U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

Comptroller General
of the United States

June 27, 2017

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

Dear Mr. 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. Government-wide, our average recommendation implementation rate for the past 4 years has been 77 percent. DOL's recommendation implementation rate is 78 percent. As of May 10, 2017, DOL had 95 open recommendations. Fully implementing these open recommendations could significantly improve agency operations.

We would ask you to focus on seven recommendations as being the highest priorities for implementation. (See the enclosure for a list of these recommendations.) These priority recommendations fall into the two major areas listed below.

Stronger protections for wage earner

The four priority recommendations in this area, once implemented, could help protect workers in significant ways against unfair or unsafe practices in the workplace, and prevent improper payments. In this area, we highlight recommendations concerning: (1) the enforcement and monitoring of labor provisions in free trade agreements; (2) agency efforts to address workplace violence; (3) inspections of high-risk facilities that handle hazardous substances, such as ammonium nitrate; and (4) identification of overlapping Federal Employees' Compensation Act (FECA) and Unemployment Insurance (UI) payments.

Regarding the first recommendation, DOL should provide details of the extent to which its Standard Operating Procedures are being implemented in cooperation with the U.S. Trade Representative and the Department of State. With respect to our recommendation on workplace violence, DOL should complete its study on OSHA's workplace violence enforcement cases in health care, and analyze the results from its Request for Information to determine whether regulatory action is needed. To fully implement our recommendation on high-risk facilities, DOL should take steps to enforce its existing ammonium nitrate storage requirements to help prevent chemical incidents. And to address our recommendation on overlapping FECA and UI payments, DOL should complete data transfer procedures needed to implement its data-sharing Memorandum of Understanding which would help to identify whether claimants are inappropriately receiving overlapping payments.

Better protections for retirees

There are three high priority recommendations in this area that, once implemented, could help protect retirees by improving retirement income options for pension plan participants. One recommendation calls for DOL to offer regulatory ~~legal~~ relief to pension plan sponsors to make it easier to offer a mix of lifetime income options in their retirement plans and adequately informing 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. To ensure full implementation, DOL should take steps to obtain stakeholder views on how to encourage more plans to offer a prudent mix of options while maintaining sufficient participant protections.

Another recommendation calls for the department to consider making regulatory changes or provide guidance to address issues regarding the fiduciary status of certain managed account providers. Implementing this recommendation is important to protecting plan sponsors and participants who use managed account services. DOL should complete its efforts to consider managed account service provider practices and fiduciary roles and address potential issues to ensure that sponsors and participants receive unconflicted managed account services from qualified managers.

The third recommendation calls for the department to convene a task force to consider establishing a national pension registry to help ensure individuals do not lose access to 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 cognizant federal agencies, industry professionals, plan sponsor representatives and consumer representatives to consider establishing a national pension registry to help ensure individuals do not lose access to the multiple 401 (k) plan accounts they may have accumulated over the course of their working lives. The task force would address possible data needs and collection, financing, and oversight, among other logistical issues involved with creating a pension registry. In addition, the task force would need to identify any regulatory and legislative action required to create such a registry.

In addition to these priority recommendations, since 1990, we have also maintained a High Risk list to call attention to government operations that are high risk due to their vulnerabilities to fraud, waste, abuse, and mismanagement, or in need of transformation.[1] 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. Progress has been possible through the concerted actions and efforts of the Congress, OMB, and the leadership and staff in agencies, including within DOL.

In particular, we designated the Pension Benefit Guaranty Corporation's (PBGC) Single Employer Insurance Program as high risk in July 2003, and added the Multiemployer Insurance Program to the list in January 2009. Despite some improvement, PBGC continues to face a significant long-term challenge with its single-employer program. Further, it faces an immediate and critical challenge with its multiemployer program. As detailed in our February 2017 High Risk update, addressing the issues in these programs primarily involves congressional action

[1] GAO, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others,* GAO-17-317 (Washington, D.C., Feb. 15, 2017). For a full discussion of the PBGC Single Employer Insurance Program risk area, see pages 616-625 in this report.

