

**FY 2017**

**CONGRESSIONAL BUDGET JUSTIFICATION**

**EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

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# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

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# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## APPROPRIATION LANGUAGE

For necessary expenses for the Employee Benefits Security Administration [\$181,000,000] \$205,761,000, of which not less than \$3,000,000 shall be made available through September 30, 2018, for the procurement of expert witnesses for enforcement litigation: *Provided, That \$6,500,000 shall be made available through September 30, 2018, to assist in the start-up of retirement savings programs in states: Provided further, That, with respect to the previous proviso, the Secretary is authorized to transfer these amounts to “Departmental Management” for use by the Office of the Chief Evaluation Officer within the Department of Labor for grants to states and is authorized to grant a temporary waiver of the preemption provisions of Section 514 of the Employee Retirement Income Security Act of 1974 until September 30, 2018 (Department of Labor Appropriations Act, 2016).*

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## ANALYSIS OF APPROPRIATION LANGUAGE

Language Provision	Explanation
<i>“...of which not less than \$3,000,000 shall be made available through September 30, 2018, for the procurement of expert witnesses for enforcement litigation....”</i>	The pursuit of complex (ERISA) litigation by the Department would not be possible without employing qualified experts. The existing budget, procurement, and litigation environment has made it exceedingly difficult to effectively administer the expert witness program. To better comport with the scheduling of cases through the courts, DOL seeks a multi-year appropriation to support the administration of expert witness contracts for enforcement litigation. This language provision will support fees and expenses of witnesses as similarly promulgated in Division B, Title II of the Consolidated Appropriations Act, 2016 for Commerce, Justice, Science, and related Agencies.
<i>“...Provided, That \$6,500,000 shall be made available through September 30, 2018, to assist in the start-up of retirement savings programs in states....”</i>	Funds are requested to support multiple pilots to implement new and different approaches to increasing retirement coverage in States, particularly for workers who are traditionally unable to access employment-based retirement benefits. Funds are requested through FY 2018 to allow sufficient time for inter-agency collaboration to craft grant solicitations that meet technical and evaluation requirements; the posting of grant solicitations with time to allow selected States to develop effective grant proposals; providing technical briefings and conducting outreach to better inform potential grantees; and the evaluation of proposals based on solicitation criteria to select grantees. Two-year funding availability can help mitigate risk of lapsing appropriated funding and extends beyond one fiscal year the timeframe believed to be reasonably necessary to administer grants to selected States to develop retirement programs.
<i>“...Provided further, That, with respect to the previous proviso, the Secretary is authorized to transfer these amounts to “Departmental Management” for use by the Office of the Chief Evaluation Officer within the Department of Labor for grants to states and is authorized to grant a temporary waiver of the preemption provisions of Section 514 of the Employee Retirement Income Security Act of 1974 until September 30, 2018...”</i>	The DOL Office of the Chief Evaluation Officer with direct technical support from, and in collaboration with the Employee Benefits Security Administration (EBSA) will administer and manage the issuance of grants to selected States to establish state-based retirement programs. Further, DOL is unable to establish or execute a pilot project to establish state-based retirement programs without explicit authorization to waive preemption provisions promulgated in Section 514 of the Employee Retirement Income Security Act of 1974.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	<b>FY 2015 Enacted</b>		<b>FY 2016 Enacted</b>		<b>FY 2017 Request</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>A. Appropriation</b>	<b>963</b>	<b>\$181,000</b>	<b>962</b>	<b>\$181,000</b>	<b>965</b>	<b>\$205,761</b>
<i>Subtotal Appropriation</i>	<i>963</i>	<i>\$181,000</i>	<i>962</i>	<i>\$181,000</i>	<i>965</i>	<i>\$205,761</i>
Offsetting Collections From:						
Reimbursements	0	\$6,177	0	\$8,000	0	\$8,000
<i>Subtotal</i>	<i>963</i>	<i>\$187,177</i>	<i>962</i>	<i>\$189,000</i>	<i>965</i>	<i>\$213,761</i>
<b>B. Gross Budget Authority</b>	<b>963</b>	<b>\$187,177</b>	<b>962</b>	<b>\$189,000</b>	<b>965</b>	<b>\$213,761</b>
Offsetting Collections To:						
Reimbursements	0	-\$6,177	0	-\$8,000	0	-\$8,000
IT consolidation <sup>1</sup>	0	\$0	-13	\$0	0	\$0
<i>Subtotal</i>	<i>963</i>	<i>\$181,000</i>	<i>949</i>	<i>\$181,000</i>	<i>965</i>	<i>\$205,761</i>
<b>C. Budget Authority Before the Committee</b>	<b>963</b>	<b>\$181,000</b>	<b>949</b>	<b>\$181,000</b>	<b>965</b>	<b>\$205,761</b>
Offsetting Collections From:						
Reimbursements	0	\$6,177	0	\$8,000	0	\$8,000
<i>Subtotal</i>	<i>963</i>	<i>\$187,177</i>	<i>949</i>	<i>\$189,000</i>	<i>965</i>	<i>\$213,761</i>
<b>D. Total Budgetary Resources</b>	<b>963</b>	<b>\$187,177</b>	<b>949</b>	<b>\$189,000</b>	<b>965</b>	<b>\$213,761</b>
Other Unobligated Balances	0	\$0	0	\$0	0	\$0
Unobligated Balance Expiring	-1	-\$813	0	\$0	0	\$0
<b>E. Total, Estimated Obligations</b>	<b>962</b>	<b>\$186,364</b>	<b>949</b>	<b>\$189,000</b>	<b>965</b>	<b>\$213,761</b>

<sup>1</sup> Departmental IT consolidation pursuant to E.O. 13589 (Section 4)

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2016 Enacted	FY 2017 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$181,000	\$205,761	+\$24,761
Total	\$181,000	\$205,761	+\$24,761
<b>Full Time Equivalents</b>			
General Funds	949	965	16
Total	949	965	16

### FY 2017 Change

Explanation of Change	FY 2016 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Increases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Costs of pay adjustments	949	\$92,367	0	\$0	0	\$1,108	0	\$1,108
Personnel benefits	0	\$28,689	0	\$0	0	\$1,199	0	\$1,199
Two days less of Pay	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$166	0	\$0	0	\$4	0	\$4
Benefits for former personnel	0	\$75	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$2,659	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$20	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$10,550	0	\$0	0	\$469	0	\$469
Rental payments to others	0	\$41	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$436	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$750	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$0	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$7,043	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$16,635	0	\$0	0	\$766	0	\$766
Other Federal sources (DHS Charges)	0	\$670	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$0	0	\$0	0	\$0	0	\$0
Research & Development Contracts	0	\$4,500	0	\$0	0	\$0	0	\$0
Operation and maintenance of facilities	0	\$0	0	\$0	0	\$0	0	\$0
Operation and maintenance of equipment	0	\$13,700	0	\$0	0	\$0	0	\$0
Supplies and materials	0	\$975	0	\$0	0	\$0	0	\$0
Equipment	0	\$1,251	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0



## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

FY 2017 Change

Explanation of Change	FY 2016 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Built-Ins Subtotal</b>	<b>949</b>	<b>+\$180,527</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$3,546</b>	<b>0</b>	<b>+\$3,546</b>
<b>B. Programs:</b>								
Enforcement Modernization Program	949	\$183,586	0	\$0	7	\$7,590	7	\$7,590
State-Based Retirement Plans	0	\$0	0	\$0	0	\$6,500	0	\$6,500
Enforcement Targeting and Analysis	949	\$183,586	0	\$0	9	\$2,882	9	\$2,882
Restoration of Inflationary Built-ins								
Not Provided in FY 2016 Omnibus	949	\$183,586	0	\$0	0	\$2,703	0	\$2,703
TSP Audit Improvement	949	\$183,586	0	\$0	0	\$2,500	0	\$2,500
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>16</b>	<b>+\$22,175</b>	<b>16</b>	<b>+\$22,175</b>
<b>Total Increase</b>	<b>949</b>	<b>+\$180,527</b>	<b>0</b>	<b>\$0</b>	<b>16</b>	<b>+\$25,721</b>	<b>16</b>	<b>+\$25,721</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Two days less of Pay	0	\$473	0	\$0	0	-\$960	0	-\$960
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>+\$473</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$960</b>	<b>0</b>	<b>-\$960</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>+\$473</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$960</b>	<b>0</b>	<b>-\$960</b>
<b>Total Change</b>	<b>949</b>	<b>+\$181,000</b>	<b>0</b>	<b>\$0</b>	<b>16</b>	<b>+\$24,761</b>	<b>16</b>	<b>+\$24,761</b>

