441 G St. N.W. Washington, DC 20548 Comptroller General of the United States

Accessible Version

May 30, 2024

The Honorable Julie A. Su Acting Secretary of Labor U.S. Department of Labor 200 Constitution Avenue, NW Washington, D.C. 20210

Priority Open Recommendations: Department of Labor

Dear Acting Secretary Su:

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. In November 2023, we reported that, on a government-wide basis, 75 percent of our recommendations made 4 years ago were implemented. DOL's implementation rate was 75 percent. As of April 2024, DOL had 114 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our May 2023 letter, DOL has implemented one of 11 open priority recommendations. Specifically, DOL identified and prioritized residual fraud risks for each inherent risk listed in its unemployment insurance (UI) fraud risk profile, as we recommended in October 2021. DOL also identified existing antifraud controls for each inherent risk and explained the suitability of existing fraud controls. Prioritizing residual fraud risks and examining the suitability of existing fraud controls will provide DOL with key information to develop an antifraud strategy and effectively manage UI fraud risks.³

We ask for your attention to the remaining 10 open priority recommendations. We are adding three new recommendations on worker safety in the meat and poultry industry and UI

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 duplication issue.

²GAO, Performance and Accountability Report: Fiscal Year 2023, GAO-24-900483 (Washington, D.C.: Nov. 15, 2023).

³COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response, GAO-22-105051 (Washington, D.C.: Oct. 27, 2021).

information technology (IT) modernization, bringing the total number of priority recommendations to 13. (See the Enclosure for the list of recommendations.)

The 13 priority recommendations fall into the following three areas.

Stronger protections for wage earners. DOL faces challenges protecting the safety and health of workers employed in the over 8 million workplace establishments in the nation. We have seven priority recommendations in this area. If implemented, they could help DOL strengthen protections for workers in hazardous industries; limit the financial risk of the Black Lung Disability Trust Fund, which pays benefits to certain coal miners; and improve the agency's response to worker safety in a public health emergency. For example, we recommended that DOL enhance collaboration across federal agencies, including the Department of Agriculture, to ensure the safety and health of meat and poultry workers and assess and report on the actions needed to protect them. Implementing these recommendations could provide opportunities to better protect these workers from hazards they face.

Regarding the Black Lung Disability Trust Fund, we recommended that DOL develop and implement certain procedures to renew coal mine operator self-insurance. We also recommended that DOL develop and implement procedures that identify timelines for self-insured coal mine operators to submit supporting documentation for their appeals and a goal for how much time DOL needs to make appeals decisions. Implementing these procedures could better position the agency to take enforcement actions to protect the Trust Fund should an operator not comply with DOL requirements.

Lastly, we recommended that the Occupational Safety and Health Administration (OSHA) assess challenges related to resources, communication, and guidance that it faced in its response to the COVID-19 pandemic and take action, as warranted. Assessing challenges to identify lessons learned could help the agency improve its enforcement efforts and better prepare for operations during any future pandemic.

Enhancing unemployment insurance. During economic downturns, the role of UI in supporting workers and our overall economy becomes more vital. However, unprecedented demand for UI benefits during the COVID-19 pandemic and the implementation of new UI programs made these programs vulnerable to fraud, improper payments, and mismanagement. We added this area to our High-Risk List in 2022, noting that the UI system faced challenges with effective service delivery and program integrity. This included challenges in how states administer UI that have contributed to declining access and disparities in benefit distribution.⁴

We have five priority recommendations in this area, which if fully implemented could facilitate more effective service delivery while strengthening program integrity and oversight. We recommended that DOL measure states' UI IT performance, such as determining whether states were using cloud computing infrastructures to support their UI systems. Doing so would enhance the agency's ability to monitor whether states' UI systems are performing efficiently and effectively. We also recommended that DOL accurately report the number of distinct individuals claiming UI benefits, such as by collecting data already available from states. Having an accurate accounting of the size of this population may be critical to understanding the efficiency and effectiveness of the nation's response to unemployment during the pandemic. It

⁴GAO, Unemployment Insurance: Transformation Needed to Address Program Design, Infrastructure, and Integrity Risks, GAO-22-105162 (Washington, D.C.: June 7, 2022).

would also help DOL and policymakers identify lessons learned about administering certain UI benefit programs.

In addition, we recommended that the agency examine the extent and potential causes of racial and ethnic disparities in receiving certain expanded UI benefits. Implementing this recommendation would provide valuable information to help DOL more effectively monitor state practices or fully meet its goals of advancing racial, geographic, and gender equity in the UI system.

