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United States Senate
COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510–6350

May 9, 2000

The Honorable Alexis Herman
Secretary of Labor
U.S. Department of Labor
Washington, DC 20210

By Facsimile: (202) 693-6111

Dear Secretary Herman:

The Department of Labor's Office of Inspector General (OIG) completed its review of the process that led to the Occupational Safety and Health Administration's (OSHA, agency) Letter of Interpretation (LI) indicating that the agency intended to hold employers responsible for workplace safety issues in home offices related to workplace safety in home offices. As you will remember, when this was exposed on the Department of Labor's web site in January it caused many members of Congress, employers and employees to be concerned about whether OSHA was expanding its jurisdiction beyond its Congressional mandate, and how OSHA could have reached this conclusion.

At our request, the Office of Inspector General audited the process OSHA uses to respond to LIs. This audit uncovered a variety of significant shortcomings resulting in the home office letter being released without adequate review and supervision from the Assistant Secretary's office or yours. The fact that this letter would have resulted in OSHA asserting jurisdiction in an area that had never before been tested, and is arguably beyond OSHA's Congressional mandate was never addressed. We believe questions of this magnitude deserve the attention of the Secretary's office before they are answered in public and we are dismayed that the current system does not provide a procedure for this review.

Of equal concern was the length of time it took for this response to be issued to the employer who requested the advice. The total time was more than two years from the time the letter was received at the Department. Employers seeking advice are looking for answers in a reasonable time so that they can make adjustments to current conditions. Having to wait more than two years for this response surely eliminated the value of the advice given.

Furthermore, the audit disclosed that OSHA's own internal procedures for developing responses to LIs were ignored. OSHA's Administrative Directive instructs the different directorates to issue specific guidelines establishing detailed procedures and control points in

responding to LIs. The Directorate of Compliance Programs, and its subsidiary office the Office of General Industry Compliance Assistance, had not issued these written instructions. The resulting fiasco was virtually a disaster waiting to happen.

Within the Inspector General's report are a set of recommendations which would help prevent a similar breakdown in procedure from occurring in the future. For your convenience, I have attached a copy of these recommendations. Of particular importance are the recommendations for implementing written guidelines and procedures that will establish exactly how to process and respond to LIs. The recommendations also indicate the need for consistent, common rules and guidance to all staff so that they will be able to identify those issues which represent clarifications of the OSH Act from those that represent expansion of existing policies. Finally, there must be a provision for executive level management and oversight of sensitive LIs.

In conclusion, we would like to know that the Department will have these in place as soon as possible. Please respond by May 15 with your commitment to implementing these recommendations in a time certain.

Sincerely,

Susan Collins

Christopher "Kit" S. Bond