

Accessible Version

June 29, 2021

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:

I appreciated our recent meeting and look forward to a constructive working relationship between our two institutions. As discussed, 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 2020, 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 61 percent. As of May 2021, DOL had 118 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

Since our April 2020 letter, DOL has implemented one of seven priority recommendations:

- DOL took steps to develop ways to identify and track the effects of advanced technologies on the U.S. workforce, as we recommended in March 2019. The agency published a report that evaluated data gaps and provided recommendations for data collection options. DOL now releases employment projections annually instead of every two years. In addition, DOL examined ways to use its O*NET data system to better assess the potential impact of advanced technologies on the world of work. Collecting better data on how advanced technologies are changing the workplace could help DOL and policymakers design training programs that meet the job needs of the future.

We ask that you direct your attention to the six remaining open priority recommendations we identified in our April 2020 letter. We are adding three new recommendations related to the impact of COVID-19 on the workforce, bringing the total number of priority recommendations to nine. (See the enclosure for the list of recommendations.)

The nine priority recommendations fall into three areas listed below.

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 2020*, [GAO-21-4SP](#) (Washington, D.C.: Nov. 16, 2020).

Stronger protections for wage earners.

Five recommendations could help enhance worker safety, health, and labor market opportunities.

- First, in March 2016, we recommended that DOL assess its efforts to address workplace violence against health care workers to determine if additional action is needed. As of April 2021, DOL had 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, additional 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 time frames to periodically evaluate it. As of April 2021, 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 time frames to evaluate it regularly.
- Third, 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 (AAP) plans from covered federal contractors on a regular basis. In 2018, OFCCP announced its AAP Verification Initiative, in which OFCCP committed to a program to verify contractors' compliance with applicable AAP obligations. In December 2020, OFCCP published a 30-day notice and request for comments in the Federal Register regarding its proposal to implement a new AAP Verification Interface. OFCCP designed the initiative to increase compliance by requiring all covered federal contractors and subcontractors to annually certify their AAPs and to optimize the compliance evaluation process by requiring contractors and subcontractors scheduled for review to electronically submit their AAPs.

To implement this initiative, OFCCP has developed information technology to facilitate an annual electronic certification process for contractors and subcontractors, as well as a tool to upload AAPs for review. According to OFCCP officials, as of April 2021, its new leadership is considering this proposal. Completing these efforts would help OFCCP better ensure that federal contractors are complying with equal employment opportunity requirements.

- Finally, we made two recommendations in January 2021 to DOL's OSHA to improve oversight of its adapted enforcement methods during the COVID-19 pandemic:
 - (1) OSHA should develop a plan with time frames to implement its oversight processes for COVID-19-adapted enforcement methods. As of May 2021, OSHA has not yet developed a comprehensive plan with time frames for its oversight. For example, OSHA officials said the agency plans to conduct follow-up inspections for a random sample of

COVID-19-related informal inquiries. However, this plan would target all informal inquiries, and not just the adapted method of using informal inquiries in place of inspections in some cases. Therefore, this sampling technique would draw from a larger pool of cases than originally planned in OSHA's May 2020 enforcement policy, and could make it less likely that the cases meriting further scrutiny would be identified for follow-up. OSHA officials stated they would consider this issue when they make further plans for this oversight.

(2) OSHA should ensure that its data system has sufficient information on the use of its adapted enforcement methods to inform its oversight. Agency officials stated that the current data system coding is sufficient to enable oversight and they will add new coding as needed. However, some adapted enforcement methods are not captured by the coding, leaving OSHA unable to reliably track some of these methods, such as citation discretion and informal inquiries used in place of inspections.

Our review of worker safety during the COVID-19 pandemic is ongoing. We will continue to examine OSHA's efforts to determine whether actions taken address our recommendations. Completing these efforts would help OSHA better determine how effective its COVID-19-adapted enforcement methods have been and whether employers have taken corrective action when needed.

Enhancing Unemployment Insurance.

Three priority recommendations involve the Unemployment Insurance (UI) program, which continues to experience high numbers of claims as a result of the pandemic. Two recommendations seek to reduce improper payments by strengthening program controls regarding work search verification requirements. 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 reporting that an overpayment was made. 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. Due to the COVID-19 pandemic, the agency has not yet developed new guidance informing 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.