Lastly, we called for DOL to provide clear information to states on work search verification requirements and what is considered sufficient verification. We also recommended that DOL inform states that they are not permitted to use formal warnings, rather than reporting an overpayment, when claimants fail to meet work search requirements. By taking these actions, DOL would have greater assurance that states are complying with its requirements, and states may report more consistent information on the extent of work search overpayments.

Protecting sensitive information. Federal agencies collect large amounts of personally identifiable information (PII) for various government programs. GAO's cybersecurity high-risk area identifies the need for agencies, including DOL, to protect the privacy of PII and strengthen cybersecurity. We identified one priority recommendation in this area for DOL to fully define the role of DOL's senior privacy official in reviewing and approving privacy protections for department systems that contain such personal information. Ensuring that the leadership of DOL's privacy program is involved in this process could help ensure more effective implementation of critical protections for sensitive personal information.

As the auditor of the consolidated financial statements of the U.S. government, I have noticed that the Department of Labor received a qualified audit opinion on its fiscal years 2021 through 2023 financial statements. Labor was unable to adequately support assumptions used for estimating remaining obligations and benefit overpayments for the unemployment insurance program. These limitations on the audit opinion and underlying internal control weaknesses, as well as related auditor recommendations, are important issues and I encourage you to address them.

In April 2023, we issued our biennial update to our High-Risk List. This list identifies government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement. It also identifies the need for transformation to address economy, efficiency, or effectiveness challenges.⁵ One of our high-risk areas concerns DOL, the Unemployment Insurance System. Resolving this high-risk area 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) ensuring the cybersecurity of the nation, and (5) establishing a government-wide personnel security clearance process.

In addition to DOL's high-risk area, we urge your attention to the other 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 within DOL. In March 2022, we issued a report on

⁵GAO, *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas*, GAO-23-106203 (Washington, D.C.: Apr. 20, 2023).

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.⁶

We also recognize the key role Congress plays in providing oversight and maintaining focus on our recommendations to ensure they are implemented and produce their desired results. Legislation enacted in December 2022 included a provision for GAO to identify any additional congressional oversight actions that can help agencies implement priority recommendations and address any underlying issues relating to such implementation.⁷

Congress can use various strategies to address our recommendations, such as incorporating them into legislation. Congress can also use its budget, appropriations, and oversight processes to incentivize executive branch agencies to act on our recommendations and monitor their progress. For example, Congress can hold hearings focused on DOL's progress in implementing GAO's priority recommendations, withhold funds when appropriate, or take other actions to provide incentives for agencies to act. Moreover, Congress could follow up during the appropriations process and request periodic updates.

Congress also plays a key role in addressing any underlying issues related to the implementation of these recommendations. For example, Congress could pass legislation providing an agency explicit authority to implement a recommendation or requiring an agency to take certain actions to implement a recommendation.

Copies of this report are being sent to the Director of OMB and the appropriate congressional committees. In addition, the report will be available on the GAO website at Priority Open Recommendation Letters | U.S. GAO.

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. Our teams will continue to coordinate with your staff on all of the 114 open recommendations, as well as those additional recommendations in the high-risk areas for which DOL has a leading role. Thank you for your attention to these matters.

Sincerely,

⁶GAO, 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).

⁷James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 7211(a)(2), 136 Stat. 2395, 3668 (2022); H.R. Rep. No. 117-389 (2022) (accompanying Legislative Branch Appropriations Act, H.R. 8237, 117th Cong. (2022)).

Hene f. Dodawo

Gene L. Dodaro Comptroller General of the United States

Enclosure

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

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.

Year Recommendation Made: 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's (DOL) Occupational Safety and Health Administration (OSHA) agreed with this recommendation. The agency published enforcement procedures to help OSHA field offices conduct inspections related to workplace violence. Officials said the agency is developing regulatory options and will obtain additional input from potentially affected small businesses. OSHA completed small business panel discussions in March 2023 and completed a report with recommendations in May 2023. As of March 2024, OSHA reported it is working on the notice of proposed rulemaking on this issue, but no date for the notice has been set.

To fully implement this recommendation, the agency should use the information collected to assess its efforts and determine which, if any, additional actions are needed. Implementing this recommendation could better position the agency to determine whether additional action may be needed to prevent workplace violence.

