigator FTE ⁴	(88)	(88)	(88)	(88)
Additional FTE Required	58	53	49	

The extrapolation of additional FTE investigator positions to meet the various caseloads specified by the requestors was based on the assumptions detailed in Appendix B of this report. Any changes in these assumptions could have a material effect on the extrapolated costs.

Notes

1. FY 2011 cost is annualized based on costs for 9 months ended June 30, 2011. ($\$12,229,775 \div 9 \times 12 = \$16,306,367$)
2. Beginning inventory of 1,655 cases as of October 1, 2010 plus 2,445 new cases received during FY 2011. ($1,655 + 2,445 = 4,100$)
3. The average number of completed cases per investigator is based on the 1,937 completed cases reported in IMIS for FY 2011 divided by 88 regional non-supervisory investigators. ($1,937 \div 88 = 22$)
4. Current investigator FTE consists of 98 regional FTE less 10 regional supervisory investigators. ($98 - 10 = 88$)

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Appendices

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Appendix A**Background**

In November 2010, the Honorable George Miller, Ranking Member, Committee on Education and the Workforce, and the Honorable Lynne Woolsey, Ranking Member, Subcommittee on Workforce Protections requested that the OIG: (1) compile and report the direct and indirect cost of operating the Whistleblower Program during FY 2010, and (2) extrapolate what the direct and indirect cost of operating the Whistleblower Program during FY 2010 would have been had whistleblower investigators operated with an average caseload of six to eight open cases. See Appendix D for a copy of the request.

OSHA is responsible for investigating complaints of discriminatory actions taken against employees for exercising rights afforded them under the Occupational Safety and Health Act and 20 other whistleblower statutes under OSHA's jurisdiction. These statutes cover workplace safety complaints filed under Section 11(c) of the OSH Act, as well as complaints related to the environment, consumer products, nuclear safety, financial systems, food safety, and transportation infrastructure. Enforcement responsibilities for the Whistleblower Program vary by state/territory (see Table 1 on the following page).

A 2010 GAO audit of the Whistleblower Program recommended OSHA track whistleblower program expenses, including FTE, separately from other OSHA programs, and annually report those expenses to Congress. In response to that report, OSHA conducted an internal review that examined national and regional program structures, operational procedures, investigative processes, budget, equipment, and personnel issues to improve program transparency and accountability. OSHA's Assistant Secretary reported that, based on GAO's findings and recommendations and OSHA's internal review, starting in FY 2012 the Whistleblower Program will report directly to the Assistant Secretary instead of being housed under the Directorate of Enforcement. He also stated OSHA was planning to establish a separate line item for the Whistleblower Program to better track and hold accountable its activities and accomplishments.

A recent OIG audit (Report No. 02-10-202-10-105, issued September 30, 2010) found that OSHA had not always ensured that complainants received appropriate investigations under the Whistleblower Protection Program. The audit estimated that 80 percent of applicable investigations under OSHA 11(c), the Sarbanes-Oxley Act and the Surface Transportation Assistance Act did not satisfy one or more of eight elements from OSHA's Whistleblower Investigations Manual. These eight elements include actions, such as conducting a formal interview with complainant and interviewing (or attempting to interview) all pertinent complainant witnesses, that are essential to ensure that complainants receive appropriate investigations.

Table 1 - Whistleblower Program Responsibilities

State/Territory	11(c) Public Employees	11(c) Private employees	All Other Whistleblower Statutes
Alabama	Federal	Federal	Federal
Alaska	State	State	Federal
American Samoa	Federal	Federal	Federal
Arizona	State	State	Federal
Arkansas	Federal	Federal	Federal
California	State	State	Federal
Colorado	Federal	Federal	Federal
Connecticut	State	Federal	Federal
Delaware	Federal	Federal	Federal
District of Columbia	Federal	Federal	Federal
Florida	Federal	Federal	Federal
Georgia	Federal	Federal	Federal
Guam	Federal	Federal	Federal
Hawaii	State	State	Federal
Idaho	Federal	Federal	Federal
Illinois	State	Federal	Federal
Indiana	State	State	Federal
Iowa	State	State	Federal
Kansas	Federal	Federal	Federal
Kentucky	State	State	Federal
Louisiana	Federal	Federal	Federal
Maine	Federal	Federal	Federal
Maryland	State	State	Federal
Massachusetts	Federal	Federal	Federal
Michigan	State	State	Federal
Minnesota	State	State	Federal
Mississippi	Federal	Federal	Federal
Missouri	Federal	Federal	Federal
Montana	Federal	Federal	Federal
Nebraska	Federal	Federal	Federal
Nevada	State	State	Federal
New Hampshire	Federal	Federal	Federal

