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Comptroller General
of the United States

Accessible Version

July 7, 2022

The Honorable Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Priority Open Recommendations: Department of Labor

Dear Secretary Walsh:

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 attention to areas where open recommendations should be given high priority.¹ In November 2021, we reported that on a government-wide basis, 76 percent of our recommendations made 4 years ago were implemented.² DOL's implementation rate was 50 percent. As of June 2022, DOL had 118 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our June 2021 letter, DOL has implemented two of nine priority recommendations and we closed two recommendations as not implemented.³ Specifically:

- DOL implemented an initiative to regularly monitor affirmative action program plans from covered federal contractors to ensure compliance with equal employment opportunity requirements.⁴
- In addition, DOL took steps to help ensure that individuals can keep track of multiple 401(k) plan accounts by meeting with a broad range of stakeholders and seeking informal input on an online pension registry.⁵

¹Priority 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.

²GAO, *Performance and Accountability Report: Fiscal Year 2021*, [GAO-22-4SP](#) (Washington, D.C.: Nov. 15, 2021).

³We closed as not implemented two priority recommendations for DOL's Occupational Safety and Health Administration (OSHA) to develop a plan to implement its oversight processes for COVID-19-adapted enforcement methods, and ensure that its data system includes information on these enforcement methods sufficient to inform these oversight processes. In May 2021 and December 2021, OSHA stated that some of these specific oversight processes had occurred and others were no longer planned. OSHA also stated that, instead, it plans to conduct an overall assessment of its pandemic efforts once the pandemic is no longer impacting its enforcement activities. Since OSHA is no longer planning its specific oversight processes for its adapted enforcement methods and plans instead to conduct an overall assessment, there is no longer an opportunity to take action on these recommendations.

⁴GAO, *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*, [GAO-16-750](#) (Washington D.C.: Sept. 22, 2016).

⁵GAO, *401(K) PLANS: Greater Protections Needed for Forced Transfers and Inactive Accounts*, [GAO-15-73](#) (Washington, D.C.: Nov. 21, 2014).

We ask for your continued attention to the five remaining open priority recommendations. We are adding seven new recommendations related to coal mine operator self-insurance, worker injury and illness data, OSHA's response to the COVID-19 pandemic, the promotion and protection of veterans in the federal contracting workforce, and unemployment insurance (UI) fraud risk management and benefit disparities, bringing the total number of priority recommendations to 12. (See the enclosure for the list of recommendations and actions needed to implement them.)

The 12 priority recommendations fall into the two following areas.

Stronger protections for wage earners:

- OSHA faces challenges protecting the safety and health of America's wage earners, particularly those working in hazardous industries, and enforcing workplace safety and health standards during the COVID-19 pandemic. We have seven priority recommendations in this area, such as taking steps to address workplace violence against health care workers, enhancing collaboration across agencies to ensure the safety of meat and poultry workers, and assessing overall pandemic-related challenges. Fully implementing these recommendations could help DOL strengthen protections for workers in various industries and improve the agency's response to worker safety in the pandemic.

Enhancing unemployment insurance:

- During economic downturns, the role of unemployment insurance (UI) in supporting workers and our overall economy becomes more vital. However, unprecedented demand for UI benefits during the COVID-19 pandemic and the urgent implementation of new UI programs made these programs vulnerable to fraud, improper payments, and mismanagement. We have five priority recommendations in this area, such as examining fraud controls, accurately reporting the number of distinct individuals claiming UI benefits, and examining racial and ethnic disparities in certain claimants' receipt of benefits. Fully implementing these recommendations could facilitate more effective service delivery while strengthening program integrity and fraud risk management.

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In March 2021, we issued our biennial update to our [High-Risk List](#), which identifies government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement or the need for transformation to address economy, efficiency, or effectiveness challenges.⁶

Two of our high risk areas concern DOL: [Pension Benefit Guaranty Corporation single-employer and multiemployer insurance programs](#), and [Unemployment Insurance System](#), added to the High-Risk List in June 2022. Resolving these high-risk areas will require leadership commitment and action by DOL and Congress.