(see Enclosure II); however, as Chair of the PBGC Board, your active support of our recommended congressional actions will be crucial to assuring PBGC's insurance programs remain solvent.

We also wanted to call your attention to three government-wide High Risk areas: Strategic Human Capital Management, Ensuring the Security of Federal Information Systems and Cyber Critical Infrastructure and Protecting the Privacy of Personally Identifiable Information, and Improving the Management of IT Acquisitions and Operations. Continued vigilance in these areas is needed to address significant and longstanding challenges across government.

Regarding IT security, we especially encourage you to give attention to any recommendations that your Inspector General may have related to implementing a comprehensive information security program. To assist agencies in their efforts, we have issued work on actions needed to improve cybersecurity and agency information security programs.[2] Regarding IT acquisitions, we have identified the need for federal agencies to continue to expeditiously implement the requirements of December 2014 IT acquisition reform legislation, known as the Federal Information Technology Acquisition Reform Act (FITARA), and to report all data center consolidation cost savings to OMB and address weaknesses in their management of software licenses.[3]

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I appreciate the Department of Labor'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. We will continue to coordinate with your staff on all 95 of the open recommendations.

Sincerely yours,

Gene L. Dodaro
Comptroller General
of the United States

Enclosures

cc: The Honorable Mick Mulvaney, Director, OMB

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[2]See, for example, GAO, *Cybersecurity: Actions Needed to Strengthen U.S. Capabilities*, GAO-17-440T (Washington, D.C.: Feb. 14, 2017) and *Federal Information Security: Agencies Need to Correct Weaknesses and Fully Implement Security Programs*, GAO-15-714 (Washington, D.C.: Sept. 29, 2015).

[3]FITARA was enacted into law as a part of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, div. A, title VIII, subtitle D, §§ 831-837, 128 Stat. 3292, 3438-3450 (2014). See, for example, GAO, *Data Center Optimization: Agencies Need to Complete Plans to Address Inconsistencies in Reported Savings,* GAO-17-388 (Washington, D.C.: May 18, 2017) and *Federal Software Licenses: Better Management Needed to Achieve Significant Savings Government-Wide,* GAO-14-413 (Washington, D.C.: May 22, 2014).

Enclosure I

Department of Labor (DOL) Priority Open Recommendations

Area 1: Stronger protections for wage earners

Free Trade Agreements: U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed. GAO-15-160. Washington, D.C.: November 6, 2014.

Recommendation: To improve the capacity of the U.S. government to monitor and enforce free trade agreement (FTA) partners' compliance with mutually agreed FTA labor provisions, the U.S. Trade Representative (USTR) and DOL, in cooperation with State, should establish a coordinated strategic approach to monitoring and enforcing FTA labor provisions, to ensure that they systematically assess the consistency of priority FTA partner countries' laws, regulations, and practices with trade agreement labor provisions and address any identified concerns.

Action Needed: DOL and USTR generally agreed with this recommendation. DOL developed Standard Operating Procedures (SOPs) to monitor and enforce FTA labor provisions, which involve coordination between USTR and State. To fully implement this recommendation, DOL should provide details of the extent to which the SOPs are being implemented in cooperation with USTR and State.

Director: Kimberly Gianopoulos
Contact information: gianopoulosk@gao.gov; (202) 512-8612

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: DOL agreed with this recommendation. To fully implement it, DOL should complete its ongoing study reviewing OSHA's workplace violence enforcement cases in health care to better understand the obstacles OSHA compliance officers encountered during these investigations and identify factors that led to citations. The agency should also analyze the input received from OSHA's Preventing Workplace Violence in Healthcare and Social Assistance Request for Information to determine whether regulatory action is needed.

Director: Cindy Brown Barnes
Contact information: brownbarnesc@gao.gov; 202-512-9345

Chemical Safety: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate GAO-14-274. Washington, D.C.: May 19, 2014.

Recommendation: The Secretary of Labor should direct the Assistant Secretary for Occupational Safety and Health to take steps to identify high risk facilities working with ammonium nitrate and develop options to target them for inspection.