Table 1 - Whistleblower Program Responsibilities

State/Territory	11(c) Public Employees	11(c) Private employees	All Other Whistleblower Statutes
New Jersey	State	Federal	Federal
New Mexico	State	State	Federal
New York	State	Federal	Federal
North Carolina	State	State	Federal
North Dakota	Federal	Federal	Federal
Ohio	Federal	Federal	Federal
Oklahoma	Federal	Federal	Federal
Oregon	State	State	Federal
Pennsylvania	Federal	Federal	Federal
Puerto Rico	State	State	Federal
Rhode Island	Federal	Federal	Federal
South Carolina	State	State	Federal
South Dakota	Federal	Federal	Federal
Tennessee	State	State	Federal
Texas	Federal	Federal	Federal
Utah	State	State	Federal
Vermont	State	State	Federal
Virgin Islands	State	Federal	Federal
Virginia	State	State	Federal
Washington	State	State	Federal
West Virginia	Federal	Federal	Federal
Wisconsin	Federal	Federal	Federal
Wyoming	State	State	Federal

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Appendix B**Objectives, Scope, Methodology, and Criteria**

Objectives

The objectives of the audit as requested by Congressman Miller and Congresswoman Woolsey were to:

1. Compile the cost of operating the federally operated Whistleblower Program for FY 2010 and the 9-month period ended June 30, 2011, and
2. Extrapolate the cost of operating the federally operated Whistleblower Program for FY 2011 assuming whistleblower investigators operated with an average caseload of eight, seven, and six cases.

Scope

This performance audit was performed at OSHA headquarters in Washington, DC. Our audit covered FY 2010 and a 9-month period of FY 2011, from October 1, 2010, through June 30, 2011. We used annualized costs for FY 2011 based on costs through June 30, 2011, in our extrapolation objective. As part of our extrapolation, we used performance information from IMIS for the year ended September 30, 2011.

Our compilation included the following types of costs: salary and personnel benefits, including cost estimates provided by SOL; travel; working capital fund; and other non-personnel costs (rent, Department of Homeland Security surcharge, postage, telecommunication, supplies and materials, and miscellaneous services). The compilation did not include whistleblower program incurred by the 27 states that operate their own worker safety and health programs. Twenty-two (22) of these states conduct all whistleblower investigations under Section 11(c) of the *Occupational Safety and Health Act*, and five (Connecticut, Illinois, New Jersey, New York, and Virgin Islands) provide 11 (c) investigations for public sector employees only. OSHA could not provide the costs incurred by these states because it does not separately identify state grant funds based on specific programs, and states do not separately report their use of grant funds by specific programs. The 27 states conduct whistleblower investigations under Section 11(c) of the Occupational Safety and Health Act only; investigations of complaints filed under the 20 other whistleblower statutes within OSHA's jurisdiction are conducted by Federal OSHA staff.

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 the results presented based on our audit objectives. We believe that the evidence obtained provides a reasonable basis the results of this audit.

The objectives of our audit did not require a verification of costs to underlying documentation. The costs presented in the report were based on the best available

information OSHA and SOL could provide or that could be obtained from DOL financial management systems. We performed certain procedures to determine the completeness and reasonableness of those costs, including performing analytical procedures and making inquiries of OSHA personnel. However, these procedures are substantially less in scope than a financial statement audit, the objective of which is the expression of an opinion regarding the fair presentation of the financial information presented taken as whole. Accordingly, we do not express such an opinion. However, based on the procedures we performed, we are not aware of any material modifications that should be made to the financial information presented in Exhibits 1 through 1d.

The extrapolation of additional FTE investigator positions to meet the various case load levels specified by the requestors was based on certain assumptions discussed in a subsequent section of this Appendix. Any changes in these assumptions could have a material effect on the extrapolated costs. It was not within the scope of our audit to give an opinion on what the appropriate level of staffing and funding for the Whistleblower Program should be.

Methodology

To accomplish our objectives, we obtained an understanding of OSHA's policies and procedures governing identifying and reporting Federal Whistleblower Program costs for FY 2010 and the 9-month period ended June 30, 2011.

