

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 written over the printed name and title of the sender.

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.