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

Contact Information: costat@gao.gov or 202-512-4769

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

Year Recommendation Made: 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 timelines 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, in January 2023, OWCP

published a Notice of Proposed Rulemaking in the Federal Register that proposes revisions to the process for coal mine operators to apply for authorization to self-insure, the amount of security self-insured operators must provide, and the process for operators to appeal determinations made by OWCP. In March 2024, agency officials stated that final rulemaking will be conducted upon review of public comments.

To fully implement these recommendations, DOL should: (1) clarify renewal procedures; and (2) ensure appeals procedures identify timeframes for operators to submit documentation for their appeals, and establish a goal for how much time DOL appeals decisions should take. Implementing these recommendations as part of its 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

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

Year Recommendation Made: 2022

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: DOL partially agreed with this recommendation. DOL noted that it is important to assess lessons learned and best practices. However, at the time, officials said that while the pandemic is ongoing, the agency's resources are best used to help employers and workers mitigate exposures to COVID-19. In March 2024, OSHA officials said that the agency is currently collecting information from regional offices and headquarters. In fiscal year 2024, OSHA will organize an internal group to produce a final report that includes actions OSHA could have taken to improve its response and communication during the pandemic, improvements OSHA has made, and actions OSHA plans to take during any future pandemic or national emergency.

To fully implement this recommendation, OSHA should complete its assessment of the challenges it faced in responding to COVID-19 and take any warranted actions. Implementing this recommendation could help the agency improve its enforcement efforts and help it prepare for operations during any future pandemic.

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

Contact Information: costat@gao.gov or 202-512-4769

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.

Year Recommendation Made: 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. To address this recommendation, OFCCP conducted research, consulted with other agencies, and met with subject matter experts. However, in March 2024, OFCCP continued to note limitations to some approaches that may hinder the office from obtaining a precise estimate of veterans protected under VEVRAA. OFCCP has attempted to obtain relevant personnel data from the Department of Defense (DOD), but OFCCP officials said it has not yet received input from DOD. OFCCP also considered adjusting the hiring benchmark upward but noted that this was not necessary as the current benchmark already overestimates the population.

GAO's recommendation is aimed at better approximating the population protected under VEVRAA, which is a narrower subset of all veterans. GAO recognizes that an estimate will not be as precise as an exact count, nor will it necessarily result in a higher hiring benchmark. In other areas, such as protections for individuals with disabilities, OFCCP relies on estimates for analysis rather than precise data or exact counts of the population.

To implement this recommendation, OFCCP could make better use of data from the Current Population Survey Veterans Supplement, which is available annually, for this purpose. Additionally, GAO identified the American Community Survey data as another potential, publicly available source OFCCP could explore, but it is unclear if OFCCP has examined its potential use. Having a better estimate of the protected veteran population would allow OFCCP to improve its monitoring of contractors' progress in hiring and recruiting this particular group and to conduct other meaningful analyses beyond establishing the national annual hiring benchmark.

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

Contact Information: costat@gao.gov or 202-512-4769

Meat and Poultry Worker Safety: OSHA Should Determine How to Address Persistent Hazards Exacerbated by COVID-19. GAO-23-105104. Washington, D.C.: June 20, 2023.

Year Recommendations Made: 2023

Recommendations: The Secretary of the Department of Labor should ensure that OSHA:

assesses and reports on which actions—such as an industry-specific standard—are
needed to protect meat and poultry workers from the numerous hazards they face,
including the risk of infectious disease. OSHA could decide to request assistance from
Centers for Disease Control and Prevention's National Institute for Occupational Safety
and Health (NIOSH) in this process; and

 meets regularly with USDA's Food Safety and Inspection Service (FSIS) through their interagency workgroup to resolve longstanding collaboration challenges and incorporate leading collaboration practices. In incorporating these practices, the agencies should clearly define short- and long-term outcomes, track and monitor progress towards these outcomes, and publicly report collaborative outcomes.

Action Needed: DOL neither agreed nor disagreed with the first recommendation. In August 2023, the agency stated that OSHA believes there are better ways to protect meat and poultry workers than to develop a new standard, given the agency's limited resources and that most of OSHA's general industry standards cover the meat and poultry industry. We recognize that these workers are covered by general industry standards; however, the agency continues to face challenges ensuring the safety of workers in this industry. To implement this recommendation, OSHA should assess and review additional actions needed to protect meat and poultry workers from hazards and consider requesting NIOSH's assistance with this process.

DOL agreed with the second recommendation. In August 2023, the agency stated that OSHA plans to work with the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS) to employ the leading collaborative practices that are already in use to identify and track specific short- and long-term outcomes. Implementing both recommendations could provide opportunities to better protect the safety and health of these workers.

