



June 9, 2020

The Honorable Elizabeth Warren
United States Senate
Washington, DC

The Honorable Tim Kaine
United States Senate
Washington, DC

The Honorable Bernard Sanders
United States Senate
Washington, DC

The Honorable Tammy Baldwin
United States Senate
Washington, DC

The Honorable Robert P. Casey, Jr.
United States Senate
Washington, DC

The Honorable Tammy Duckworth
United States Senate
Washington, DC

Dear Senator Warren, Kaine, Sanders, Baldwin, Casey, and Duckworth:

I write in response to your May 27, 2020, request that the U.S. Department of Labor (DOL) Office of Inspector General (OIG) conduct an audit of the Occupational Safety and Health Administration's (OSHA) actions during the coronavirus disease 2019 (COVID-19) pandemic.

The OIG has developed and published a comprehensive Pandemic Response Oversight Plan (enclosure 1) to address known and expected risks resulting from the pandemic. Our oversight will be conducted in four phases and focus on the Department's response to the pandemic, particularly under the Coronavirus Aid, Relief, and Economic Security Act.

As part of our Pandemic Response Oversight Plan, last month we initiated two reviews of OSHA's actions relating to COVID-19. We are reviewing OSHA's guidance to workplaces for preventing exposure to COVID-19 (enclosure 2), as well as OSHA's actions taken to address COVID-19 related whistleblower complaints (enclosure 3). I have instructed my staff to consider the specific concerns included in your letter as we conduct these and future reviews.

Please contact me at (202) 693-5100 if you have any questions or if we may be of further assistance on this or any other matter. Alternatively, your staff may contact Luiz Santos, Assistant Inspector General for Congressional and Public Relations, at (202) 693-7100.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Dahl".