Action Needed: OSHA agreed with this recommendation. To fully address it, the agency should implement the planned local emphasis programs that will focus on the safe use and storage of ammonium nitrate and anhydrous ammonia at fertilizer facilities. As of April 2017, OSHA officials reported that implementation of these local emphasis programs has been delayed due to litigation regarding process safety management enforcement in the fertilizer industry. Since OSHA's ammonium nitrate storage requirements in 29 CFR 1910.109(i) are separate from OSHA's process safety management standard, we believe OSHA could do more to enforce its existing ammonium nitrate storage requirements to help prevent chemical incidents.

Director: Cindy Brown Barnes
Contact information: brownbarnesc@gao.gov; 202-512-9345

Federal Employees' Compensation Act: Case Examples Illustrate Vulnerabilities That Could Result in Improper Payments or Overlapping Benefits. GAO-13-386. Washington, D.C.: April 3, 2013.
Recommendation: The Secretary of Labor should assess the feasibility of developing a cost-effective mechanism to share Federal Employees' Compensation Act (FECA) compensation information with states, such as reporting information to the National Directory of New Hires, to help identify whether claimants are inappropriately receiving overlapping unemployment insurance (UI) and FECA payments.

Action Needed: DOL agreed with this recommendation and has taken steps to develop a cost-effective mechanism to share FECA compensation information with states, but has not completed its efforts. DOL reported that it signed a Memorandum of Understanding (MOU) that allows it to provide information on FECA compensation to states to determine unemployment benefits. DOL is setting up data transfer procedures but has not yet completed them. When completed, these actions should help states to identify whether claimants are inappropriately receiving overlapping UI and FECA payments.

Director: Seto Bagdoyan
Contact information: bagdoyans@gao.gov; 202-512-4749

Area 2: 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 regulatory relief to 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: Although DOL expressed reservations about this recommendation, it is open to considering alternative regulatory approaches and would consider this recommendation as part of its ongoing development and prioritization of its regulatory agenda. We encourage DOL to take steps to obtain stakeholder views on how to incentivize 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: Improvements Can Be Made to Better Protect Participants in Managed Accounts. GAO-14-310. Washington, D.C.: June 25, 2014.

Recommendation: To better protect plan sponsors and participants who use managed account services, the Secretary of Labor should direct the Assistant Secretary for the Employee Benefits Security Administration (EBSA) to consider the fiduciary status of managed account providers when they offer services on an opt-in basis and, if necessary, make regulatory changes or provide guidance to address any issues.

Action Needed: DOL concurred with this recommendation. To fully implement this recommendation, DOL should complete its efforts to consider managed account service provider practices and fiduciary roles and take any necessary action to address potential issues to ensure that sponsors and participants receive unconflicted managed account services from qualified managers.

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 convene a taskforce. DOL cited its limited authority, resource constraints and the Pension Benefit Guaranty Corporation's (PBGC) initiative to include accounts in 401(k) and other defined contribution plans in its own registry of accounts left in closed defined benefit plans. Our recommendation, however, is to convene a task force to consider logistical issues, such as data needs and collection, financing, and oversight, that would first need to be addressed to create a pension registry, and to identify any regulatory and legislative action required to create such a registry. Furthermore, PBGC's initiative is targeted to include only accounts left in terminated plans but Congress proposed in June 2016 that a new national, online, lost and found for Americans' retirement accounts be created, which would not be limited to terminated plans, but would also include information on active plans. Until Congress' proposal becomes law, we believe DOL should facilitate a task force to discuss legal and other logistical questions that would need to be addressed to create a registry.

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

Key Matters for Congressional Consideration in High Risk Area that Could Support PBGC

High Risk Area: PBGC Insurance Programs

High-Risk Series: Progress on Many High Risk Areas, While Substantial Efforts Needed on Others. GAO-17-317. Washington, D.C.: February 15, 2017*. [See section on PBGC Insurance Programs, pp. 616-625.]*

Significant and positive steps have been taken by Congress and the 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; and
- 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.