We relied on computer-processed data contained in PeoplePower and the New Core Financial Management System (NCFMS) for a majority of the compiled costs (salary, benefits, working capital fund and other non-personnel costs). To assess the reliability of this data, we relied on the work performed by KPMG LLP, the independent public accounting firm contracted by the OIG, on the Department's financial statements for FY 2010 and FY 2011. We also assessed data for reasonableness based on information developed from data provided by regional and national office management and knowledge of cost accounting standards used in federal financial accounting and reporting. In addition, we verified NCFMS information received from OSHA by independently recreating selected data files from NCFMS. Although we did not verify SOL-provided costs related to Whistleblower Program costs expended by that agency, we performed a reasonableness test of the information provided by reviewing the SOL documents used to compile the costs.

We also used data from IMIS in our extrapolation. To assess that data, we obtained the IMIS database and tested the system calculations of reports used in our audit.

We concluded the data were sufficiently reliable to be used in performing the compilation and the extrapolations necessary to meet the audit's objectives.

Compiling Costs

In planning and performing our objective of compiling Federal Whistleblower Program costs, we used interviews, state grant file reviews, surveys of regional offices, reviews of budget justification documents, and examination of whistleblower costs available in the Department of Labor's (DOL) financial management systems and OSHA's national and regional offices to compile costs since OSHA did not separately account for Whistleblower Program costs. Our methodology for compiling costs is discussed below.

1. Salary and benefits were developed by:
 - obtaining employee listings from the regions and the national office budget officer and obtaining investigator position classification codes,
 - obtaining regional office management representation to the validity of the information provided,
 - identifying salary costs found in PeoplePower,
 - comparing salary and benefit costs from PeoplePower to estimated costs developed using employee listings provided by OSHA and a benefit rate used by OSHA in its FY 2012 budget justification document, and
 - determining the number of FTE used by the Whistleblower Program for FY 2010 and for the 9-month period ending June 30, 2011, from departmental payroll records.

2. Working capital fund and other non-personnel costs were compiled by:
 - identifying Enforcement Directorate costs that would apply to all enforcement activities, including the Whistleblower Program,
 - obtaining Enforcement Directorate financial activity for FY 2010 and the 9-month period ended June 30, 2011, in NCFMS,
 - applying an average Enforcement Directorate rate to Whistleblower Program regional and national office FTE, and
 - obtaining OSHA management representation as to the validity of the type of costs that should be used as other non-personnel costs.

3. Travel costs were compiled by:
 - obtaining travel costs data from OSHA's regional offices and comparing it to the Department's travel system (E2 Solutions), and
 - obtaining regional office management representation as to the validity of the costs provided.

4. Other direct costs were obtained from the regional offices without verification.

Extrapolation of Costs

To address the Congressional request, we extrapolated Whistleblower Program costs based on an assumption of limiting caseloads to six to eight per investigator. We calculated the number of FTE that would be required to complete FY 2011 cases by using the number of cases each investigator completed during FY 2011 and a caseload of 6 to 8 per investigator at year end. We calculated the additional costs of the program by applying the average cost of Whistleblower Program regional investigators to the number of additional investigators needed under each reduction assumption.

Assumptions for the Extrapolation of Additional FTE Investigator Positions

1. The number of cases OSHA receives remains the same as the number received for FY 2011.
2. The distribution of case types among the 21 different whistleblower statutes under OSHA's jurisdiction (e.g., Section 11 (c) Occupational Safety and Health Act, Sarbanes Oxley Act, or Surface Transportation Assistance Act) remains the same as it was in FY 2011.
3. The distribution of case completion types (e.g., withdrawn, dismissed, settled, merit) remains the same as it was in FY 2011.
4. No additional whistleblower statutes are added to OSHA's jurisdiction.
5. All investigators, including new investigators, would be able to complete the same average number of cases.
6. No additional OSHA staff would be needed in its national office and no additional supervisors would be needed in its regional offices.
7. SOL costs would remain at a constant level based on costs for the 9-month period ended June 30, 2011. We made this assumption because there was insufficient information to determine the effect an increase in the rate of completing whistleblower case investigations would have on the need for legal assistance.
8. Training costs would remain at a constant level based on cost for the 9-month period ended June 30, 2011. We made this assumption because there was insufficient information to determine the amount of additional training costs that may be required for new investigators.
9. The extrapolation assumes that the average time expended on a case will remain the same as it was in FY 2011. We did not determine the amount of time it should take to properly complete a case. As discussed in Appendix A, a recent OIG audit (Report No. 02-10-202-10-105, issued September 30, 2010) found that OSHA had not always ensured that complainants received appropriate investigations under the Whistleblower Protection Program.