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY</b> (Dollars in Thousands)								
	<b>FY 2015 Enacted</b>		<b>FY 2016 Estimate</b>		<b>FY 2017</b>			
					<b>Current Law</b>		<b>Legislative Proposal</b>	
	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>	<b>FTE</b>	<b>Amount</b>
<b>Enforcement and Participant Assistance</b>	<b>856</b>	<b>147,400</b>	<b>830</b>	<b>147,400</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
General Funds	856	147,400	830	147,400	0	0	0	0
<b>Policy and Compliance Assistance</b>	<b>79</b>	<b>26,901</b>	<b>93</b>	<b>26,901</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
General Funds	79	26,901	93	26,901	0	0	0	0
<b>Executive Leadership, Program Oversight and Administration</b>	<b>27</b>	<b>6,699</b>	<b>26</b>	<b>6,699</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
General Funds	27	6,699	26	6,699	0	0	0	0
<b>Employee Benefits Security Programs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>965</b>	<b>205,761</b>	<b>0</b>	<b>100,000</b>
General Funds	0	0	0	0	965	205,761	0	100,000
<b>Total</b>	<b>962</b>	<b>181,000</b>	<b>949</b>	<b>181,000</b>	<b>965</b>	<b>205,761</b>	<b>0</b>	<b>100,000</b>
<b>General Funds</b>	<b>962</b>	<b>181,000</b>	<b>949</b>	<b>181,000</b>	<b>965</b>	<b>205,761</b>	<b>0</b>	<b>100,000</b>

NOTE: 2015 reflects actual FTE.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2015 Enacted</b>	<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>	<b>Diff. FY17 Request / FY16 Enacted</b>
	Full-Time Equivalent				
	Full-time Permanent	959	945	961	16
	Other	4	4	4	0
	<b>Total</b>	<b>963</b>	<b>949</b>	<b>965</b>	<b>16</b>
	Average ES Salary	\$174,116	\$175,857	\$177,401	\$1,544
	Average GM/GS Grade	12/7	12/7	12/7	0
	Average GM/GS Salary	\$90,365	\$91,269	\$93,968	\$2,699
11.1	Full-time permanent	89,722	90,675	94,555	3,880
11.3	Other than full-time permanent	1,363	1,047	1,061	14
11.5	Other personnel compensation	1,143	1,000	1,000	0
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>92,228</b>	<b>92,722</b>	<b>96,616</b>	<b>3,894</b>
12.1	Civilian personnel benefits	28,194	28,973	31,110	2,137
13.0	Benefits for former personnel	75	75	0	-75
21.0	Travel and transportation of persons	2,659	2,659	2,846	187
22.0	Transportation of things	16	20	28	8
23.1	Rental payments to GSA	11,231	10,550	11,499	949
23.2	Rental payments to others	0	41	0	-41
23.3	Communications, utilities, and miscellaneous charges	445	436	486	50
24.0	Printing and reproduction	633	750	750	0
25.1	Advisory and assistance services	717	0	0	0
25.2	Other services from non-Federal sources	7,988	7,043	17,113	10,070
25.3	Other goods and services from Federal sources 1/	14,391	17,305	18,071	766
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	5,000	4,500	4,500	0
25.7	Operation and maintenance of equipment	14,991	13,700	20,427	6,727
26.0	Supplies and materials	930	975	991	16
31.0	Equipment	1,502	1,251	1,324	73
38.0	Depreciation Expense - Unfunded	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>181,000</b>	<b>181,000</b>	<b>205,761</b>	<b>24,761</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	13,721	16,635	17,401	766
	DHS Services	670	670	670	0

# **EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

## **SIGNIFICANT ITEMS IN FY 2016 APPROPRIATIONS' REPORTS**

### **[EMPLOYEE BENEFITS SECURITY ADMINISTRATION]**

Senate Report 114-74 (page 27) – Mental health disorders affected an estimated 43.8 million adults in the United States in 2013. The Committee believes that progress has been made in this country in recognizing the significance of mental healthcare and treating it equitably with physical health. Nonetheless, there is little information available assessing activities of the States toward this end. The Committee requests the Secretary to coordinate with the Secretary of Health and Human Services (HHS) to prepare a report within 180 days of enactment of this act to the Committees on Appropriation of the Senate and House of Representatives assessing activities of the States on this issue.

Response: The Department of Labor (DOL) recognizes that unnecessary and serious losses occur as a result of untreated mental health conditions and substance use disorders and has been devoting extensive efforts to advance access to employer-sponsored coverage for mental health and substance use disorder benefits. Since the passage of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), DOL has enforced the law, assisted consumers, and continuously clarified the responsibility of group health plans and insurers providing mental health coverage to ensure that coverage for mental health treatment is on par with that offered for other medical care. A summary of these activities is in development and is expected to be transmitted to Congress within 180 days of enactment of the FY 2016 Budget.

Under ERISA section 502(b)(3), DOL is barred from enforcing part 7 of title I of ERISA (including the MHPAEA provisions) against health insurance issuers providing coverage under group health plans, apart from collecting certain civil penalties. With respect to health insurance coverage in the individual and group markets, States generally have primary enforcement authority with respect to MHPAEA. HHS does not have oversight authority in the States that have primary enforcement authority and HHS has informed DOL that it does not have specific data on implementation or enforcement of MHPAEA in those States. Staff at HHS, however, works closely with staff at the National Association of Insurance Commissioners (NAIC) and with regulators of individual States to provide technical assistance with respect to MHPAEA. Five States have elected to defer enforcement of the federal health insurance provisions, including MHPAEA, to HHS (Alabama, Missouri, Oklahoma, Texas and Wyoming). In those States, HHS enforces MHPAEA through the form filing review process and market conduct examinations. HHS also has direct enforcement authority with respect to self-funded non-Federal governmental plans and addresses complaints against these plans with respect to MHPAEA.

The Office of the Assistant Secretary for Planning and Evaluation in HHS is currently conducting a project examining changes in the scope and level of coverage for mental health and substance use treatment from 2013 to 2014 in the individual and small group markets. In these insurance markets, parity requirements became effective in 2014. To explore this topic, the contractor is looking at detailed benefit descriptions from a sample of 192 policies in 12 states. Within each state, they are choosing issuers by market share, and then using premium data to select plans from each issuer. The project will conclude in September 2016, but

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preliminary results from a subset of states will be available within four to five months. Since many of the states in the sample have state-based marketplaces, the findings will reflect how states are implementing ACA parity requirements. Additionally, staff at HHS is exploring the possibility of working with the NAIC to collect information on State implementation and enforcement of MHPAEA. This is in the early planning phase and such information, if collected, would not be available for some time.

DOL anticipates responding to the request in Senate Report 114-74 through a two part effort: (1) DOL will prepare and forward a summary of Departmental mental health activities, and (2) because of statutory limitations on the ability to enforce MHPAEA with respect to issuers, DOL will continue to work with HHS to secure the best and most recent information available on state enforcement of MHPAEA and provide it to Congress.