Several other government-wide high-risk areas also have direct implications for DOL and its operations. These include: (1) [improving the management of IT acquisitions and operations](#), (2) [improving strategic human capital management](#), (3) [managing federal real property](#), (4)

⁶GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: Mar. 2, 2021).

ensuring the cybersecurity of the nation,⁷ and (5) establishing a government-wide personnel security clearance process. We urge your attention to the high-risk issues that center directly on DOL and the 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. In March 2022, we issued a report on key practices to successfully address high-risk areas, which can be a helpful resource as your agency continues to make progress addressing these high-risk issues.⁸

Copies of this report are being sent to the Director of the Office of Management and Budget; the Committees on Appropriations; Budget; Health, Education, Labor, and Pensions; and Homeland Security and Governmental Affairs, United States Senate; and the Committees on Appropriations, Budget, Education and Labor, and Oversight and Reform, House of Representatives. In addition, the report will be available 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 Cindy Brown Barnes, Managing Director, Education, Workforce, and Income Security Issues, at brownbarnesc@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 118 open recommendations. Thank you for your attention to these matters.

Sincerely yours,

A handwritten signature in black ink that reads "Gene L. Dodaro". The signature is fluid and cursive, with a large, prominent "D" at the end.

Gene L. Dodaro
Comptroller General
of the United States
Enclosure

cc: The Honorable Shalanda Young, Director, Office of Management and Budget

⁷With regard to cybersecurity, we also urge you to use foundational information and communications technology supply chain risk management practices set forth in our December 2020 report: GAO, *Information Technology: Federal Agencies Need to Take Urgent Action to Manage Supply Chain Risks*, [GAO-21-171](#) (Washington, D.C.: Dec. 15, 2020).

⁸GAO, *High-Risk Series: Key Practices to Successfully Address High-Risk Areas and Remove Them from the List*, [GAO-22-105184](#) (Washington, D.C.: Mar 3, 2022).

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. The agency published enforcement procedures to help the Occupational Safety and Health Administration (OSHA) field offices conduct inspections related to workplace violence. As of March 2022, officials said the agency is developing regulatory options and will obtain additional input from potentially affected small businesses. To fully implement this recommendation, DOL should use the information collected to assess its efforts and determine which, if any, additional actions are needed. Implementing this recommendation would better position the agency to determine whether additional action may be needed to prevent workplace violence.

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) and make any needed changes to ensure improved collaboration, and set specific time frames for periodic evaluations of the MOU.

Action Needed: OSHA neither agreed nor disagreed with this recommendation. As of March 2022, OSHA and FSIS drafted an MOU to clarify agency responsibilities and coordination activities and to reflect current procedures, which both parties are reviewing. Agency officials said they plan to finalize the MOU and will continue meeting routinely to determine whether it needs adjustments. To fully implement this recommendation, the agencies should finalize the MOU and establish time frames to evaluate it periodically. Evaluating the implementation of the MOU and making any needed changes would help ensure the agencies improve their collaboration and leverage their resources to further protect the safety and health of both plant workers and FSIS inspectors.

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

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

Black Lung Benefits Program: Improved Oversight of Coal Mine Operator Insurance Is Needed. [GAO-20-21](#). Washington, D.C.: February 21, 2020.

Recommendations: The Director of the Office of Workers' Compensation Programs (OWCP) should develop and implement:

- procedures for coal mine operator self-insurance renewal that clarify how long an operator is authorized to self-insure; when an operator must submit its renewal application and supporting documentation; and the conditions under which an operator's self-insurance authority would not be renewed; and

- procedures for self-insured coal mine operator appeals that identify time lines for self-insured operators to submit documentation supporting their appeals and that identify a goal for how much time DOL should take to make appeals decisions.

