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April 3, 2019

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Priority Open Recommendations: Department of Labor

Dear Secretary Acosta:

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 2018, 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 62 percent. As of February 2019, DOL had 103 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our April 2018 letter, DOL has implemented two of our six priority recommendations. DOL launched a new targeted inspection program to address hazards from exposure to fertilizer-grade ammonium nitrate and agricultural anhydrous ammonium. This will help the fertilizer industry better understand how to comply with existing regulations and may reduce the potential for related future catastrophic incidents involving these hazardous chemicals. In addition, DOL took steps to establish a more coordinated strategic approach among federal agencies to monitor and enforce free trade agreement (FTA) labor provisions. This will improve the U.S. government's capacity to hold FTA partners accountable for compliance with labor provisions that were mutually agreed upon.

We ask your continued attention to the remaining four open priority recommendations we identified in the 2018 letter. As priorities this year, we are adding two new recommendations related to overpayments in the Unemployment Insurance program. This brings the total number of open priority recommendations to six. (See enclosure I for the list of these recommendations.)

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

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 2018*, [GAO-19-1SP](#) (Washington, D.C.: November 15, 2018).

Stronger protections for wage earners

Two priority recommendations could help enhance worker safety and health. In March 2016, we recommended that DOL assess its efforts to prevent workplace violence against health care workers and determine if additional action is needed. To address this recommendation, DOL needs to complete its process of obtaining input on the regulatory options the agency is developing and finalize its determination on whether regulatory action is needed. Our November 2017 report on worker safety and health in the meat and poultry industry recommended that DOL work with the United States Department of Agriculture's Food Safety and Inspection Service (FSIS) to assess the implementation of their joint Memorandum of Understanding (MOU) and establish timeframes to periodically evaluate it. The agencies have met to discuss chemical exposures, referrals, and issues of jurisdiction in states with state plans, and DOL will continue to coordinate with FSIS to update the MOU. To fully implement this recommendation, DOL should finish updating the MOU and establish a mechanism and timeframes to evaluate it regularly.

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. Specifically, in August 2018, 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. DOL agreed with these recommendations and is developing guidance and instructions to address these issues. To implement these recommendations, DOL should finalize and provide this information to states.

Better protections for retirees

Two priority recommendations in this area could help protect retirees by improving retirement income options for pension plan participants. In August 2016, we recommended that DOL offer legal relief to pension plan fiduciaries to encourage plan sponsors to offer a mix of lifetime income options in their retirement plans and adequately inform participants about options before they direct their investments into them. This could encourage more plans to make a mix of options available, thereby allowing participants to create a better retirement strategy by selecting and combining annuity and withdrawal options. Witnesses invited to DOL's Employee Retirement Income Security Act Advisory Council provided comments to DOL that support creating a mix of options in plans. In implementing this recommendation, DOL should consider the Council's comments on this topic as it balances regulatory relief with participant protections.

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. To fully implement this recommendation, DOL should convene a task force of federal agency stakeholders, industry professionals, plan sponsor representatives and consumer representatives to consider establishing a national pension registry. The task force could address possible data needs and how best to finance them, as well as oversight data collection and analysis, and other logistical issues involved with creating a pension registry. In addition, the task force could identify any regulatory and legislative actions required to create such a registry.

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In March, 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 that are 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.

One of our high-risk areas, Pension Benefit Guaranty Corporation insurance programs, concerns DOL. (See enclosure II for PBGC high-risk area.) Several other government-wide high-risk areas have direct implications for DOL and its operation. These include: (1) ensuring cybersecurity of the nation, (2) improving management of IT acquisitions and operations, (3) addressing strategic human capital management, (4) managing federal real property, and (5) improving government-wide security clearance process. 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.⁴

Copies of this report are being sent to the Director of the Office of Management and Budget and appropriate congressional committees, 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 the 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 103 open recommendations. Thank you for your attention to these matters.