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## AUTHORIZING STATUTES

<b>Public Law / Act</b>	<b>Legislation</b>	<b>Statute No. / US Code</b>	<b>Volume No.</b>	<b>Page No.</b>	<b>Expiration Date</b>
P.L. 93-406	Employee Retirement Income Security Act of 1974	88 Stat. 832/ 29 U.S.C. 1001 et. seq.	88	832	Indefinite
P.L. 99-335	Federal Employees' Retirement System Act of 1986	100 Stat. 514/ 5 U.S.C. 8401 et. seq.	100	514	Indefinite

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>APPROPRIATION HISTORY</b>					
(Dollars in Thousands)					
	<b>Budget Estimates to Congress</b>	<b>House Allowance</b>	<b>Senate Allowance</b>	<b>Appropriations</b>	<b>FTE</b>
2007					
Base Appropriation...1/	\$143,573	\$141,573	\$141,573	\$141,573	855
2008					
Base Appropriation...2/	\$147,425	\$142,925	\$143,262	\$139,313	855
2009					
Base Appropriation...3/4/	\$147,871		\$139,313	\$143,419	835
2010					
Base Appropriation...5/	\$156,060	\$154,060	\$155,662	\$154,861	910
2011					
Base Appropriation...6/	\$161,995		\$161,995	\$154,551	910
2012					
Base Appropriation...7/	\$197,528	\$159,363	\$195,528	\$183,153	1,003
2013					
Base Appropriation...8/	\$183,153			\$173,573	993
2014					
Base Appropriation...9/	\$179,104			\$178,500	985
2015					
Base Appropriation...10/	\$188,447			\$181,000	963
2016					
Base Appropriation...11/	\$207,455	\$180,699	\$168,930	\$181,000	949
2017					
Base Appropriation	\$205,761				965

<sup>1</sup> Reflects amounts provided under FY 2007 full year continuing resolution pursuant to P.L. 110-5 and excludes \$7,000 for the one-time real transfer from Pension Benefit Guaranty Corporation (PBGC) pursuant to the FY 2007 supplemental P.L. 110-28

<sup>2</sup> Reflects a reduction of \$2,477 pursuant to the enacted rescissions in P.L. 110-161, the FY 2008 estimate to Congress included \$5,500 for EFAST2 later removed based on funding provided in FY 2007 appropriation.

<sup>3</sup> Excludes \$9,705 for the Recovery Act through a non-expenditure transfer from the Departmental Management (DM) account pursuant to P.L. 111-5

<sup>4</sup> This bill was only reported out of Subcommittee and was not passed by the Full House.

<sup>5</sup> Excludes \$4,434 for emergency transfer pursuant to P.L. 111-17

<sup>6</sup> Excludes a non-expenditure transfer of \$4,502 from the Departmental Management (DM) account pursuant to P.L. 112-10.

<sup>7</sup> Reflects a reduction of \$347 pursuant to the enacted rescission in P.L. 112-74 and does not reflect re-programming levels. Re-programming levels for FY 2012 is reflected in the Summary Budget Authority and FTE by Activity exhibit.

<sup>8</sup> Reflects a reduction of \$366 pursuant to the enacted rescission in P.L. 113-6 and a reduction of \$9,214 pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended, issued by the President on March 1, 2013.

<sup>9</sup> Reflects the full appropriation pursuant to P.L. 113-76 without enacted rescissions

<sup>10</sup> Reflects the full appropriation pursuant to P.L. 113-235 without enacted rescissions

<sup>11</sup> Reflects the full appropriation pursuant to P.L. 114-113 without enacted rescissions

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## OVERVIEW

### Introduction

The DOL Strategic Plan creates the roadmap for meeting the workplace and economic challenges we face as a nation. Contained within the plan are the strategies that DOL will use to protect the most vulnerable populations while ensuring broad compliance with the Employee Retirement Income Security Act of 1974 (ERISA) and related laws. In support of the strategic plan and the Secretary's vision of "*Promoting and Protecting Opportunity*," EBSA has a single outcome goal of "improving health benefits and retirement security for all workers." EBSA is charged with protecting more than 143 million workers, retirees and their families who are covered by nearly 681,000 private retirement plans, 2.3 million health plans, and similar numbers of other welfare benefit plans. Together, these plans hold estimated assets of \$8.5 trillion.

The retirement and health benefits security of workers, retirees, and their families continue to be significant factors in the overall financial security of the American public. EBSA's mission and programs are pivotal in providing benefit security to the public and increasing confidence that workers' retirement, health and other benefits will be available when needed. EBSA's mission is carried out in a complex and evolving economic and regulatory environment. In order to enhance benefit security and maintain public confidence in our private benefits system, EBSA administers an integrated program of regulation, compliance assistance and education, civil and criminal enforcement, research and analysis.

### Employee Benefits Security Programs (EBSP)

EBSA utilizes an aggressive outreach, education, and participant assistance program to inform the public of their rights and benefits as well as to educate the regulated community regarding their responsibilities and obligations under the law. EBSA component programs utilize a number of different approaches to ensuring employee benefits are protected, including national/regional enforcement priorities and projects, voluntary compliance programs, civil/criminal litigation, and research-based analysis to accomplish its mission. In addition, the economic research program continues to study economic issues affecting all programs. EBSA operates strong individual program components for enforcement, compliance assistance, public outreach and assistance, research and regulations that interact extensively in a way that is not reflected in the agencies budget activity split. To remedy this disconnect, EBSA is consolidating budget activities for enforcement and participant assistance; policy and compliance assistance; and executive leadership, program oversight, and administration. These activities will now be included in a single comprehensive budget activity entitled employee benefits security programs (EBSP). The current specification of three rigid budget activities fails to recognize the interconnected nature of the work performed within the program components and has unduly restricted the Agency's ability to rationally allocate tasks and resources between categories. The consolidated budget activity will ensure optimal allocation of resources between related program components based on an ongoing assessment of the best means to promote agency goals and outcomes. The continuation of the current activity structure fails to appropriately reflect the integrated approach that EBSA takes – particularly as it relates to regulatory and enforcement



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efforts. EBSA's approach to promoting benefits security is developed and implemented in response to public concerns, the Agency's experience with civil and criminal investigations, participant inquiries, research, and trends and vulnerabilities identified in the private sector. EBSA believes that restructuring its budget activities will facilitate the allocation of resources toward better performing and higher priority strategies/programs. The restructured budget activity will create a responsive organization that facilitates results-based management. Additionally, the restructured budget eliminates unhelpful and artificial lines between activities, all of which are aimed at a single outcome — employee benefits security programs.

### Program Workload and Performance Metrics

The Agency's primary objectives are to improve compliance with ERISA; focus on monetary recoveries that are directly paid to plans, participants, and their beneficiaries, whether in the form of loss recoveries, disgorgement of unjust enrichment or increased benefit payments; and increase the deterrent impact of its enforcement efforts on employee benefit plans, participants and beneficiaries. An effective employee benefits security program has attributes that include: effective targeting, prompt detection and pursuit of violations; the successful pursuit of monetary recoveries; non-monetary results that promote compliance with ERISA; and the aggressive and timely pursuit of participant tips and complaints.

In FY 2017, EBSA will continue to use workload measures and performance metrics designed to increase the effectiveness of the employee benefits security program and to shift the emphasis to more complex cases. In previous years, the Agency had given undue weight to cases that yielded quick and easy results, such as cases involving technical violations, bonding, small delays in payment, or technical reporting and disclosure violations. EBSA has implemented a more refined approach to performance measurement that avoids reliance on the number of cases processed as an important component of its metrics for the enforcement program. EBSA has implemented metrics that provide incentives to support its strategic objectives, including:

- 1) Total investigative time spent on the conduct of major cases;
- 2) Timeliness of civil non-major cases closed or referred for litigation; and
- 3) Timeliness of criminal cases closed or referred for prosecution.

