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Washington, DC 20548

Comptroller General
of the United States

April 14, 2020

Accessible Version

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Priority Open Recommendations: Department of Labor

Dear Secretary Scalia:

The purpose of this letter is to provide an update on the overall status of the Department of Labor's (DOL) implementation of GAO's recommendations and to call your personal attention to areas where open recommendations should be given high priority.¹ In November 2019, we reported that on a government-wide basis, 77 percent of our recommendations made 4 years ago were implemented.² DOL's implementation rate was 64 percent. As of March 2020, DOL had 110 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our April 2019 letter, DOL has implemented one of our six priority recommendations. DOL considered providing fiduciary relief for retirement plan sponsors to offer a mix of retirement income options. DOL's Advisory Council on Employee Welfare and Pension Benefit Plans studied this topic and included in its November 2018 report testimony from some who expressed support for providing relief to sponsors who offer at least three distinct retirement income options. Encouraging plan sponsors to make a mix of options available can help ensure retirees have more options to create a retirement income strategy appropriate for them.

We ask your continued attention to the remaining five open priority recommendations we identified in the 2019 letter. As priorities this year, we are adding two new recommendations related to the impact of advanced technologies on the workforce, and federal contractors' compliance with affirmative action requirements. This brings the total number of open priority recommendations to seven. (See enclosure I for the list of these recommendations.)

GAO was given responsibilities to review and report to Congress on agencies' implementation of programs designed to assist in the public health emergency currently facing our nation and to provide economic relief to individuals and institutions. This includes, for example, the implementation of flexibilities in work search requirements under the Unemployment Insurance

¹ Priority recommendations are those that GAO believes warrant priority attention from heads of key departments or agencies. They are highlighted because, upon implementation, they may significantly improve government operations, for example, by realizing large dollar savings; eliminating mismanagement, fraud, and abuse; or making progress toward addressing a high-risk or fragmentation, overlap, or duplication issue.

² GAO, *Performance and Accountability Report: Fiscal Year 2019*, [GAO-20-1SP](#) (Washington, D.C.: November 19, 2019).

program. We expect to be engaged in these activities over the year and will communicate with you and your staff as we undertake this work and develop any additional recommendations.

The seven priority recommendations fall into three major areas listed below.

Stronger protections for wage earners. Four priority recommendations could help enhance worker safety and health.

- First, in March 2016, we recommended that DOL assess its efforts to address workplace violence against health care workers and determine if additional action is needed. DOL obtained and reviewed information collected through a Request for Information on preventing workplace violence in healthcare settings. DOL officials said the agency is developing regulatory options and will obtain additional input from potentially affected small businesses. To address this recommendation, DOL needs to complete its process of obtaining input on these regulatory options and use the information collected to assess its efforts and determine which, if any, regulatory actions are needed.
- Second, our November 2017 report on worker safety and health in the meat and poultry industry recommended that DOL work with the Department of Agriculture's Food Safety and Inspection Service (FSIS) to assess the implementation of their joint Memorandum of Understanding (MOU) and make any needed changes to ensure improved collaboration, and establish timeframes to periodically evaluate it. The Occupational Safety and Health Administration (OSHA) and FSIS have a draft MOU, which is under review, to clarify agency responsibilities and coordination activities, and reflect current procedures. The agencies plan to finalize the MOU and continue meeting routinely to determine whether it needs adjustments. To fully implement this recommendation, DOL should finalize the MOU and establish timeframes to evaluate it regularly.
- Third, in March 2019, we made a recommendation related to advanced technologies, such as robots and artificial intelligence, which are changing the workplace. Workforce data do not identify the causes of employment shifts, making it hard to assess the causes of technology's effects. Knowing the causes of such shifts could help agencies design programs to prepare workers for jobs of the future. We recommended that DOL develop ways to use existing or new data collection efforts to identify and systematically track the workforce effects of advanced technologies. For example, the agency could: (1) expand existing surveys to ask respondents whether advanced technologies have resulted in worker displacements, work hour reductions, or substantial adjustments to work tasks, (2) expand employment projections to regularly identify affected occupations, (3) expand the O*NET data system to identify changes to skills, tasks, and tools associated with occupations, and consider how this could be used to track the spread of advanced technologies and (4) identify other options.
- DOL agreed with this recommendation and is conducting studies to identify data collection options. It plans to complete these studies in 2020 and share the results with Congress and the public. Also in 2020, the agency plans to test the feasibility of using O*NET to track skills by occupation over time as a way to identify areas where advanced technologies may be changing the workplace. DOL has also taken steps to release employment projections annually instead of every two years, with the planned release of 2019 data in fall 2020. This recommendation will be implemented when DOL completes these activities.