Sincerely yours,



Gene L. Dodaro
Comptroller General
of the United States
Enclosures
cc: The Honorable Mick Mulvaney, Director, OMB

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

⁴ [GAO-19-157SP](#), p. 3.

Enclosure I -- Department of Labor Priority Recommendations

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. DOL obtained and reviewed information collected through a Request for Information on Preventing Workplace Violence in Healthcare and Social Assistance. DOL is developing regulatory options and will obtain additional input from potentially affected small businesses. DOL anticipates completing this process by December 2019. To fully implement this recommendation, DOL should determine which, if any, regulatory actions are needed.

Director: Cindy Brown Barnes

Contact information: brownbarnesc@gao.gov; 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: OSHA neither agreed nor disagreed with this recommendation. OSHA and FSIS met several times to discuss chemical exposures, referrals, and issues of jurisdiction in states with state plans. To fully implement this recommendation, the agencies should finish updating the MOU and establish a mechanism and timeframes to evaluate it regularly.

Director: Cindy Brown Barnes

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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 that states can no longer use formal warnings. 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 guidance.

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 new guidance with instructions to clarify work search verification requirements. To fully implement this recommendation, DOL should finalize and publish these instructions on verifying claimants' work search activities and provide them to states.

Director: Cindy Brown Barnes

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

Better protections for retirees

401(K) Plans: DOL Could Take Steps to Improve Retirement Income Options for Plan Participants. GAO-16-433. Washington, D.C.: August 9, 2016.

Recommendation: The Secretary of the Department of Labor should help encourage plan sponsors to offer lifetime income options by considering providing legal relief for plan fiduciaries offering an appropriate mix of annuity and withdrawal options, upon adequately informing participants about the options, before participants choose to direct their investments into them.

Action Needed: DOL did not agree or disagree with this recommendation. DOL included in its 2018 regulatory agenda a long-term action to consider lifetime income products and features in the context of qualified default investment alternatives. Witnesses invited to DOL's Employee Retirement Income Security Act Advisory Council provided comments to DOL that support creating a mix of options in plans. To fully implement this recommendation, DOL should consider the Council's comments on providing relief for more plans to offer a prudent mix of options while maintaining sufficient participant protections.

Director: Charles Jeszeck

Contact information: jeszeckc@gao.gov; 202-512-7215

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 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.

DOL cited its limited authority, resource constraints and the Pension Benefit Guaranty Corporation's (PBGC) initiative to include accounts in 401(k) and the expansion of the Pension Benefit Guaranty Corporation's (PBGC) missing participant program.

However, PBGC's expansion added only accounts from terminating 401(k) and other defined contribution plans to the existing program for defined benefit plans. The agency also assumed a pension registry would require reporting and a mandate to authorize it. However, 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 that 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

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Enclosure II -- Key Matters for Congressional Consideration in High-Risk Area that Could Support the Pension Benefit Guaranty Corporation

High-Risk Area: PBGC Insurance Programs

High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas. [GAO-19-157SP](#). Washington, D.C.: March 6, 2019. [See section on PBGC Insurance Programs, pp. 267-271.]

Significant and positive steps have been taken by Congress and the Pension Benefit Guaranty Corporation (PBGC) to strengthen the agency over the past 3 years through various program reforms and premium increases. However, concerns related to the multiemployer program and challenges related to PBGC's funding structure and governance persist. To improve the long-term financial stability of both PBGC's single-employer and multiemployer insurance programs, Congress should consider:

- authorizing a redesign of PBGC's single employer program premium structure to better align rates with sponsor risk;
- adopting additional changes to PBGC's governance structure—in particular, expanding the composition of its board of directors;
- strengthening funding requirements for plan sponsors;
- working with PBGC to develop a strategy for funding PBGC claims over the long term, as the defined benefit pension system continues to decline; and
- enacting additional structural reforms to reinforce and stabilize the multiemployer system that balance the needs and potential sacrifices of contributing employers, participants, and the federal government.

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.