**Target (Civil) – Increase total investigative time spent on major enforcement cases.** This program priority was introduced in FY 2013 and has guided the benefits security program to more complex and impactful investigations. EBSA will continue to invest more time and resources on major cases that are likely to have a greater impact on participants and plans. The shift in emphasis to more challenging and complex civil and criminal cases will take time to come to fruition. EBSA is developing programs to enhance the skills of front line employees that include the extensive financial training required to conduct complex, financial, and resource intensive cases.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

**Target (Civil) – 86 percent of non-major civil cases will be closed or referred for litigation within 30 months of case opening.** EBSA seeks to promptly detect, pursue and correct violations, and to aggressively pursue tips and complaints from the public. This goal is based on a five year review of historical averages. The metric excludes civil cases involving delinquent employee contributions, abandoned plans, bonding, Health-Part 7, and other reporting and disclosure of non-fiduciary breaches that should be closed or referred for litigation within 18 months of case opening.

**Target (Civil) – 69 percent of select non-major civil cases will be closed or referred for litigation within 18 months of case opening.** Select non-major civil cases include delinquent employee contributions, abandoned plans, bonding, Health-Part 7, and other reporting and disclosure of non-fiduciary breaches. The issues raised by these select civil cases are generally less complex or stem from participant complaints.

**Target (Criminal) – 75 percent of criminal cases closed or referred for prosecution within 18 months of case opening.** This timeliness measure affects criminal investigations within the employee benefits security program. An analysis of the historical data indicates that the earlier a case is referred for prosecution, the higher the probability of a criminal result (e.g. indictment or guilty plea). For example, more than 87 percent of cases with an indictment were referred within one year of case opening. The basis of this goal is a five year review of historical averages, as well as careful consideration of the time necessary for more complex criminal investigations.

In 2017, the Department will continue to focus on the implementation and enforcement of health care laws, helping workers transform retirement savings into secure lifetime income, and protecting plan participants. EBSA will continue its successful strategy of bringing plan sponsors and their benefit plans into compliance with the law using an integrated approach. As a general matter, this strategy is included in the following employee benefits security programs:

- 1) Vigorous Enforcement;
- 2) Informative Compliance Assistance;
- 3) Proactive Regulation;
- 4) Targeted Research;
- 5) Strong Consumer Outreach and Education; and
- 6) Effective Participant Assistance and Outstanding Customer Service

### **FY 2017 Request**

The Secretary's vision of "*Promoting and Protecting Opportunity*," through the promotion of retirement and health benefits security is supported by this budget request of \$205,761,000 and 965 FTE. This resource request includes the following program initiatives and increases:

- **\$7,590,000 and 7 FTE for enforcement program modernization.** This request encompasses \$7,590,000 and 7 FTE (includes \$6,116,000 for Information Technology) for employee benefits security programs. These resources will ensure: (1) development and implementation of advanced training programs that focus on health plans and financial institutions for field investigators and auditors who conduct complex major

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

cases; and (2) development of advanced investigative tools that will enhance health and retirement benefits analysis and targeting. This request is vital to EBSA's efforts to improve capacity and develop the expertise to conduct major cases that are likely to have a far greater potential impact on participants and plans.

- **\$2,882,000 and 9 FTE for enforcement targeting and analysis.** This request encompasses \$2,882,000 and 9 FTE for employee benefits security programs. These resources will ensure: (1) establishment of a group dedicated to the data-driven development of enforcement strategies; (2) creation of a team that will focus on the analysis and presentation of data in individual enforcement cases and consider the cost and benefits of potential alternatives to litigation, including regulatory and guidance projects; and (3) enhanced development of risk-analytics and targeting and detection strategies that better protect plan participants and beneficiaries from abusive practices.
- **\$2,500,000 for Thrift Savings Plan oversight.** EBSA seeks \$2,500,000 to strengthen DOL oversight of the Federal Retirement Thrift Investment Board. These resources will enable EBSA to continue to pursue the development of improved mechanisms for overseeing the performance of the Thrift Savings Plan (TSP). In particular, EBSA will use this increased funding to perform a comprehensive, detailed review of the TSP's IT operating environment – specifically to review the adequacy of controls at contractor sites and over contractor IT personnel. EBSA believes that appropriate solutions include, but are not limited to: greater accountability and oversight of the Federal Retirement Thrift Investment Board; establishment of a formal process by which Congress can be made aware of critical concerns associated with TSP operations; and/or creation of an Inspector General (IG) oversight structure with statutory authority to compel remedial action by the TSP Board.
- **\$2,703,000 to restore automatic built-in increases.** Due to inflationary cost increases related to compensation, benefits, and rent, the FY 2016 request included resources for built-in adjustments in these areas. Funding for built-in adjustment costs were not provided for EBSA in FY 2016 appropriations. The FY 2017 request includes resources to cover these built-in adjustments for personnel and rent costs as a program increase.
- **\$6,500,000 (two-year funding availability) for a state-based retirement plan demonstration project.** EBSA seeks \$6,500,000 to assist states in developing and implementing different approaches (such as state-based 401(k) plans, state-based auto-IRAs, or retirement marketplaces) for increasing retirement coverage, particularly for workers who are traditionally unable to access employment-based benefits. Total funding for this project includes resources for state implementation grants and state program evaluations. DOL is seeking appropriations language changes that will: provide two-year funding availability through September 30, 2018 and authorize the transfer of amounts appropriated for this project to the Departmental Management (DM) Chief Evaluation Office for grant administration.

This request also includes built-in adjustments for inflation totaling \$3,546,000 and a built-in decrease of \$960,000 for two days' less pay.

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## **FY 2017 Legislative Proposals**

Our system of retirement benefits has not kept pace with a rapidly evolving economy in which more individuals work as independent contractors and many frequently switch jobs. Approximately half of workers employed by firms with fewer than 50 workers and less than one-quarter of part-time workers have access to workplace retirement plans. The Budget includes proposals to address this problem by encouraging new models that provide new, more portable models for providing retirement and other employer-provided benefits across multiple employers.

*Innovation grants for portable, multiple employer benefits pilots.* The Budget proposes \$100,000,000 of mandatory budget authority to finance pilots that design, implement, and evaluate new approaches to expanding retirement coverage and other employer benefits. DOL will administer the grant program through the Chief Evaluation Office and grantees would be states or nonprofits. Under this legislative proposal, grantees will receive funding to pilot innovative, portable approaches to provide retirement and other employer-provided benefit coverage using the proposed open multiple employer plan structure or other existing structures. Priority will be placed on: (1) expanding coverage among the self-employed who are ineligible for many workplace retirement plans, individuals whose work patterns are intermittent and whose earnings are unpredictable from month to month, and employees who have multiple employers or who frequently switch jobs; and (2) developing models that are portable across employers and that can accommodate pooled contributions from multiple employers to offer benefits for an individual worker.

*Open Multiple Employer Plans (open MEPs).* The Administration proposes to remove barriers to the creation of open MEPs, which allow multiple unrelated employers to offer benefits through the same administrative structure but with lower costs and less compliance burden since the employers collectively operate a single ERISA-covered plan. The Administration seeks to eliminate the commonality requirement for retirement plans, while also adding significant new worker safeguards, thereby enabling more small businesses to offer cost-effective, pooled plans to their workers and facilitating pooled plans of self-employed individuals.

## **FY 2017 Activities, Strategies, and Program Results**

During FY 2017, EBSA will continue to focus its employee benefits security program on major cases. The Major Case Initiative will concentrate resources on areas that have the greatest impact on the protection of plan assets and participants' benefits (e.g., professional fiduciaries and service providers with responsibility for large amounts of plan assets and benefits). Since inception, EBSA has certified 209 cases as major cases and over \$631,000,000 has been returned to plans and participants from major cases investigations. As an example, in a major case involving a multiple employer welfare arrangement (MEWA), EBSA may discover that the MEWA operator mismanaged death benefit plans and diverted millions of dollars in plan assets for personal real estate, etc. After litigation, a federal district court could enter a significant financial judgment and permanently bar the operator and others from serving as fiduciaries to any employee benefit plan. EBSA will continue to implement compliance-related programs to

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

aid in the Agency's oversight and audit initiatives involving the purchase of health insurance for employees and Multiple Employer Welfare Arrangements (MEWA) enforcement to combat health care fraud. EBSA will also continue to develop materials and conduct compliance workshops across the country to educate industry professionals about the new MEWA provisions and will enhance the MEWA Registration Form to facilitate targeting entities for investigation that may not have sufficient reserves to pay legitimate health care claims.