Scott S. Dahl
Inspector General

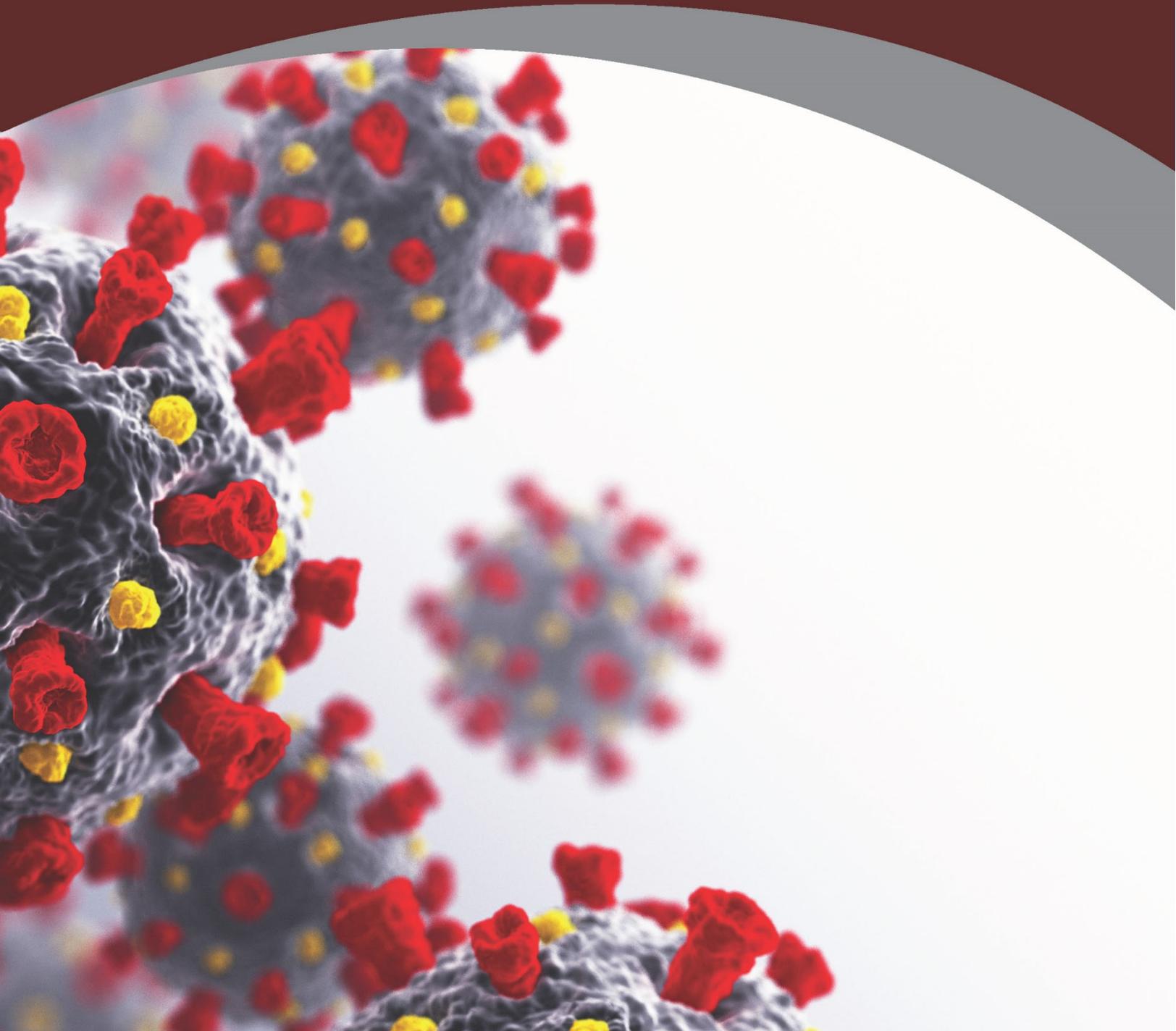
Enclosures

Enclosure 1
Pandemic Response Oversight Plan



Pandemic Response Oversight Plan

Office of Inspector General for the U.S. Department of Labor



U.S. DEPARTMENT OF LABOR OFFICE OF INSPECTOR GENERAL **PANDEMIC RESPONSE OVERSIGHT PLAN**

Published April 15, 2020

BACKGROUND

The U.S. Department of Labor (DOL), Office of Inspector General (OIG), received an appropriation of \$26 million to carry out oversight activities of DOL's response to the coronavirus (COVID-19) pandemic under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Specifically, the OIG received \$25 million to oversee the unprecedented expansion of the Unemployment Insurance (UI) programs provisioned by the Act and \$1 million for oversight of DOL activities supported with funds appropriated to prepare for and respond to the coronavirus pandemic.

OVERSIGHT PLAN

The OIG's oversight will focus on the Department's response to the pandemic, particularly under the CARES Act. The OIG's oversight work will be conducted in four phases covering the allocation periods for CARES Act funds and post-allocation. This plan is subject to change as the OIG continues to conduct risk assessments to identify specific areas for review. Funding for oversight related to activities other than UI programs is provided by the \$1 million CARES Act funding, as appropriate, or by reprioritization of existing OIG resources. See the appendix for select criteria for DOL's response to the coronavirus pandemic.

Phase 1

(Expected completion by June 30, 2020)

The OIG will address DOL's plans for administration and oversight in Phase 1. The first phase will include the issuance of "advisory reports" to aid in the Department's administration and oversight planning. These advisory reports will be based on past programmatic issues identified by the OIG to help the Department avoid historical pitfalls while implementing its pandemic response. The OIG will also issue fraud alerts to both the Department and to the state workforce agencies to highlight areas susceptible to fraud and abuse.

Potential Audit Oversight Focus:

Employment and Training Administration (ETA) – Office of Unemployment Insurance:

- CARES Act regulations and implementation guidance to State Workforce Agencies
- Plans and resources for providing oversight of key programs
- Timeliness of funds released to states
- Benefits paid to gig and self-employed workers
- Reporting and accountability
- Information Technology plans and resources for continuous operations, providing oversight, and preventing fraud

Occupational Safety and Health Administration (OSHA):

- Interim employer guidance issued on preparing workplaces for a COVID-19 outbreak
- Guidance provided to regional and area offices regarding compliance safety and health officers' safety and protection to continue the mission during a health crisis

Wage and Hour Administration (WHD):

- Department CARES Act regulations and WHD implementation guidance
- Action plans, including goals and objectives for each program and the risk of fraud and other risks that threaten WHD's ability to achieve those objectives.
- Reporting and accountability
- Plans and resources for providing oversight of key programs

Employee Benefits Security Administration (EBSA):

- Expansion of DOL authority to postpone plan filing deadlines
- Expansion of DOL authority to adjustment single-employer plan funding rules

Office of Workers' Compensation Programs (OWCP):

- Impact on the program as a result of COVID-19 claims from federal workers

Multi-agency Grant Management:

- Guidance to agencies awarding grants intended to provide administrative relief (federal financial assistance) to entities directly impacted by COVID-19 due to loss of operations

Other DOL Activities:

- Impact of COVID-19 response on other DOL activities, including Occupational Safety and Health Administration Whistleblower Programs; Mine Safety and Health Administration; and Office of Federal Contract Compliance Programs

Potential Investigative Oversight Focus:

- Determine relevant points of contact and program experts within DOL (nationally and regionally) for the various programs that may be impacted by fraud related to COVID-19. Program experts will initially be sought from ETA (unemployment and job training funds), WHD (labor standards, family friendly leave, family medical leave), OSHA (occupational safety), EBSA (hardship 401k distributions), and OWCP (claimant/medical provider fraud) to gain an investigative knowledge base for specific programmatic disbursements/issues related to COVID-19. Having program knowledge will be essential for developing a foundation when initiating criminal investigations and applying pertinent criminal statutes
- In coordination with DOL program experts, OIG will identify potential fraud within the pertinent programs as a result of the government's response to COVID-19 with an emphasis on UI fraud. As fraud vulnerabilities are identified, investigative resources will be shifted as appropriate

- Identify criminal coordinators for local, state and federal law enforcement COVID-19 task forces throughout the country. Assign OIG resources to COVID-19 task forces, as appropriate. Align OIG investigative focuses at the national and local levels with prosecutorial priorities as they relate to COVID-19 related fraud schemes that fall within the investigative jurisdiction of the OIG, including UI fraud
- Conduct relevant data mining and analysis through readily available law enforcement databases to assess the nature of complaints submitted to local, state and federal agencies. Based on these assessments, the OIG will determine potential vulnerabilities in various labor programs and shift investigative resources to those areas, as appropriate
- Increase public awareness of fraud by encouraging the filing of complaints regarding potential COVID-19 wrongdoing through the OIG Hotline and National Center for Disaster Fraud. Use COVID-19 informational materials to publish the OIG Hotline's contact information as part of its outreach activities to protect the public from criminal actors who attempt to exploit labor programs
- Develop agreed-upon procedures between the OIG, ETA's Office of Workforce Security for the referral of complaints and evidence of fraud relating to UI benefits under the CARES Act
- Procure and configure data analytics tools to supplement the OIG's current data tools sets as data is collected and processed from States' UI programs and other data sources
- Coordinate with the Department to identify and obtain access to currently available data to aid the OIG in its oversight work. Specifically, the OIG is requesting direct access to ICON (UI Interstate Connection Network) so that investigators have timely access to State Workforce Agency (SWA) wage and unemployment claim information to efficiently identify and investigate unemployment fraud, particularly when it spans multiple states

Phase 2
(Expected completion by September 30, 2020)

Phase 2 will focus on DOL's initial implementation of its administration and oversight activities.

Potential Audit Oversight Focus:

ETA – Office of Unemployment Insurance:

- Technical assistance and training to all states and implementation of its oversight plans, including plans to reduce the risk of fraud
- State implementation and reporting for the most significant programs

Occupational Safety and Health Administration (OSHA):

- Evaluate OSHA's efforts to protect people on the front lines of this pandemic, particularly doctors, nurses, other health care workers, and emergency responders with increased exposure risk

Wage and Hour Administration (WHD):

- Plans for providing technical assistance to regional and district offices when implementing the:
 - Emergency Family and Medical Leave Expansion Act
 - Emergency Paid Sick Leave Act
- Challenges during COVID-19 action plan implementation and corrective action taken to resolve the issues
- Reporting and accountability
- Preliminary outcomes of the affected programs to identify potential internal control weaknesses

Employee Benefits Security Administration (EBSA):

- Implementation of DOL authority to postpone plan filing deadlines
- Implementation of DOL authority to adjust single-employer plan funding rules

Office of Workers' Compensation Programs (OWCP):

- Oversight of compensation and medical claims related to COVID-19

Multi-agency Grants Management:

- Oversight of agencies awarding grants intended to provide administrative relief (federal financial assistance) to entities directly impacted by COVID-19 due to loss of operations

Other DOL Activities:

- Nature and scope of work will depend on the results of the assessment in Phase 1

Potential Investigative Oversight Focus:

- Develop predictive data analytic models based on case fact patterns to aid in the identification of potential misuse of funds. Proactively identify alleged misuse of funds based on those fact patterns. Deploy data analytic dashboards to assist in the efficient assessment of payments, claims, grant data and payee data. Modeling will use traditional data science techniques, and continual machine learning based on past analytic models, as well as any new information discovered during OIG investigations
- Utilize case management systems and data analytics to monitor case trends and fraud schemes to ensure investigative resources are deployed appropriately to address COVID-19-related investigations with particular emphasis on UI fraud resource allocation
- Specifically, when addressing unemployment fraud, OIG will coordinate directly with SWA investigative units to determine fraud trends that may emerge including:
 - Mass/batched uploads of employee wage records
 - Employee wages submitted near or after claimant's UI claim is filed
 - Employer forms that originate from claimant address
 - Employers/claimants interceding in unusual ways
 - UI benefits deposited into common bank accounts
 - Commonalities for employees (phone, IP, email, address)
- Identify particular areas of significant COVID-19 fraud based on previous case data, incoming complaints, data mining, and ongoing criminal investigations. Historically, following disaster relief and stimulus funding deployed by DOL, OIG has seen an increase in organized criminal fraud schemes relating to the following programs:

ETA – Unemployment Insurance

- Fictitious employer schemes (fabricated employers and employees)
- Identity theft schemes (stolen identities used for unemployment)
- Personally Identifiable Information leasing schemes (loaning of identities for wage-earning and unemployment)
- Employee integrity schemes (SWA employees manipulating claims)
- Unemployment supplement schemes (utilizing unemployment to pay regular wages)

ETA – Job Training Programs

- Embezzlement of job training funds
- Ghost participant schemes

EBSA – Pension Plans

- Hardship loan schemes (false statements to pension plans)
- Imposter schemes (Impersonation of plan beneficiary for withdrawals)

WHD – Worker Standards

- Kickback schemes (employees forced to return assessed back wages)
- Attempted bribery of WHD officials

OWCP – Workers' Compensation

- Claimant fraud (performing physical activities inconsistent with injury/working and not reporting)
- Medical provider fraud (billing for services not rendered)

OSHA – Occupational Safety Standards

- Fabricated OSHA certifications
- Attempted bribery of OSHA officials

- Work with local, state and federal prosecutors to resolve ongoing criminal investigations involving COVID-19 wrongdoing and pursue all available criminal, civil, and administrative remedies, to include suspension and debarment, when appropriate

Phase 3
(Expected completion by September 30, 2021)

Phase 3 will focus on after-the-fact reviews of the Department's administration and oversight, lessons learned, and how the Department's response to the pandemic affected normal operations.

Potential Audit Oversight Focus:

ETA - Unemployment Insurance:

- Nationwide performance data and reporting
- State administration, controls, and performance related to UI programs (fraud and other improper payments)
- State methods and efforts to recover overpayments

Occupational Safety and Health Administration (OSHA):

- Impact of COVID-19 pandemic on operations, including the number and types of inspections
- Alternative mechanisms for programmed inspections, such as phone/fax inspections to safeguard workers
- OSHA plans in anticipation of future pandemics

Wage and Hour Administration (WHD):

- Nationwide performance data and reporting for COVID-19 activities

Employee Benefits Security Administration (EBSA):

- Impact of DOL implementing its authority to postpone plan filing deadlines
- Impact of DOL implementing its authority to adjust single-employer plan funding rules

Office of Workers' Compensation Programs (OWCP):

- Impact of COVID-19 related claims on OWCP

Multi-agency Grants Management:

- Impact of grants awarded to provide administrative relief (federal financial assistance) to entities directly impacted by COVID-19 due to loss of operations

Other DOL Activities:

- Nature and scope of work will depend on results of assessment in Phases 1 and 2

Potential Investigative Oversight Focus:

- Coordinate with the OIG's Office of Audit on any systemic weaknesses or fraud vulnerabilities identified during COVID-19 investigations to reduce the long-term impact of fraud on DOL programs
- Highlight successful COVID-19 investigations by issuing DOL/DOJ press releases in coordination with investigative partners. Utilize press releases by publishing them on the OIG website to deter COVID-19 related fraud and increase public awareness on reporting COVID-19 wrongdoing to the OIG hotline
- Advise DOL regulatory agencies/program experts of investigative findings and possible weaknesses in the various programs to prevent future fraud
- As trends in unemployment fraud scheme are identified, OIG will ensure SWAs consider issuing fraud alerts to other SWAs to deter additional fraud

Phase 4 (Ongoing)

The OIG will continue to monitor and assess DOL's actions relating to COVID-19 in response to any new legislation enacted by Congress, as well as continue our investigative efforts. This phase will also include an overall summary of lessons learned from all major programs impacted.