Our third UI recommendation is from November 2020. We recommended that DOL pursue options to report the actual number of distinct individuals claiming UI benefits, such as by collecting data already available from states, beginning in January 2020. DOL agreed to pursue options to report the actual number of distinct individuals claiming benefits but not with collecting data retroactively, noting challenges state UI programs currently face with high claims volumes, antiquated data systems, and insufficient staff.

As of April 2021, DOL has begun developing a new state report that will capture data on distinct individuals claiming regular UI benefits, with the first report expected in early 2022. Because it is vital to understand how many individuals are receiving UI benefits and the size of the population supported by the UI system during the pandemic, DOL should complete these new data collection efforts and pursue options to report these data for the regular and pandemic UI programs retroactively from January 2020. Given the substantial investment in UI programs during the pandemic, an accurate accounting of the size of this population may be critical to understanding the effectiveness of the nation's response, and may help DOL and policy makers

identify lessons learned about the administration of regular and expanded UI benefit programs. We encourage DOL to pursue options to report the actual number of individuals claiming benefits in the most feasible and least burdensome way, and at a time when this effort will not detract from states' primary obligation for timely and accurate claims processing.

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.

As of April 2021, DOL reported continuing to meet with relevant stakeholders to discuss missing participant issues, but not a national pension registry. 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 2021, we issued our biennial update to our [High-Risk List](#), 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 List](#) 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 single-employer and multiemployer insurance programs](#)—concerns DOL. 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](#),⁴ and (5) [government-wide personnel 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.

³GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: Mar. 2, 2021).

⁴With 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).

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 written in a cursive style with a large, prominent "D" at the end.

Gene L. Dodaro
Comptroller General
of the United States

Enclosure

cc: The Honorable Shalanda Young, Acting 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.

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. As of April 2021, officials said DOL 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.

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: The Occupational Safety and Health Administration (OSHA) neither agreed nor disagreed with this recommendation. As of April 2021, OSHA and FSIS have a draft MOU that is under review. To fully implement this recommendation, the agencies should finalize the MOU and establish time frames to evaluate it regularly.

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. OFCCP published a 30-day Federal Register notice related to its proposal to implement a new AAP Verification Interface to verify contractor compliance with applicable AAP obligations. OFCCP plans to create an annual AAP certification process for all covered contractors and subcontractors and establish a requirement for covered contractors and subcontractors to upload their AAPs if OFCCP schedules them for a compliance evaluation. OFCCP has developed the information technology needed to implement this initiative. As of April 2021, OFCCP's new leadership is considering this proposal. To implement this recommendation, DOL should complete these efforts and roll out the initiative.

Director: Cindy Brown Barnes, Education, Workforce, and Income Security
Contact information: brownbarnesc@gao.gov or 202-512-7215

COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and Other Challenges Require Focused Federal Attention. GAO-21-265. Washington, D.C.: January 28, 2021.

Recommendations: The Assistant Secretary of Labor for Occupational Safety and Health should:

- develop a plan, with time frames, to implement the agency's oversight processes for COVID-19-adapted enforcement methods, as described in its pandemic enforcement policies; and
- ensure that the Occupational Safety and Health Administration Information System includes comprehensive information on use of the agency's COVID-19-adapted enforcement methods sufficient to inform its oversight processes for these methods.

Action Needed: DOL neither agreed nor disagreed with our recommendations. The agency plans to take steps to begin addressing these recommendations, such as making plans to conduct follow-up inspections for some COVID-19-related informal inquiries, and adding new coding to its data system, as needed. To fully implement them, DOL should develop a comprehensive plan with time frames for oversight of each of the agency's COVID-19-adapted enforcement methods, and ensure that its data system has sufficient information on these adapted methods to inform the oversight.

Acting 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.

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, as of April 2021, 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, as of April 2021, 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

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: The agency partially agreed with this recommendation, noting that state UI programs may face challenges in implementing any new reporting requirements, particularly retroactively. DOL has begun developing a new state report to capture data on distinct individuals claiming regular UI benefits, expected to start in early 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.

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

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

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 in the expansion of the PBGC's missing participant program. As of April 2021, DOL reported continuing to discuss missing participant issues with stakeholders, but not a national pension registry.

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 stated it believed a pension registry would require a mandate requiring reporting to the agency maintaining the registry. 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 online 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: Tranchau (Kris) Nguyen, Education, Workforce, and Income Security
Contact information: nguyentt@gao.gov or 202-512-7215

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