In FY 2017, EBSA anticipates allocating 15 percent of total investigative time on major case enforcement, closing or referring for litigation 86 percent of its non-major cases within 30 months of case opening, closing or referring for litigation 69 percent of its other non-major cases (includes delinquent employee contribution, abandoned plan, bonding, health part 7 and non-fiduciary breach cases) within 18 months of case opening, and closing or referring 75 percent of criminal cases for prosecution within 18 months of case opening. EBSA also estimates increasing participant benefit recoveries and assets restored to plans by two (2) to five (5) percent from the Agency's five-year rolling average (the current average is \$224,800,000). Legacy benefits security program workload and demand measures continuing into FY 2017 include, but are not limited to: responding to an estimated 250,000 participant inquiries; obtaining 97 indictments through the criminal investigation program; completing 4,330 reporting compliance reviews; conducting 734 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 10 webcasts and 10 compliance seminars for plan sponsors and participants.

In FY 2017, EBSA will continue to develop regulatory projects related to Title I of ERISA in order to address Departmental priorities and the regulatory agenda. It is anticipated that major projects will include guidance to facilitate compliance with the fiduciary, reporting and disclosure requirements of ERISA. Major regulatory projects (proposed and final rule stage) that will continue to be priorities for EBSA include: (1) conflict of interest rule – investment advice; (2) amendment to disability claims procedure regulation; (3) revision of the Form 5500 Series and implementing regulations under ERISA; (4) savings arrangements established by States for non-governmental employees; (5) amendment of abandoned plan program; (6) electronic filing of apprenticeship and training notices, and top hat plan statements; (7) adoption of amended and restated voluntary fiduciary correction program; and (8) final rules under the Affordable Care Act for grandfathered plans, preexisting condition exclusions, lifetime and annual limits, rescissions, dependent coverage, appeals, and patient protections. EBSA will continue to promulgate regulations implementing health care reform initiatives in conjunction with the Departments of Health and Human Services (HHS) and Treasury; continue health benefit studies (including the annual self-insured report to Congress); and implement education, outreach, and assistance programs, as well as pursue additional enforcement strategies that support new requirements for employer sponsored health plans. EBSA estimates completing a total of 3,224 interpretive and other associated technical assistance projects/plan inquiries; regulatory projects for research, health plan standards, and exemptions; and other targeted technical assistance in FY 2017.

## **EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

### **Selected Workload and Productivity (FY 2015)**

In FY 2015, EBSA processed 2,441 civil cases that included 1,640 cases closed with a result that benefited plan participants. EBSA has focused on monetary recoveries that are directly paid to plans, participants, and their beneficiaries, whether in the form of loss recoveries, disgorgement of unjust enrichment, or increased benefit payments. To that end, EBSA recovered \$73,225,000 in participant benefits through formal civil investigations involving abandoned plans, delinquent employee contributions, imprudence, benefit payments and health. EBSA also restored \$402,893,000 to plans and participants through the informal dispute resolution of participant complaints received by Agency Benefits Advisors. Additionally, EBSA restored \$184,767,000 to benefit plans through civil and criminal investigations for a total of \$660,885,000. EBSA benefits security efforts also included documented “prohibited transactions corrected” of \$69,604,000 and the protection of plan assets involving \$71,578,000. EBSA also recovered \$7,287,000 in monetary results under the civil health benefits security program in FY 2015. Under the Abandoned Plan Program, EBSA facilitated the distribution of 1,624 account balances totaling \$13,809,000 to plan participants. During this period, EBSA also processed 24,335 applications received by its two major voluntary compliance programs, the Voluntary Fiduciary Correction Program (VFCP) and the Delinquent Filer Voluntary Compliance Program (DFVCP).

EBSA utilizes its criminal enforcement program to pursue the most egregious violators. Criminal investigations are often conducted jointly with other federal and state law enforcement agencies or in consultation with the appropriate local law enforcement authority. EBSA’s criminal investigations, as well as its participation in criminal investigations with other law enforcement agencies, can result in the indictment, conviction, and sentencing of individuals, including plan officials, corporate officers, and service providers, for offenses against employee benefit plans. In FY 2015, EBSA closed 275 criminal cases that resulted in 61 indictments and 67 cases closed with guilty pleas and/or convictions.

In FY 2015, EBSA conducted 1,894 outreach activities reaching 73,317 individuals. Included in the 1,894 outreach activities are 403 compliance assistance activities, 999 participant assistance activities (692 were rapid response sessions), and 492 public awareness activities. In support of health care reform, EBSA conducted 300 Affordable Care Act-specific outreach activities reaching 14,363 individuals. Also during this period, EBSA distributed nearly 430,000 publications through its toll-free publication hotline and at outreach events. All the publications are available and accessible online with many also available in Spanish. EBSA’s Web site has become the primary means of reaching the public. In FY 2015, the Web site hosted over 7.7 million visitors, viewing over 9.6 million pages. Additionally, EBSA’s benefits advisors responded to 201,894 inquiries (including 12,215 Affordable Care Act-related inquiries) and recovered \$402,893,000 through the informal dispute resolution of participant complaints.

The President called on DOL to update the rules and requirements governing investment advice so that retirement advisers put the best interests of their clients ahead of their own financial interests. EBSA and the Council of Economic Advisers have concluded that retirement investors currently lose billions of dollars each year as a result of investment advisers’ conflicts of interest. Accordingly, in FY 2015, EBSA issued a Notice of Proposed Rulemaking (NPRM) to ensure that advisers adhere to a best interest standard when advising retirement investors. The proposal

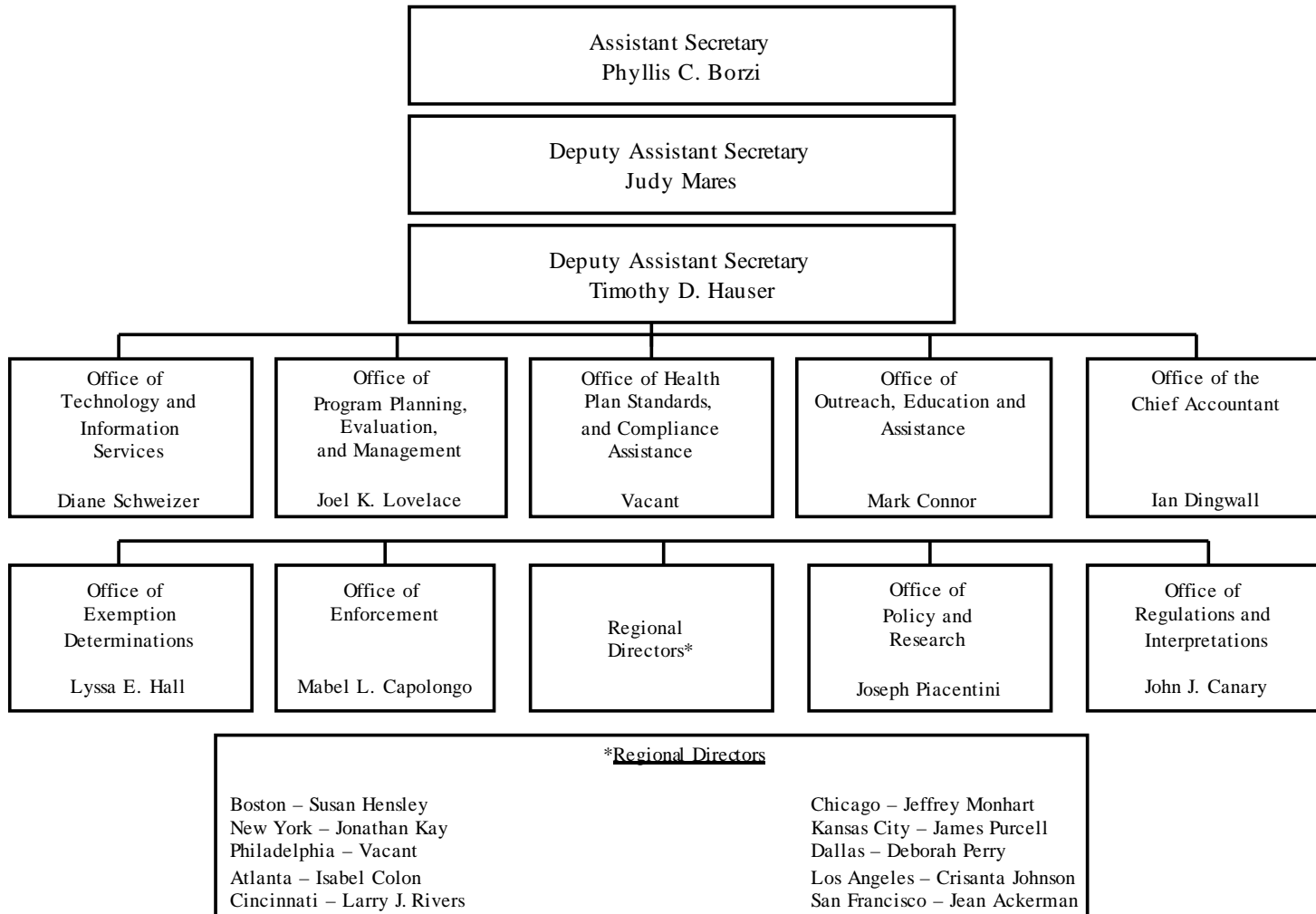
## **EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