Criteria

Handbook of Federal Accounting Standards and Other Pronouncements, As Amended, issued by the Federal Accounting Standards Advisory Board.

Appendix C

Acronyms and Abbreviations

DOL	Department of Labor
FTE	Full Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
IMIS	Integrated Management Information System
NCFMS	New Core Financial Management System
OIG	Office of Inspector General
OSHA	Occupational Safety and Health Administration
SOL	Office of the Solicitor of Labor
Whistleblower Program	Whistleblower Protection Program

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Request Letter from Congressman Miller and Congresswoman Woolsey

MAJORITY MEMBERS:

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November 18, 2010

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VIA ELECTRONIC MAIL

The Honorable Daniel Petrole
 Acting Inspector General
 U.S. Department of Labor
 200 Constitution Ave, NW
 Washington, DC 20210

Dear Mr. Petrole:

We write to ask that the Office of the Inspector General compile and present comprehensive information about the costs of the Occupational Safety and Health Administration (OSHA) Whistleblower Protection Program (WPP).

Your office's September 30, 2010, audit report, *Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program*, addressed weaknesses in internal controls in the WPP. In addition, the report highlighted the excessive caseload imposed on OSHA whistleblower investigators due to understaffing.

OSHA's ten regional administrators direct whistleblower investigators with limited support and oversight from headquarters. In a report issued earlier this year, the Government Accountability Office noted: "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."¹ GAO recommended that OSHA "track whistleblower program expenses, including FTEs, separately from other OSHA programs, and annually report these expenses to Congress."

In addition to assuring accountability for appropriated funds, a solid baseline cost estimate is now imperative because OSHA is actively exploring the idea of restructuring the program.

¹ *Whistleblower Protection: Sustained Management Attention Needed to Address Longstanding Problems* (GAO-10-722). Government Accountability Office (August 2010), p.4.

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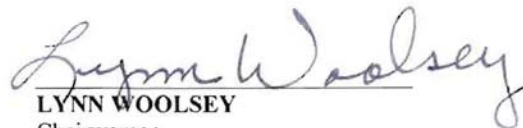
To inform our committee and the Secretary of Labor as we work to best address the long-standing structural weaknesses in the WPP, we respectfully request that the Office of the Inspector General undertake the following:

- 1) Compile and report the direct and indirect cost of operating the WPP during FY 2010, noting the FTEs (including all investigative and supervisory personnel), 11(c) appeals, training, policy development, and administrative functions; and
- 2) Extrapolate what the direct and indirect cost of operating the WPP during FY 2010 would have been had WPP investigators operated with an average caseload of 6-8 open cases, representing the optimal investigator caseload referenced in your office's recent report.

Please have your staff contact Richard Miller, Senior Policy Advisor, or Michael Zola, Chief Investigative Counsel, of the Committee at 202-225-3725, or Erika Hunter, Legislative Assistant for Representative Woolsey, at 202-225-5161 with any questions about this request.

Sincerely,


GEORGE MILLER
Chairman


LYNN WOOLSEY
Chairwoman
Subcommittee on Workforce Protections

OSHA Response to Draft Report


U.S. Department of Labor

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



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

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Draft Audit Report
#22-12-014-10-105
Whistleblower Protection Program Cost

This memorandum is in response to your November 15, 2011, transmittal of the Office of Inspector General (OIG) Audit Report No. 22-12-014-105, Whistleblower Protection Program Cost. We appreciate the efforts of the OIG to evaluate and develop a baseline cost estimate for the operation of the Occupational Safety and Health Administration's (OSHA) Whistleblower Protection Program (WPP). We concur with the report findings and the extrapolation of the cost data to define the resource requirements necessary to operate the WPP more effectively.

As you accurately note in the report, since the passage of the Occupational Safety and Health Act of 1970 (OSH Act), Congress has passed and added to OSHA's enforcement authority 20 additional whistleblower statutes. However, OSHA has continued to operate the WPP as effectively as possible without any significant increase in Agency resources and taken important steps to enhance the operational effectiveness of this program.

Again, we appreciate the time and effort the OIG staff spent to develop the WPP cost data. This information will be beneficial as we move forward with initiatives to restructure and improve operational efficiencies of this critically important program for the protection of worker rights.

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Appendix F

Acknowledgements

Key contributors to this report were Rogelio Alejandro-Cisneros, Joe Donovan, Johanna Nathanson, Michael Powell, and Stephen Fowler.

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