- Fourth, in September 2016, we recommended that DOL direct the Office of Federal Contract Compliance Programs (OFCCP) to develop a mechanism to monitor affirmative action program plans (AAPs) from covered federal contractors on a regular basis. In 2018, OFCCP developed its AAP Verification Initiative in which OFCCP committed to a program verifying contractors' compliance with applicable AAP obligations. The agency emphasized to contractors that AAP certification is an agency priority. OFCCP is working with the General Services Administration (GSA) to obtain data it can use to track contractors' AAP certifications so that OFCCP can better identify and address noncompliance. OFCCP has concurrently requested approval from OMB to develop the information needed to collect all contractors' AAPs annually, but has not yet received a response. In addition, the agency is planning a public information campaign to inform contractors about AAP certification enforcement and is developing a web site to let contractors upload their AAPs electronically and make it easier for the agency to review them. Completing these efforts once OMB approves it would help OFCCP better ensure that federal contractors are complying with equal employment opportunity requirements.

Potential reductions in improper payments. Two priority recommendations would potentially reduce improper payments by strengthening program controls regarding work search verification requirements for Unemployment Insurance (UI) program claimants. Some states issued formal warnings to claimants after the first discovered occurrence of their failure to meet work search requirements rather than reporting that an overpayment was made. In August 2018, we reported that DOL determined federal law does not permit states to warn claimants instead of establishing an overpayment. We recommended that DOL: (1) notify states about its determination that the use of state formal warning policies is no longer permissible and (2) clarify information on work search verification requirements. The agency is developing guidance that more explicitly informs states that formal warning policies are not permissible and instructions that clarify work search verification requirements. To implement these recommendations, DOL should finalize and provide this information to states.

Better protections for retirees. One priority recommendation in this area could help protect retirees. Our November 2014 recommendation calls for the department to convene a task force to consider establishing a national pension registry to help ensure individuals have access to consolidated online information about the multiple 401(k) plan accounts they may have accumulated over the course of their working lives. DOL initially agreed to evaluate the possibility of convening a task force but ultimately decided not to do so. Nevertheless, we believe it is important for participants to have access to consolidated information about their multiple plan accounts to keep track of their savings. To fully implement this recommendation, DOL should convene a task force of federal government stakeholders, industry professionals, plan sponsor representatives, and consumer representatives to consider establishing a national pension registry. The task force could address possible data needs, data collection oversight and analysis, and other logistical issues involved with creating a pension registry, such as how best to finance it. In addition, the task force could identify any regulatory and legislative actions required to create such a registry.

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In March 2019, we issued our biennial update to our high-risk program, which identifies government operations that are particularly vulnerable to fraud, waste, abuse, and mismanagement or in need of transformation to address challenges of economy, efficiency, or

effectiveness.³ Our high-risk program has served to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical service to the public.

In addition to the above priority recommendations, high priority should be given to addressing the long-term financial stability of [Pension Benefit Guaranty Corporation \(PBGC\) single-employer and multiemployer insurance programs](#), which we designated as a high-risk area. While significant and positive steps have been taken by Congress and PBGC to strengthen the agency through various program reforms and premium increases, concerns related to the multiemployer program and challenges related to PBGC's funding structure and governance persist. Congress should consider improvements in these areas and work with PBGC to develop a strategy for funding PBGC claims over the long term. Active support for these actions by the Secretary of Labor, as Chair of the PBGC Board, will be crucial to assuring PBGC's insurance programs remain solvent.

Several other government-wide high-risk areas also have direct implications for DOL and its operation. These include: (1) ensuring the cybersecurity of the nation, (2) improving the management of IT acquisitions and operations, (3) addressing strategic human capital management, (4) managing federal real property, and (5) improving the government-wide personnel security clearance process.⁴ We urge your attention to these government-wide high-risk issues as they relate to DOL. Progress on high-risk issues has been possible through the concerted actions and efforts of Congress, Office of Management and Budget (OMB), and the leadership and staff in agencies, including DOL.