will make more advisers fiduciaries; mitigate or eliminate dangerous conflicts of interest; and ensure that retirement investors can hold advisers accountable when they breach basic standards of fiduciary conduct and fair dealing.

EBSA will coordinate with HHS and Treasury regarding a methodology for the third Mental Health Parity and Addiction Equity Act (MHPAEA) Report to Congress and will consider any supplements to the second MHPAEA compliance report as more data becomes available. Additionally, EBSA transmitted the 2015 Self-Insured Group Health Plans Report to Congress on March 30, 2015.

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## Employee Benefits Security Administration





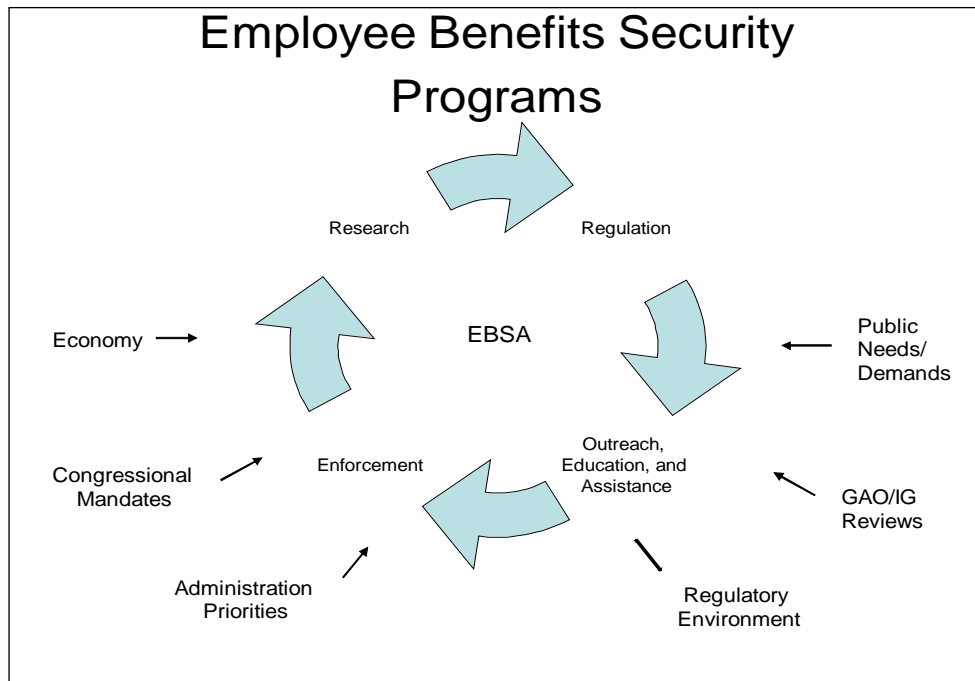
## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2015 Enacted</b>	<b>FY 2016 Estimate</b>	<b>FY 2017</b>	
			<b>Current Law</b>	<b>Legislative Proposal</b>
Activity Appropriation	181,000	181,000	205,761	100,000
FTE	962	949	965	0

NOTE: FY 2015 reflects actual FTE. Authorized FTE for FY 2015 was 963.

### Introduction

The retirement and health care benefit security of workers, retirees, and their families are significant factors in the public’s perception of their overall financial security. EBSA’s mission and programs are pivotal in providing benefit security to the public and increasing their confidence that their retirement, health and other benefits will be there when needed. EBSA’s mission is carried out in a very complex and evolving economic and regulatory environment where the public’s demands, needs, and perceptions are influenced by many factors. Through this single budget activity, EBSA administers an integrated program of regulation; compliance assistance and education; civil and criminal enforcement; and research and analysis. The graphic below depicts this integrated effort to provide benefit security to America’s workers, retirees and their families.



EBSA’s regulatory guidance and enforcement programs (pension and health) are developed and implemented in response to the Administration’s priorities, Congressional actions, public concerns, and the Agency’s experience with civil and criminal investigations, participant inquiries, research, as well as trends and vulnerabilities identified in the private sector benefit security universe. After regulations are promulgated, EBSA utilizes an aggressive outreach, education, and participant assistance program to inform the public of their rights and benefits,

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

and educates the regulated community regarding their rights and responsibilities under the law. EBSA has numerous outreach and educational strategies to achieve this end. At the same time, EBSA's enforcement program must ensure compliance with the law. The Agency's enforcement program utilizes a series of approaches (national/regional priorities, voluntary compliance programs, civil/criminal litigation, etc.) to achieve this end. Finally, the EBSA research program continues to analyze and study the benefit industry to identify emerging trends. To ensure that the Agency can respond efficiently and effectively to a complex regulatory and financial environment, the Agency has proposed to restructure budget activities to permit greater flexibility in achieving program goals by managing and budgeting at a more efficient level of aggregation. The single "employee benefits security programs" budget activity combines and replaces the former budget activities for enforcement and participant assistance, policy and compliance assistance, and executive leadership, program oversight and administration.

Regulatory work, enforcement, outreach, participant assistance, research, and compliance assistance are interrelated activities that promote the common goal to improve health benefits and retirement income security for all workers – all of which should be conducted in a collaborative manner that avoids needless fragmentation and stovepipes. A single budget activity for employee benefits security programs will facilitate the allocation and redistribution of resources from lesser performing and lower priority strategies/programs to better performing and higher priority strategies/programs. Restructuring the budget activities will create a responsive organization that facilitates results-based management.

### ***Enforcement, Compliance and Customer Assistance Programs***

Through employee benefits security programs, EBSA develops and implements a comprehensive enforcement program using civil and criminal investigations that target the most egregious and persistent violators, while also implementing voluntary compliance programs. The enforcement program detects and investigates civil and criminal violations of ERISA and other related criminal laws and, as appropriate, refers them for civil litigation or to prosecutors for criminal prosecution; ensures that annual reports are filed timely and accurately; and determines that public accountant audits of employee benefit plans comply with professional standards. To help plan sponsors and fiduciaries comply with ERISA's complex provisions, EBSA administers the Fiduciary Education program that informs plan sponsors and their service providers about their basic fiduciary responsibility under the law.

