



Date: March 29, 2023
To: PRR OSH Forum
From: Helen Cleary, Director
Re: OIG Audit Report on FedOSHA's Complaint and Referral Process

On March 6, 2023, the U.S. Department of Labor (DOL) Office of Inspector General (OIG) issued a [report](#) that detailed an audit performed on the DOL's Occupational Safety and Health Administration (OSHA). The report is titled "**OSHA Needs to Better Address Complaints and Referrals for Increased Worker Safety.**" OSHA disagreed with the findings and recommendations. However, the Agency acknowledged the importance of effectiveness and improvement in its documentation, customer service, and training.

Purpose

The audit was prompted by the fact that "For Fiscal Year (FY) 2019 and FY 2020, inspections from complaints and referrals were slightly greater than 40 percent of OSHA's total inspections. In addition, "A complainant expressed concern that OSHA may not be adequately considering the statements of complainants and witnesses when responding to complaints and referrals." Such a failure, by OSHA, would result in hazardous conditions continuing, further endangering the lives and safety of workers.

The OIG hired an independent law firm, The Lopez Group, LLP, (Lopez Group) to conduct the performance audit of OSHA's hazard complaint and referral process. The Lopez Group was tasked with answering the following question posed by the OIG:

"To what extent did OSHA ensure complaints and referrals were adequately and timely addressed?"

Audit Findings

The Lopez Group concluded that "OSHA did not consistently ensure complaints and referrals were adequately addressed nor regularly enforce hazard abatement timelines. Specifically, Lopez found OSHA did not consistently involve the complainant and/or witnesses in the investigation or inspection process." They also concluded there was no process or policy in place to interview

the complainant *after* the complaint was filed regardless of any insight that person may have had.

In the files reviewed by the Lopez Group they determined that OSHA did not consistently follow procedures in its Field Operations Manual (FOM) and that there was no clear reasoning as to why an inspection was not conducted in one-third of the cases where the criteria for conducting an investigation was met.

The Lopez Group determined that OSHA lacks the following:

1. A methodology to determine when complainant should be interviewed and their involvement,
2. A process for documenting supervisory review and decision approvals, and
3. Controls to ensure enforcement of abatement deadlines for employers.

The lack of protocols indicated that “OSHA may have conducted incomplete inspections and workers may have been exposed to hazardous working conditions for an extended period of time.”

In the course of their determination, using a random number generator, Lopez reviewed 100 complaint and referral cases between FY 2019 and FY 2020 from three OSHA Regions and found that *OSHA did not interview the complainant in 50% of the cases and did not conduct an inspection in one-third of the cases*. It should be noted that the audit scope covered over 62,000 cases that were opened and closed in the previously stated time frame.

Results, Recommendations, and OSHA’s Response

OSHA takes the findings “seriously” but expressed serious concern, including a lack of support in the report, to the preliminary and final findings. Overall, the Agency disagreed with the report’s recommendations and submitted an [official response](#) that addressed issues with the findings and recommendations. The Lopez Group stated that the Agency’s comments were considered but no changes were made to the recommendations following their review.

The results and recommendations issued by the Lopez Group, highlights of OSHA’s response to each recommendation, and the Lopez Groups’ rebuttal (if applicable) are as follow:



Result 1. OSHA did not sufficiently involve Complainants and/or Witnesses in the Inspection or Inspection Process.

Recommendation 1: Modify the Field Operations Manual to include a policy for mandatory interview of complainants and witnesses or document the rationale for lack thereof and provide training to Compliance Safety and Health Officers on the updated requirements.

OSHA Response: OSHA stated that the Lopez Group/OIG misunderstood the role of witnesses and complainants. OSHA concedes it can improve but asserts that additional involvement may not be necessary to advance the investigation. The Agency is always looking to improve effectiveness but is concerned that "rote interview requirements will not advance the cause." The Compliance Safety and Health Officer (CSHO) must have the discretion to determine what interviews are necessary. However, OSHA is reviewing its current "customer service" procedures in order to improve the inspection process.

Response Rebuttal: There is a need of either mandatory interview of complainants and witnesses or documented rationale for lack thereof.

Result 2. OSHA did not provide Evidence that an Inspection was Conducted when a Completed Referral met the Criteria.

Recommendation 2: Update the Field Operations Manual to require documented case file review and approvals by supervisors and provide training for CSHOs to ensure complete documentation of significant decisions and actions.

OSHA Response: The result is based and limited to 11 out of 30 sample cases not including documentation that supported why OSHA determined an inspection was not necessary. Following the FOM, inspections are typically warranted for *formal* complaints. Ten (10) of the 11 cases reviewed and determined, by the Lopez Group, to lack justification to not perform an audit were *non-formal* complaints or referrals. In all 10, OSHA asserted that FOM procedures were properly followed. OSHA noted that the report identified *documentation* issues but did not reveal any evidence that the documentation issues resulted in hazards not being addressed.

OSHA did agree documentation is important and agreed to additional training to supervisors to reinforce case file documentation as required.

Result 3. OSHA did not ensure Violations from Complaints and Referrals were Corrected in a Timely Manner and did not Adhere to Documentation Requirements.

Recommendation 3: Establish controls and provide training of Field Operations Manual abatement certification and documentation requirements and create a monitoring process that is reviewed and approved by a supervisor.

OSHA Response: The audit confuses the date of abatement documentation with the date abatement occurred. In addition, the audit failed to recognize and consider reasons why abatement may be extended. OSHA's biggest concern: "The audit team did not assess whether hazards were mitigated in any way, whether a work process was no longer active or whether OSHA had the authority to require abatement of a hazard at the time. The need for new policies and procedures is not supported.

Additional details can be found in the [full report](#) and a summary of the audit report can be found [here](#).