Copies of this report are being sent to the Director of the Office of Management and Budget; the Committees on Appropriations, Budget, and Homeland Security and Governmental Affairs, United States Senate; and the Committees on Appropriations, Budget, and Oversight and Reform, House of Representatives. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

I appreciate DOL's continued commitment to these important issues. If you have any questions or would like to discuss any of the issues outlined in this letter, please do not hesitate to contact me or Barbara Bovbjerg, Managing Director, Education, Workforce, and Income Security Issues, at bovbjergb@gao.gov or 202-512-7215. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. We will continue to coordinate with your staff on all of the 110 open recommendations. Thank you for your attention to these matters.

³ GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, [GAO-19-157SP](#) (Washington, D.C.: Mar. 6, 2019).

⁴ [GAO-19-157SP](#). See pages 267-271 for Pension Benefit Guaranty Corporation Insurance Programs, pages 178-184 for Ensuring the Cybersecurity of the Nation, pages 123-127 for Improving the Management of IT Acquisitions and Operations, pages 75-77 for Strategic Human Capital Management, pages 78-85 for Managing Federal Real Property, and pages 170-177 for Government-wide Personnel Security Clearance Process.

Sincerely yours,

A handwritten signature in black ink that reads "Gene L. Dodaro". The signature is written in a cursive style with a long horizontal stroke extending to the right from the end of the name.

Gene L. Dodaro
Comptroller General of the United States
Enclosure

cc: The Honorable Russ Vought, Acting Director, OMB

Enclosure

Priority Open Recommendations to Department of Labor

Stronger Protections for Wage Earners

Workplace Safety and Health: Additional Efforts Needed to Help Protect Health Care Workers from Workplace Violence. [GAO-16-11](#). Washington, D.C.: March 17, 2016.

Recommendation: To help determine whether current efforts are effective or if additional action may be needed, such as development of a workplace violence prevention standard for health care employers, the Secretary of Labor should direct the Assistant Secretary for Occupational Safety and Health to develop and implement cost-effective ways to assess the results of the agency's efforts to address workplace violence.

Action Needed: The Department of Labor (DOL) agreed with this recommendation. Officials said DOL is developing regulatory options and will obtain additional input from potentially affected small businesses, with plans to finish this process in 2020. To fully implement this recommendation, DOL should use the information collected to assess its efforts and determine which, if any, regulatory actions are needed.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security

Contact information: brownbarnesc@gao.gov or 202-512-7215

Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants. [GAO-18-12](#). Washington, D.C.: November 9, 2017.

Recommendation: The Assistant Secretary of Labor for Occupational Safety and Health should work with the Food Safety and Inspection Service (FSIS) to assess the implementation of the Memorandum of Understanding (MOU), make any needed changes to ensure improved collaboration, and set specific timeframes for periodic evaluations of the MOU.

Action Needed: The Occupational Safety and Health Administration (OSHA) neither agreed nor disagreed with this recommendation. OSHA and FSIS have a draft MOU that is under review by both agencies. To fully implement this recommendation, the agencies should finalize the MOU and establish timeframes to evaluate it regularly.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security

Contact information: brownbarnesc@gao.gov or 202-512-7215

Workforce Automation: Better Data Needed to Assess and Plan for Effects of Advanced Technologies on Jobs. [GAO-19-257](#). Washington, D.C.: March 7, 2019.

Recommendation: The Secretary of Labor should direct the Bureau of Labor Statistics (BLS) and the Employment and Training Administration (ETA) to develop ways to use existing or new data collection efforts to identify and systematically track the workforce effects of advanced technologies. For example, the Secretary could select any of the following possibilities, or could identify others.

- BLS could expand existing worker or firm surveys to ask respondents whether advanced technologies have resulted in worker displacements, work hour reductions, or substantial adjustments to work tasks.
- BLS could expand its employment projections work to regularly identify occupations projected to change over time due to advanced technologies.

- ETA could expand the O*NET data system to identify changes to skills, tasks, and tools associated with occupations, as the information is updated on its rotational basis, and consider how this could be used to track the spread of advanced technologies.