EBSA implements two highly successful self-correction programs designed to encourage voluntary compliance in order to better leverage its resources. The agency's Voluntary Fiduciary Correction Program (VFCP) encourages plan officials to voluntarily comply with ERISA's fiduciary and prohibited transactions provisions by self-correcting certain specified violations of the law. The Delinquent Filer Voluntary Compliance Program (DFVCP) encourages voluntary compliance with the annual reporting requirements under ERISA. Together, these two programs provide an efficient mechanism for self-identifying and correcting violations, enabling the Agency to focus more investigative resources on other, more complex issues.

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

Complementing the Agency's investigative work, EBSA's participant assistance staff responds to inquiries from members of the public who are seeking information or have complaints about their benefits. The agency's benefits advisors are able to assist the public in understanding their rights under their plans and are often able to informally resolve disputes thereby obtaining benefits for workers and their families. This informal dispute resolution process enables EBSA to effectively respond to participant complaints without utilizing the more resource intensive investigative process, and promotes EBSA's ability to direct its investigative resources to more egregious and widespread violations of ERISA. The participant assistance program is also the source of some of the Agency's best investigative leads, producing several hundred cases per year—cases that, in the absence of this program, might not have been discovered.

EBSA educates plan participants and officials by conducting outreach and education programs regarding their rights and responsibilities under ERISA. Benefits are more secure when plan officials and plan participants know their rights and responsibilities. Better informed plan participants are better prepared to ensure they receive all the benefits to which they are entitled under their plan and to bring potential violations to the attention of EBSA. EBSA benefits security programs include three education campaigns: (1) the Retirement Savings Education Campaign (RSEC); (2) the Health Benefits Education Campaign (HBEC); and, (3) the Fiduciary Education Campaign. These campaigns target plan sponsors and officials, service providers, and plan participants to inform them of their rights and responsibilities under ERISA. As part of its outreach and education efforts, EBSA worked cooperatively with private and public sector organizations such as the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, the Certified Financial Planner Board and state commissioners of insurance. In addition to these three campaigns, EBSA also conducts outreach to dislocated workers through rapid response events delivered in conjunction with states and other DOL agencies. Outreach is also conducted via public awareness events such as Congressional office briefings, job fairs and other venues.

EBSA also has responsibility to ensure that the regulated community files its employee benefit plan annual reports (Form 5500) timely and accurately via an electronic filing system. First implemented in January 2010, the electronic filing system has created more transparency by providing for the public disclosure of plan information, and by providing a free web-based program that plan administrators can use to meet the new electronic filing requirement at no additional cost to them. Annually, the electronic filing system receives and processes 1.2 million Forms 5500 that are filed with DOL, IRS and the PBGC. EBSA also operates the ERISA Information System (EIS) that provides plan data for the Agency's enforcement, research, and policy development programs. Together these systems support enforcement-related targeting, comprise essential databases for the agency's research and regulatory activities, and are the primary sources of employee benefit plan information to Congress and interested stakeholders, including plan participants and beneficiaries. The electronic filing system is also the primary source of employee benefit plan data for the IRS, the PBGC, the Government Accountability Office (GAO) and others. The benefit plan data provided by the electronic filing system support IRS oversight of private-sector retirement and health plans and directly impacts the PBGC's ability to manage the risks associated with underfunded defined benefit plans.

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

### ***Regulatory and Research Programs***

EBSA constantly seeks to improve policy and regulatory programs and routinely evaluates and adjusts regulatory activities to achieve the Secretary's priorities. The Agency provides thoughtful and useful compliance assistance and engages the regulated community in designing and implementing compliance assistance tools and materials. EBSA formulates policy, promulgates regulations and provides interpretations and other guidance to the regulated community under Title I of ERISA. The Agency also implements a proactive regulatory agenda that includes providing detail and clarity to the law by rulemaking, thereby offering a path to more secure health and retirement benefits. EBSA will carry out the agency's interpretive activities concerning the provisions of ERISA and related statutes through the timely issuance of advisory opinions and field assistance bulletins addressing relevant interpretive issues raised by the regulated community or considered significant by the Department.

EBSA will continue its research activities relating to employer-sponsored pension and health benefit plans. Additionally, EBSA will continue implementing health care reform initiatives by promulgating regulations, developing compliance assistance tools and materials, and providing technical assistance. With the increase in regulatory activity for both pension and health care benefits, EBSA will continue to strengthen its research program which plays a pivotal role in supporting the regulatory agenda and policy formulation of the agency. EBSA performs three major, non-discretionary research functions:

- *Economic research* – Section 513 of ERISA directs the Secretary of Labor to conduct research and produce statistics on employee benefit programs (health care reform initiatives include many additional specific areas of research);
- *Regulatory impact analysis* – Agencies must assess their regulations' economic costs and benefits as required under Executive Order 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act; and
- *Legislative and policy development and analysis* – EBSA is a lead agency for many of the Administration's employee benefits legislative and policy activities.

Through employee benefits security programs, EBSA also issues administrative individual and class exemptions from the prohibited transaction provisions of ERISA. These exemptions are necessary to facilitate transactions between employee benefit plans and related parties, such as service providers, that would otherwise be prohibited but that are considered beneficial to employee benefit plans. Additionally, EBSA provides ongoing compliance and technical assistance to small businesses, plan officials, and the general public to improve compliance with statutory and regulatory requirements.

### ***Agency Oversight and Administrative Programs***

Through employee benefits security programs, EBSA ensures overall leadership and direction for the policy, regulatory, enforcement and all other program and administrative activities that support the Secretary's vision of "*Promoting and Protecting Opportunity*." This program function supports the Secretary's strategic vision through EBSA's component program offices and will improve pension and health benefits security with increased enforcement, strengthened

## EMPLOYEE BENEFITS SECURITY PROGRAMS

regulatory programs to effectively implement reform legislation, and improve transparency through public disclosure and helpful participant assistance and outreach programs.

This function also provides for the development and implementation of the agency's administrative policy, strategic planning, and operational guidance by: (a) planning and overseeing human capital management programs to build, sustain, and effectively deploy the skilled, knowledgeable, diverse, and high-performing workforce needed to meet current and emerging needs; (b) providing leadership in the development of the agency's training goals and delivery mechanisms; (c) providing leadership in the development of long-term and annual performance plans and reports; (d) overseeing the development and implementation of the agency's Continuity of Operations Plan (COOP) to ensure timely and effective continuation of critical agency operations in the event of a major disruption; (e) planning and directing the analysis, justification, execution and evaluation of the agency budget, and integrating the agency's strategic performance goals with budget formulation and execution; (f) providing advice and oversight regarding the prudent management and use of resources and compliance with governing laws and regulations; and, (g) planning and coordinating the overall facilities management plan including space, telecommunications, mail, and printing management.

Through this function, EBSA also carries out its responsibilities under the Debt Collection and Debt Collection Improvement Acts, specifically including its responsibilities related to debts arising from civil penalties assessed under ERISA sections 502(c), 502(i) and 502(l).

### **Reimbursable Account**

Program Description: A reimbursable account is established in EBSA to receive funds from other Federal agencies to support the electronic filing system and other work involving pension or health care issues performed on their behalf.

FY 2017 Request: The FY 2017 request level of \$8,000,000 for this purpose will allow EBSA to collect and obligate funds for any authorized reimbursable work associated with the electronic filing system and other reimbursable agreements with the IRS and PBGC.

### **Five-Year Budget Activity History**

<b><u>Fiscal Year</u></b>	<b><u>Funding</u></b> (Dollars in Thousands)	<b><u>FTE</u></b>
2012	\$183,153	1,003
2013	\$173,573	993
2014	\$178,500	985
2015	\$181,000	963
2016	\$181,000	949

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

### **FY 2017**

EBSA seeks \$205,761,000 and 965 FTE for employee benefits security programs in FY 2017. This request includes program increases of \$22,175,000 and 16 FTE as well as built-in adjustments for inflation totaling \$3,546,000 and a built-in decrease of \$960,000 for two days' less pay.

