

Appendix D

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 #18-13-004-10-105
"Recovery Act: OSHA's Activities Under the Recovery Act"

This memorandum is in response to your May 17, 2013 transmittal of the Office of Inspector General (OIG) Audit Report No. 18-13-004-10-105, "Recovery Act: OSHA's Activities Under the Recovery Act." We appreciate the opportunity to respond to the findings and recommendations of the OIG. As more fully discussed below, management accepts the report's two recommendations.

Additionally, we appreciate that the OIG was responsive to some of the Agency's concerns with earlier characterizations of OSHA's management of American Recovery and Reinvestment Act of 2009 (Recovery Act) funds and the incorporation of a number of our earlier comments intended to improve accuracy, including that:

- the OIG acknowledged that OSHA did spend Recovery Act funds as outlined in its Recovery Act Plan
- the OIG found OSHA met or exceeded its program goals and objectives to successfully provide enforcement and compliance assistance activities as outlined in the Recovery Act Plan
- the OIG clarified that there were issues in the identification of Recovery Act inspections due to inconsistent documentation/recordkeeping processes used by OSHA

OSHA would like to provide additional information associated with the Recovery Act funding and implementation. The passage of this legislation was an unprecedented action created to stimulate economic growth in response to the financial crisis which impacted the country in 2009. OSHA's role was to ensure that worker protection laws were enforced as recovery infrastructure investments were carried out. The temporary funding and the associated program work directed to OSHA were under a unique set of circumstances for which the Agency had no prior experience. OSHA received \$13.6 million in transferred funding from the Department under the Recovery Act to be used in Fiscal Years (FY) 2009 and FY 2010 for enforcement and outreach activities at worksites that had received Recovery Act funds. Despite the uncertainty,

then eventual delays in Federal and State government distribution of funding to Recovery Act construction projects, OSHA developed an initial Operating Plan outlining a series of output measures for enforcement inspection activity at these jobsites and the development of safety and health compliance assistance and outreach products. OSHA also developed several new Local and Regional Emphasis Programs (LEPs/REPs) which were enacted nationwide to address Recovery Act related activity.

Despite the very challenging circumstances, OSHA believes the Agency complied with all parameters established in the Recovery Act and Agency Operating Plans to ensure the safety and health of workers engaging in Recovery Act related activities. The primary difference between the OIG findings and OSHA's view is largely a matter of interpretation of the requirements of the Recovery Act implementation. For instance, the OIG found that OSHA lacked specific criteria and supporting documentation for a temporarily funded program activity. As a result OIG had difficulty linking certain program activities, specifically federal enforcement inspections, as conducted by the Agency under the Recovery Act. OSHA used long-standing methods for selection of inspection jobsites and documenting inspections. Enhanced documentation procedures may have been useful; however, the circumstances surrounding the distribution of the Recovery Act funding and associated work did not allow the opportunity to develop new tracking and documentation processes. Despite the difficulty in linking documentation to verify Recovery Act inspections, the OIG notes that reports obtained from OSHA data management systems (Integrated Management Information System and OSHA Information System) reflect that the Agency surpassed its goal to increase federal Recovery Act inspections over FYs 2009, 2010, and 2011.

Additionally, the report states that OSHA did not establish a baseline to evaluate the effectiveness of LEPs and REPs. OSHA agrees that data on the effectiveness of any programmatic effort is valuable; however, evaluating effectiveness and results is complex, requiring definition of outcomes, follow-up inspection activity and data analysis/interpretation. This type of effort was not anticipated nor were resources allotted for this short-term, rapidly executed endeavor. The focus was to increase safety and health enforcement and compliance assistance program activities at Recovery Act funded worksites to assure workers were protected. As previously stated, the Agency established output measures to ensure targets were set to accomplish these activities and the OIG acknowledged in the audit report that OSHA met or exceeded its program goals of increased enforcement and compliance assistance activities.

OSHA's responses to the OIG audit recommendations are provided below:

Recommendation 1: Develop and provide a clearly defined framework for implementing a temporarily funded inspection program. The process should specify the criteria and supporting documentation necessary for the program.

OSHA Response: Management accepts this recommendation. As part of the lessons learned, OSHA will develop a framework for implementing temporarily funded inspection programs which includes better tracking and documentation of program activities.