

**WRITTEN TESTIMONY OF
ELLIOT P. LEWIS
ASSISTANT INSPECTOR GENERAL FOR AUDIT
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF LABOR**

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Subcommittee on Workforce Protections
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Good morning, Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss our recent report on the Occupational Safety and Health Administration's (OSHA) monitoring of State Plan programs. As you know, the Office of Inspector General (OIG) is an independent entity within the Department of Labor (DOL); therefore, the views expressed in my testimony are based on the findings and recommendations of my office's work and not intended to reflect the Department's position.

Background

Protecting the health and safety of our nation's workers is one of the most important responsibilities of the Department. The Occupational Safety and Health Act (OSH Act) of 1970 provides the mandate for OSHA to ensure the safe and healthy working conditions for working men and women by: setting and enforcing standards; providing training, outreach, and education; and encouraging continuous improvement in workplace safety and health. With few exceptions, the OSH Act covers most private sector employers and their employees in the 50 states and six territories, either directly through Federal OSHA or through an OSHA-approved state safety and health plan.

Currently, 27 states and territories have been approved by Federal OSHA to operate their own worker safety and health programs. The OSH Act also authorizes OSHA to provide funding through Federal grants for up to 50 percent of state operational costs. In FY 2010, states were granted \$104 million to develop and operate State Plans.

Under Section 18 (c)(2) of the OSH Act, Federal OSHA is responsible for ensuring that State Plans are at least as effective as Federal OSHA. Once OSHA approves a plan, the state assumes full responsibility for operating its occupational safety and health program. However, Federal OSHA remains responsible for ensuring that the state complies with the OSH Act and may revoke approval of the State Plan if it does not.

Mr. Chairman, our audit was conducted to determine whether OSHA ensured that safety and health programs operated under State Plans were at least as effective as the Federal OSHA program, as required by law. We concluded that increased accountability is needed at both the Federal and state level, because neither Federal OSHA nor the states have outcomes-based performance metrics to measure and demonstrate the causal effect of their programs on the safety and health of workers.

Audit Findings

As part of our audit, we surveyed all 27 State Plans. We found that states generally believed their programs were effective. This belief was often based on their comprehensive knowledge of local employers. Many states indicated that they have created unique safety and health initiatives that reduce the number of workplace fatalities, injuries, and illnesses. States measure their own performance by measuring changes in the number of worker injuries and illnesses. However, as with the Federal OSHA, none of the states provided us with information to show that they have established a causal relationship between their activities and reductions in injuries and illnesses. It is important to consider that these rates can be impacted by external factors. These include economic conditions in the states, such as levels of employment and changes in the mix of industries.

All of the states believe that operating their own safety and health programs allows for more flexibility in response to specific needs of the workplace in their state. We found that 78 percent (21 of 27) of states also believe that their programs are more comprehensive than Federal OSHA. For example, 19 states believe that their health and safety standards exceed OSHA's regarding permissible exposure limits for hazardous substances. Further, all 27 states indicated that their State Plans had responded more quickly to local needs citing more aggressive whistleblower deadlines, more timely review of contested cases, and faster adoption of standards.

Our survey found 75 percent of the states (20 of 27) believed that recommendations made by OSHA Federal monitors were usually feasible or very feasible. However, the states did not always agree that program changes required by OSHA would improve the effectiveness of their programs. One example they cited was OSHA's change to its penalty structure, which would significantly increase penalty amounts. OSHA required states to adopt either the Federal penalty structure or a similar one. States were reluctant to adopt this Federal policy, indicating that OSHA has not explained how higher penalties would result in more effective enforcement.

In addition, 48 percent (13 of 27) of states believe that OSHA's monitoring of their state programs needs improvement, but only 3 (or 11 percent) believed that a total revamp of OSHA's monitoring is needed. Fourteen states responded that OSHA's "one-size-fits-all" approach is not effective, noting deviations from the Federal program do not equate to a state being less effective. Eleven states noted that OSHA needs to be more consistent in monitoring and reporting results. Finally, 6 states mentioned that improved communications are needed between the states and Federal OSHA.

Many states believed that there is a large variance between what OSHA requests from them at one point in time to another, especially when there are changes in Administration. The survey indicated that 70 percent (19 of 27) of states expressed concerns that this "moving target" approach regarding desired program performance resulted in a lack of clear expectations.