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

Contact Information: costat@gao.gov or 202-512-4769

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.

Year Recommendation Made: 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 2024, DOL reported that new guidance to address this issue is being developed but has been delayed due to competing priorities and the complex nature of the content. 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 monitor their responses, 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. As of March 2024, is developing information to clarify work search verification requirements. According to DOL officials, however,

this effort is dependent on the agency's development of new work search guidance, which has been delayed due to competing priorities. To fully implement this recommendation, DOL should finalize and share this information with states. By providing clear direction to states about verifying work search activities and monitoring state compliance, DOL would have greater assurance that states are complying with its requirements.

High-risk area: Unemployment Insurance System

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

Contact Information: costat@gao.gov or 202-512-4769

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

Year Recommendation Made: 2021

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 continues to work on developing a new state report to capture data on distinct individuals claiming regular UI benefits and other operations data, including the causes of claims processing backlogs such as ID verification issues. As of March 2024, DOL officials said their work on this new report has been delayed until the agency finalizes guidance on appropriate ID verification procedures.

To fully address this recommendation, DOL should complete this effort and pursue options to report these data retroactively and report the actual number of individuals claiming benefits. An accurate accounting of the size of this population is critical to understanding the effectiveness of the nation's response to the pandemic. It may also 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

Contact Information: costat@gao.gov or 202-512-4769

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.

Year Recommendation Made: 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. DOL noted 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. DOL's efforts to promote equity in UI programs have included providing grant awards to 45 states and the District of Columbia as of November 2023 to promote equitable access to UI programs. DOL stated that due to funding limitations, it does not plan to make additional grant awards. DOL has also continued its work to establish data partnerships with selected states to obtain claimant-level data to analyze the demographic and geographic characteristics of people who apply for, receive, and are denied UI benefits, including reasons for denial, if possible. As of March 2024, DOL has executed data sharing agreements with four UI Equity Pilot states. DOL also plans to enhance its collection of demographic information in certain reports that states submit with UI data.

To implement this recommendation, in addition to completing these efforts, the agency should also pursue an analysis of the extent of and potential causes of inequities in the receipt of PUA benefits. Having this valuable information would help DOL more effectively monitor state practices or fully meet its goals of advancing racial, geographic, and gender equity in the UI system.

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

Contact Information: costat@gao.gov or 202-512-4769

Unemployment Insurance: DOL Needs to Further Help States Overcome IT Modernization Challenges. GAO-23-105478. Washington, D.C.: July 10, 2023.

Year Recommendation Made: 2023

Recommendation: The Secretary of the Department of Labor should direct the Office of Unemployment Insurance to measure states' UI IT performance against established standards.

Action Needed: DOL agreed with this recommendation. In April 2024, DOL published plans for transforming unemployment insurance. In these plans, DOL described its ongoing and future efforts to help states build resilient and responsive IT systems, such as strengthening the measurement of state's UI IT performance.

To implement this recommendation, DOL will need to provide documentation demonstrating that the department has measured states' UI IT performance against established standards. By doing so, DOL will enhance its ability to monitor whether states' UI systems are performing efficiently and effectively.

High-Risk area: Improving the Management of Information Technology (IT) Acquisitions and Operations

Director: Carol Harris, Information Technology and Cybersecurity

Contact Information: harriscc@gao.gov or 202-512-4456

Protecting Sensitive Information

Privacy: Dedicated Leadership Can Improve Programs and Address Challenges. GAO-22-105065. Washington, D.C.: September 22, 2022.

Year Recommendation Made: 2022

Recommendation: The Secretary of Labor should fully define and document the role of the senior agency official for privacy or other designated privacy official in reviewing and approving system categorizations, overseeing privacy control assessments, and reviewing authorization packages.

Action Needed: DOL agreed with this recommendation. In March 2024, DOL stated that it is establishing a new departmental privacy program in the Office of the Chief Information Officer. As part of this process, DOL is developing new privacy policies that, according to officials, will define the role of privacy officials in these activities. DOL estimated completing this effort by the end of fiscal year 2024.

To fully implement this recommendation, the agency needs to fully document the senior agency official's role with respect to privacy control assessments and authorization packages. By fully establishing this element of its privacy program, DOL will have greater assurance that it is consistently and effectively implementing privacy protections.

High-risk area: Ensuring the Cybersecurity of the Nation

Director: Jennifer Franks, Information Technology and Cybersecurity

Contact Information: franksj@gao.gov or (404) 679-1831