Action Needed: DOL agreed with these recommendations and is taking steps to improve oversight of coal mine operator insurance. Regarding renewals, as of March 2022, OWCP officials said they completed a review of the self-insurance process and plan to publish a notice of proposed rulemaking in the second half of 2022 to ensure that coal mine operators better secure their liabilities. Regarding appeals, DOL officials said they had been working with several operators to ensure the operators submit additional evidence before the agency makes initial decisions. However, due to COVID-19, DOL granted coal operators time extensions that extended time frames for resolving appeals.

To fully implement these recommendations, DOL should: (1) finalize regulations clarifying renewal procedures; and (2) ensure appeals procedures identify time frames for operators to submit documentation for their appeals, and a goal for how much time DOL appeals decisions should take. Implementing these recommendations as part of its new process for self-insurance going forward could better position OWCP to protect the Black Lung Disability Trust Fund should an operator not submit its renewal application or comply with DOL's collateral requirements. In addition, establishing appeals procedures could help ensure that DOL is able to revoke an operator's ability to self-insure, when warranted.

Director: Thomas Costa, Education, Workforce, and Income Security
Contact information: costat@gao.gov or 202-512-4769

Workplace Safety and Health: Actions Needed to Improve Reporting of Summary Injury and Illness Data. GAO-21-122. Washington, D.C. January 27, 2021.

Recommendation: The Secretary of Labor should evaluate OSHA's current procedures for ensuring that employers electronically report their annual 300A injury and illness data to OSHA when required and implement a plan to remediate identified deficiencies. This should include its efforts related to: (1) encouraging employers to comply with the 300A reporting requirement; and (2) citing employers for non-compliance with this reporting requirement.

Action Needed: DOL generally agreed with this recommendation. OSHA is reviewing how it encourages employers to submit the data and how it addresses non-compliance. For example, the agency is evaluating the use of postcards to encourage non-compliant employers to submit their data and is developing a computer match to better identify non-compliant employers during OSHA's regular inspection process. To address this recommendation, the agency should finish evaluating and developing plans to: (1) better encourage employers to submit these data, and (2) ensure it cites employers who are not in compliance with the reporting requirements. Implementing this recommendation could provide the data needed to target inspections of high-risk establishments and ensure worker safety and health.

Director: Thomas Costa, Education, Workforce, and Income Security
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COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response. GAO-22-105051. Washington, D.C. October 27, 2021.

Recommendation: The Assistant Secretary of Labor for OSHA should assess—as soon as feasible and, as appropriate, periodically thereafter—various challenges related to resources and to communication and guidance that OSHA has faced in its response to the COVID-19 pandemic and should take related actions as warranted.

Action Needed: OSHA partially agreed with this recommendation. OSHA officials agree that it is important to assess lessons learned and best practices; however, while the pandemic is ongoing, they said the agency's resources are best used to help employers and workers mitigate exposures to COVID-19. OSHA plans to conduct an assessment as soon as feasible, and will incorporate lessons learned, if applicable. The agency also reported that it is taking steps to address issues related to communication and guidance. To fully implement this recommendation, OSHA should conduct an assessment of the challenges it has faced in responding to COVID-19, and take any related warranted actions. Implementing this recommendation could help the agency improve its enforcement efforts during this pandemic and help it prepare for operations during any future pandemic.

Director: Thomas Costa, Education, Workforce, and Income Security

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Equal Employment Opportunity: Better Assistance and Data Use Could Improve Oversight of Veterans' Federal Contractor Employment. [GAO-22-104599](#). Washington, D.C., May 26, 2022.

Recommendation: The Director of the Office of Federal Contract Compliance Programs (OFCCP) should use available data to better approximate the size and characteristics of the veteran population protected under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). For example, OFCCP could consider how to adjust the data it uses from the CPS Veterans Supplement to approximate the subset of veterans who are protected.

Action Needed: DOL neither agreed nor disagreed with this recommendation related to the promotion and protection of veterans in the federal contracting workforce. To implement this recommendation, OFCCP should use available data to better approximate the veteran population it is charged with protecting. Having this information would allow OFCCP to better monitor contractors' progress in hiring and recruiting protected veterans.

