

United States Senate

WASHINGTON, DC 20510-4804

September 7, 2017

COMMITTEES
APPROPRIATIONS
ENERGY AND NATURAL RESOURCES
INTELLIGENCE
VETERANS' AFFAIRS

The Honorable R. Alexander Acosta
Secretary
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Mine Safety Health Administration Compliance Assistance Initiative

Dear Secretary Acosta,

I write in regard to the new Compliance Assistance Program (CAP) announced by the Mine Safety and Health Administration (MSHA) on June 19, 2017 which is set to run through September 30, 2017. The CAP is an effort to address the recent increase in miners' injuries and fatalities at coal mines, primarily located in Appalachia. As noted in the MSHA announcement, between October 2015 and March 2017, less experienced miners have suffered injuries at a higher rate than more experienced miners. And, while I wholeheartedly support the critical goal of enhancing mine safety and ensuring that miners of all experience levels are adequately trained and compliant with safety procedures, the manner in which such a CAP is conducted is also very important. I have received reports regarding changes made to certain practices during this CAP that may have unintended consequences and on which we request additional information.

It is my understanding that, during the course of this new initiative, MSHA Compliance Assistance Program inspectors ("MSHA inspectors") have been instructed to leave their Authorized Representative Status credentials ("AR cards") at their desks before commencing inspection activities at a mine site. Normally, MSHA inspectors are required to show their AR cards to an operator upon request. By law, these credentials authorize an MSHA inspector to issue a violation where an unsafe condition exists. These credentials, in essence, embody the enforcement authority of the MSHA inspector and, therefore, MSHA. By separating the MSHA inspector from his or her credentials, one is essentially removing the ability of that MSHA inspector to issue an order to remove miners from the unsafe area and issue a violation which, particularly in the event of an imminent danger, can prove perilous.

Additionally, I have received reports that MSHA has advised miners that they do not have the authority to pick their "Miners' Representative" with "walk-around rights" to participate in this program because those rights are not triggered under Section 103(f) of the Federal Mine Safety and Health Act (the "Act"). We have received feedback that, under this CAP, the Miner's Representative is no longer permitted to walk the site with the MSHA inspector unless the mine operator allows for such participation. But, as provided under Section 103(f) of the Act, a Miners' Representatives participates in and assists MSHA Inspectors in mine inspections and accident investigations.

This is particularly alarming because, no one is better suited to spot inconsistencies or unsafe conditions than the very people who work at the mine day in and day out. A miner possesses an intimate knowledge of the site and operations, as well as an inherent desire to protect his or her co-workers. The Miners' Representatives' first-hand knowledge of the mines serves as a

valuable asset during such inspections, investigations and any lawful CAP that MSHA could implement.

I believe that, while the Compliance Assistance Program is an effort to improve miners safety, MSHA inspections, investigations, and standards, the exercise in itself is an inspection and, therefore, removing AR credentials or disallowing the presence of a Miners' Representative undermines the transparent nature of MSHA's operations for the ultimate safety of the worker – an original goal of Congress when it passed the Act.

Therefore, we request a response including (1) the detailed goals of the Compliance Assistance Program; (2) MSHA's data that shows between October 2015 and March 2017, less experienced miners have suffered injuries at a higher rate than more experienced miners; (3) clarification regarding any directives, verbal or written, similar to those outlined above that may have been given to MSHA inspectors, miners or mine operators; (4) MSHA's reasoning behind instructing the inspector to not bring his credentials to the mine site and how this will increase mine safety; and (5) how an inspector is instructed to handle a situation where he or she observes a Significant and Substantial or "S&S" violation or an imminent danger while conducting a "compliance" visit.

Sincerely,



Joe Manchin III
United States Senator

CC: The Honorable Patricia W. Silvey