Mr. Chairman, we recognize that there will be differences between state-run safety and health programs and Federal OSHA. We do not disagree that there can be more than

one approach to safety; however, all programs must ultimately meet the mandate of the OSH Act. Effectiveness measures are needed to make this determination. In fact, in response to our survey, 63 percent (17 of 27) of states said that effectiveness measures need to be re-evaluated and made outcome, rather than output-based. A particularly good observation we received was that a national dialogue should be initiated to explore how best to measure improvements in worker safety and health programs, as opposed to measuring outputs such as citations and penalties issued.

In addition, many states expressed concerns that their programs would be impacted by budget cuts. One state noted that its current fiscal crisis resulted in furloughs, which impacts their ability to meet program goals. Another noted that because of state budget reductions, it was unable to accept additional grant funds being offered by Federal OSHA to state programs due to the lack of matching funds from the state. Many also believed that there is a scarcity of qualified staff and a high turnover rate due to a lack of resources to fund competitive salaries. This is compounded by state hiring freezes that result in vacant positions and a significant decrease in the number of inspections, surveys, and other activities. These concerns by the states are all the more reason to know whether we are getting the most benefit from the resources invested.

Mr. Chairman, our audit found OSHA has not defined effectiveness for health and safety programs, whether operated by the states or Federal OSHA. This not only limits OSHA's ability to ensure its own program operates in an effective manner but also to determine whether State Plans are, or are not, at least as effective as Federal OSHA. OSHA reviews individual State Plans by evaluating data such as inspection counts, penalty amounts, injury and fatality rate trends, measures for timeliness and completion of inspections, violation classification, and timely adoption of standards. While these measures may be appropriate, they do not necessarily measure the effect of these actions on achieving safety and health improvements.

OSHA has taken steps recently toward improving oversight, but the approach continues to focus on State Plan program outputs. As mentioned in our audit, OSHA's Enhanced Federal Annual Monitoring and Evaluation (EFAME) process requires more on-site monitoring of compliance with Federal OSHA program structure and procedures. However, EFAME does not measure program effectiveness from an outcomes perspective.

Audit Recommendations

Our audit contained four recommendations to OSHA. Specifically, we recommended that OSHA:

- Define effectiveness in terms of the impact of state programs on workplace safety and health.
- Design measures to quantify the impact of State Plans on workplace safety and health.
- Measure Federal OSHA program performance to establish a baseline to evaluate State Plan effectiveness.

- Revise the monitoring processes to include comparison of the impact of state and Federal programs.

OSHA Response

In response to our audit, OSHA stated that it:

- Intends to continue to use appropriate activity measures to evaluate the effectiveness of state programs and ensure that they are meeting the requirements for State Plan approval and funding.
- Formed a task force with State Plan representatives and is working to define effectiveness and expand its scope to review appropriate impact measures.
- Is developing additional impact measures for both Federal OSHA and the states.
- Envisions a review of trends and compliance, violations, or discrimination rates as measures of impact within its FY 2011-2016 Strategic Plan.

Mr. Chairman, we recognize that defining and measuring effectiveness of safety and health programs is difficult to do. However, in order to meet the OSH Act requirements that state programs be at least as effective as the Federal program, effectiveness must be defined and measured.

OSHA noted in its response to our audit report that it is committed to defining and measuring effectiveness. Possible ways OSHA could do this include:

- Continuing to work through the Federal/State task force to determine how effectiveness can be measured.
- Evaluating states with model plans to identify best practices that have resulted in successful program outcomes for possible implementation on a wider scale.
- Developing metrics and pilot testing them in several states to see whether they are actually measuring safety and health program outcomes rather than outputs.

Conclusion

In conclusion, Mr. Chairman, we believe that there is room for greater accountability at the Federal and state levels in demonstrating the impact of safety and health programs funded by the taxpayers. We believe that current program evaluation should be augmented with outcome-based performance measures. In our opinion, it is critical to measure the impact of specific program strategies on protecting the safety and health of our nation's workers – regardless of whether a program is operated by the state or the Federal government.

Thank you for the opportunity to testify on our work. I would be pleased to answer any questions that you or any Members of the subcommittee may have.