Director: Thomas Costa, Education, Workforce, and Income Security

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Enhancing Unemployment Insurance

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. As of March 2022, DOL is developing new guidance to inform states more explicitly that formal warning policies are not permissible. According to officials, however, this effort is competing with other priorities to help states recover from the COVID-19 pandemic and implement provisions under the American Rescue Plan Act of 2021.⁹ 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. If DOL does not provide states with this information and monitoring their response,

⁹Pub. L. No. 117-2, 135 Stat. 4.

states may continue to report inconsistent information on the extent of work search overpayments.

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, as of March 2022, is developing information to clarify work search verification requirements. According to DOL officials, however, this effort is competing with other priorities to help states recover from the COVID-19 pandemic and implement provisions under the American Rescue Plan Act of 2021. To fully implement this recommendation, DOL should finalize and share this information with states. Until DOL provides clear direction to states about verifying work search and monitors state compliance, the agency has little assurance that states are complying with its requirements.

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

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COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response. GAO-21-191. Washington, D.C.: November 30, 2020.

Recommendation: The Secretary of Labor should ensure the Office of Unemployment Insurance pursues options to report the actual number of distinct individuals claiming benefits, such as by collecting these already available data from states, starting from January 2020 onward.

Action Needed: DOL agreed to pursue options to report the actual number of distinct individuals claiming benefits but not with collecting data retroactively, noting that state UI programs may face challenges in implementing any new reporting requirements, particularly retroactively. DOL began developing a new state report to capture data on distinct individuals claiming regular UI benefits, expected to be ready for public notice and comment in calendar year 2022. As of March 2022, DOL officials said their work on this new report was delayed due to other competing priorities, but they anticipate submitting it for public notice and comment in calendar year 2022. To fully address this recommendation, DOL should complete the effort and pursue options to report these data retroactively, and report the actual number of individuals claiming benefits in the most feasible and least burdensome way. An accurate accounting of the size of this population may be critical to understanding the effectiveness of the nation's response to the pandemic, and may help DOL and policymakers identify lessons learned about the administration of regular and expanded UI benefit programs.

Director: Thomas Costa, Education, Workforce, and Income Security

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COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response. GAO-22-105051. Washington, D.C.: Oct. 27, 2021.

Recommendation: The Secretary of Labor should examine the suitability of existing fraud controls in the unemployment insurance program and prioritize residual fraud risks.

Action Needed: DOL neither agreed nor disagreed with this recommendation. Agency officials said the agency would use this recommendation to build on its current risk assessment and management process. One of the leading practices for planning and conducting fraud risk assessments is to examine the suitability of existing fraud controls and prioritize residual fraud risks. To fully implement this recommendation, DOL should incorporate this leading practice as part of its fraud risk assessment process, which would strengthen fraud risk management to help ensure that agency efforts are targeted to areas most at risk for fraud.

Director: Seto Bagdoyan, Forensic Audits and Investigative Service
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Pandemic Unemployment Assistance: Federal Program Supported Contingent Workers amid Historic Demand, but DOL Should Examine Racial Disparities in Benefit Receipt. [GAO-22-104438](#). Washington, D.C.: June 7, 2022.

Recommendation: The Secretary of Labor should ensure the Office of Unemployment Insurance examines and publicly reports on the extent of and potential causes of racial and ethnic inequities in the receipt of Pandemic Unemployment Assistance (PUA) benefits, as part of the agency's efforts to modernize UI and improve equity in the system. The report should also address whether there is a need to examine racial, ethnic, or other inequities in regular UI benefit receipt, based on the PUA findings.

Action Needed: DOL partially agreed with this recommendation, noting that enhancing demographic data collection in the permanent UI programs to inform actions to improve equity is a higher priority than performing a complete retrospective review of the PUA program, which is no longer operating. Examining and reporting on the extent and potential causes of racial and ethnic inequities in the receipt of PUA benefits would provide valuable information for DOL and policymakers. Without this information, DOL may have difficulty effectively monitoring state practices or meeting its goals of advancing racial, geographic, and gender equity in the UI system.

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