Action Needed: DOL agreed with this recommendation. The agency plans to conduct analyses and produce a final report in FY2020 identifying data collection options for measuring the impact of advanced technologies on the workforce. In 2020, the agency also plans to test the feasibility of using O*Net to track changes in skills over time to identify how advanced technologies may be affecting the workplace. The agency has also taken steps to release employment projections annually instead of every two years, with the planned release of 2019 data in fall 2020. To fully implement this recommendation, DOL should complete all of these activities.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security

Contact information: brownbarnesc@gao.gov or 202-512-7215

Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance. [GAO-16-750](#). Washington, D.C.: September 22, 2016.

Recommendation: To ensure that federal contractors are complying with equal employment opportunity requirements, the Secretary of Labor should direct the Director of OFCCP to develop a mechanism to monitor AAPs from covered federal contractors on a regular basis. Such a mechanism could include electronically collecting AAPs and contractor certification of annual updates.

Action Needed: DOL agreed with this recommendation. The agency established the AAP Verification Initiative to verify contractor compliance with AAP applicable obligations. Actions still in progress include obtaining and using GSA data to track contractors' AAP certifications and developing a web site to better manage AAP certifications. OFCCP also awaits approval from OMB to develop the information needed to collect all contractors' AAPs annually. To implement this recommendation, DOL should complete these efforts.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security

Contact information: brownbarnesc@gao.gov or 202-512-7215

Potential Reductions in Improper Payments

Unemployment Insurance: Actions Needed to Ensure Consistent Reporting of Overpayments and Claimants' Compliance with Work Search Requirements. [GAO-18-486](#). Washington, D.C.: August 22, 2018.

Recommendation: The Assistant Secretary of DOL's Employment and Training Administration should provide states with information about its determination that the use of state formal warning policies is no longer permissible under federal law.

Action Needed: DOL agreed with this recommendation and is developing new guidance to inform states more explicitly that formal warning policies are not permissible. To fully implement this recommendation, DOL needs to demonstrate that it has notified states to stop using formal warning policies by finalizing and publishing this information.

Recommendation: The Assistant Secretary of DOL's Employment and Training Administration should clarify information on work search verification requirements in its revised Benefit Accuracy Measurement procedures. The revised procedures should include an explanation of what DOL considers to be sufficient verification of claimants' work search activities.

Action Needed: DOL agreed with this recommendation and is developing information to clarify work search verification requirements. To fully implement this recommendation, DOL should finalize and share this information with states.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security

Contact information: brownbarnesc@gao.gov or 202-512-7215

Better Protections for Retirees

401(K) PLANS: Greater Protections Needed for Forced Transfers and Inactive Accounts. [GAO-15-73](#). Washington, D.C.: November 21, 2014.

Recommendation: To ensure that individuals have access to consolidated online information about their multiple 401(k) plan accounts, the Secretary of Labor should convene a task force to consider establishing a national pension registry. The task force could include industry professionals, plan sponsor representatives, consumer representatives, and relevant federal government stakeholders -- such as representatives from the Social Security Administration, Pension Benefit Guaranty Corporation, and Internal Revenue Service -- who could identify areas to be addressed through the regulatory process, as well as those that may require legislative action.

Action Needed: While DOL initially agreed to evaluate the possibility of convening a task force to consider the establishment of a national pension registry, it ultimately decided not to do so. In reaching its decision, DOL cited its limited authority, resource constraints, and the Pension Benefit Guaranty Corporation's (PBGC) initiative to include accounts in 401(k) plans and the expansion of the PBGC's missing participant program.

PBGC's missing participant program expansion added only accounts from terminating 401(k) and other defined contribution plans, among others, to the existing program for single-employer defined benefit plans. DOL also assumed a pension registry would require authorization by mandate and reporting. Our report notes approaches in other countries that did not require those factors, and could be further examined by a task force. For example, Denmark's pension registry is voluntarily financed by pension providers.

To address this recommendation, DOL should convene a task force to look at developing a pension registry to ensure participants have access to consolidated information about their multiple plan accounts, which could help participants locate, track, and claim their savings. The task force could consider a variety of issues—such as data needs and collection, financing, and oversight—and identify any regulatory and legislative steps that would be required to establish such a registry.

Director: Charles Jeszeck, Education, Workforce, and Income Security

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