Audit Response to New Legislation:

- Assess DOL agency planning, including enactment of necessary regulatory changes, issuance of guidance, establishment of reporting requirements, and plans for oversight
- Assess DOL agency initial implementation and oversight
- After-the-fact assessment of program results, including impact on agency operations

Ongoing Investigative Work:

- OIG will evaluate ongoing, long-term, complex criminal investigations with an emphasis on unemployment fraud schemes. Resources will be allocated to high-impact multi-state fraud schemes. OIG will prioritize the most significant investigations and dedicate appropriate resources and expertise to those investigations. Specifically, OIG will determine if new fraud schemes emerged as a result of COVID-19 funding. To deter future fraud, we will notify DOL program agencies about those new schemes
- Upon the conclusion of high-impact investigations, OIG will:
 - Relay significant concerns, programmatic weaknesses, and lessons learned via investigative notices to the Department
 - Make legislative recommendations related to vulnerabilities discovered during investigations as a result of the COVID-19 funding
 - Evaluate the initial investigative response, case results and final outcomes
 - Identify significant challenges encountered and determine future initiatives based on investigative findings
 - Consider establishing new policies and procedures or revising existing policies to more efficiently meet the agency investigative mission

Overall Summary of Lessons Learned:

- Roll-up reports of all OIG work conducted to present overall results of program achievement in responding to COVID-19, impact on agencies' operations, and lessons learned

Select Criteria for DOL's Response to the Coronavirus Pandemic

Employment and Training Administration – Office of Unemployment Insurance

Coronavirus Aid, Relief, and Economic Security Act

Secs. 2102, 2103 – Coverage of workers not traditionally eligible for unemployment and 50% reimbursement for nonprofits, government agencies, and Indian tribes

Sec. 2104 – **Pandemic Unemployment Assistance**, \$600 additional weekly benefit amount

Sec. 2105 – Waiver of waiting week

Sec. 2106 – Temporary staffing for states

Sec. 2107 – **Pandemic Emergency Unemployment Compensation**, additional 13 weeks

Secs. 2109-11 – Short-term compensation programs

Occupational Safety and Health Administration

29 CFR 1910.1030 – Bloodborne Pathogens standard

29 CFR 1910.132 – Personal Protective Equipment standard

29 CFR 1910.134 – Respiratory Protection standard

Wage and Hour Division

Families First Coronavirus Response Act (FFCRA)

Division C – Emergency family and medical leave expansion

Division E, Secs. 3601, 3602, 3604, 3605 – Changes to paid leave

Employee Benefits Security Administration

Coronavirus Aid, Relief, and Economic Security Act

Sec. 3607 – Postponement of certain ERISA filing deadlines

Sec. 3608 – Changes to single-employer plan funding rules

Grants Management

OMB Memo M-20-17, *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations*

Enclosure 2

Audit of OSHA's Guidance to Workplaces for Preventing Exposures to COVID-19



April 14, 2020

MEMORANDUM FOR: LOREN SWEATT
Principal Deputy Assistant Secretary
for Occupational Safety and Health

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Audit of OSHA's Guidance to Workplaces for
Preventing Exposures to COVID-19

Please be advised the Office of Inspector General is initiating an audit of the Occupational Safety and Health Administration's (OSHA) guidance to workplaces for preventing exposures to COVID-19.

We will contact your audit liaison to schedule an entrance conference to discuss the audit's objective, scope, and methodology. Due to the urgency of this work, we would like to have an entrance conference the week of April 20, 2020, and plan to begin work immediately after the entrance conference. We would appreciate your notifying appropriate agency officials of our plans.

If you have any questions, please contact Mark L. Schwartz, Audit Director, at (917) 406-5871.

cc: Robert Sanders
Director, OSHA's Office of Audit

Enclosure 3

Audit of OSHA COVID-19 Whistleblower Complaint Process



May 6, 2020

MEMORANDUM FOR: LOREN SWEATT
Principal Deputy Assistant Secretary
for Occupational Safety and Health

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Audit of OSHA COVID-19 Whistleblower Complaint
Process

Please be advised the Office of Inspector General is initiating an audit of the OSHA COVID-19 whistleblower complaint process. The audit will focus on actions taken to address COVID-19 related complaints and the overall impact on OSHA operations.

We will contact your audit liaison to schedule an entrance conference to discuss the audit's objective, scope, and methodology. Due to the urgency of this work, we would like to have an entrance conference the week of May 11, 2020, and plan to begin work immediately after the entrance conference. We would appreciate your notifying appropriate agency officials of our plans.

If you have any questions, please contact Mark Schwartz, Audit Director, at (917) 406-5871.

cc: Robert Sanders
Director, OSHA's Office of Audit