The proposed increases include: (a) \$7,590,000 to enable EBSA to modernize enforcement program functions, thereby improving capacity and developing expertise to conduct major cases; (b) \$2,882,000 to develop risk-analytics and targeting and detection strategies that better protect plan participants and beneficiaries from abusive practices; (c) \$2,500,000 for focused oversight of the Thrift Savings Plan's internal control operating environment and additional audits to improve IT security; (d) \$2,703,000 for restoration of inflationary built-ins not provided in the FY 2016 Omnibus; and (e) \$6,500,000 to support new and different approaches to increasing retirement plan coverage, such as state-based 401(k) plans or state-based auto-IRAs through a retirement plan demonstration project. EBSA also seeks an appropriation language change authorizing multi-year funding for the management and administration of expert witnesses who consult with and testify on behalf of the Federal Government. EBSA has proposed to restructure budget activities to permit greater flexibility in achieving program goals by managing and budgeting at a more efficient level of aggregation.

### ***Enforcement, Compliance and Customer Assistance Programs***

In FY 2017, EBSA will continue to focus program resources on creating a more evaluative and innovative program that increases compliance with ERISA. For example, EBSA will continue the major case enforcement initiative and develop data-driven enforcement and targeting strategies. Field offices will also be required to place special investigative emphasis on national enforcement projects and will respond to emerging issues by developing regional enforcement initiatives. EBSA will continue to work aggressively in support of the goal to improve health benefits and retirement security for all workers; sustain effective implementation of health care reform initiatives; and ensure the capability to effectively respond to the inquiry demand of participants and stakeholders.

In FY 2017, EBSA will continue to diligently pursue enforcement of participant rights with respect to health plans. Investigations conducted under the Agency's national Health Benefits Security Project are among the most resource-intensive and will require EBSA to allocate additional resources to effectively enforce participant rights. In addition, EBSA will continue to develop materials and conduct compliance workshops across the country to educate industry professionals about Multiple Employer Welfare Arrangements (MEWA) provisions and will continually refine the MEWA Registration Form to facilitate the identification of entities that may not have sufficient reserves to pay legitimate health care claims. A MEWA is an entity that offers or provides coverage for medical care to the employees of two or more employers. The ACA includes provisions that require MEWA entities to register with DOL and expands enforcement authority to include ex parte cease and desist and summary seizure orders. In addition, Health and Human Services (HHS) will continue to identify areas where more

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

enforcement action is necessary and share the information with EBSA for use in enforcement activities.

Ongoing benefits security program workload and demand measures continuing into FY 2017 include, but are not limited to: securing 97 indictments through the criminal enforcement program; processing an estimated 21,900 applications through the Agency's voluntary compliance programs (Voluntary Fiduciary Correction Program and Delinquent Filer Voluntary Compliance Program); completing 4,330 reporting compliance reviews; responding to approximately 65,000 Electronic Filing Acceptance System help-desk inquiries; responding to 250,000 participant inquiries; conducting 734 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 10 webcasts and 10 compliance seminars for plan sponsors and participants.

Strengthening oversight of the Federal Retirement Thrift Investment Board is a key priority for EBSA, and the Budget includes an increase of \$2,500,000 to achieve that goal. Given the Thrift Savings Plan's (TSP) large transaction volumes, its number of participants, and the size of its investments, EBSA believes that these resources are critical in allowing it to improve focus and oversight in areas where weaknesses have been identified but not adequately mitigated. EBSA has become increasingly concerned about the TSP's management of its IT systems, and the security of those systems.

For over 25 years, the Agency's strategy has been to conduct a specialized fiduciary audit of the operation and administration of the TSP. Specifically, the fiduciary audit has the following major objectives: (1) establish/maintain a strategic audit plan; (2) review whether the TSP fiduciaries act in the sole interest of the participants and beneficiaries; (3) review whether all plan fiduciaries comply with the fiduciary rules and prohibited transactions requirements of FERSA; (4) review the security of personal and financial data; (5) review benefit records, customer service recordkeeping systems, and administrative policies and procedures; and (6) review investment management organization and operation.

In FY 2017, EBSA will use this increased funding to perform a comprehensive, detailed review of the TSP's IT operating environment – specifically to review the adequacy of controls at contractor sites and over contractor IT personnel. The control risk environment in which the TSP operates includes routinely using contractors to perform many critical functions, including its IT services. EBSA will look at such areas as: computer access and security controls, security vulnerability assessments, IT operations management, systems enhancements and software change controls, service continuity controls and participant website controls. The expected outcomes of these reviews are to: (a) determine the Board's progress in identifying, achieving, and maintaining an effective IT control environment, and (b) ensure that all IT related recommendations, scheduled by the Board to be implemented in response to past audits, have in fact been properly implemented.

EBSA will continue its three education campaigns: (1) the Retirement Savings Education Campaign (RSEC); (2) the Health Benefits Education Campaign (HBEC); and, (3) the Fiduciary Education Campaign. As resources permit, EBSA will update, print and distribute publications which explain participant rights and plan sponsor responsibilities. The Agency will also conduct

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

local seminars and national webcasts for its compliance assistance constituencies. EBSA will continue to participate in rapid response sessions to reach dislocated workers and will continue to update and distribute educational materials with the latest information on managing benefits through job loss.

EBSA will leverage its resources by partnering with numerous organizations such as the Social Security Administration (SSA), AARP, Financial Literacy Education Commission (FLEC), Women's Institute for a Secure Retirement (WISER), labor unions, state insurance commissioners, IRS, Department of Health and Human Services (HHS), Society of Human Resource Management (SHRM), the American Institute of Certified Public Accountants (AICPA), the Society of Actuaries, and others to reach target audiences. The Agency will also maintain a Web site and utilize webcasts as an efficient way to inform stakeholders about its programs, services and initiatives and to assist the regulated community with compliance. EBSA conducts numerous webcasts which are attended by thousands of stakeholders each year. These sessions are archived on EBSA's Web site for future review by other interested parties. EBSA continues to believe that partnering with worker and community-based organizations to educate workers, small business owners, and others about ERISA's requirements is an effective way to create broad-based compliance.

### ***Regulatory and Research Programs***

Resources for employee benefits security programs will enable EBSA to sustain and fully support effective implementation of health care reform initiatives as well as support the Department's regulatory strategies of *Plan-Prevent-Protect* and *Openness and Transparency*. Fiduciary education, regulations, exemptions, compliance assistance, policy and research, and interpretive guidance have and will continue to substantially contribute to the protection of employee pension and health benefits.

In FY 2017, EBSA will continue collaboration with the Departments of Health and Human Services (HHS) and Treasury to support and participate in the development of regulations, regulatory impact statements and economic analyses, and guidance needed for the implementation and administration of ACA provisions. At the resource level proposed for employee benefits security programs, EBSA will develop more sophisticated analytical tools that will enhance data compilation, risk assessment and modeling to help better target enforcement efforts and improve statistical and analytic support for cases in which large volumes of data must be examined for evidence of violations, such as cases involving the mass administration of claims arising under health and welfare plans.

In sustaining health care reform, EBSA will continue its commitment to the development of health care related regulations, interpretive guidance and other materials. These materials will both encourage and facilitate compliance with the new law and regulations. For example, EBSA will continue to develop and disseminate compliance assistance tools and materials, including investigative and compliance assistance check sheets that will provide clarifications to group health plans, health insurance issuers, participants, beneficiaries, and other interested stakeholders regarding compliance with health care reform initiatives. These check sheets will be designed to facilitate broad based compliance among group health plans and health insurance



## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

issuers. EBSA will also conduct research on employment-based health insurance plan topics. EBSA will continue to advance the goals of health care reform by publishing compliance assistance guidance regarding the health plan coverage provisions of ERISA, including the Genetic Information Nondiscrimination Act (GINA), and the Mental Health Parity and Addiction Equity Act (MHPAEA).

EBSA will continue to carry out interpretive activities concerning the provisions of ERISA and related statutes through the timely issuance of advisory opinions and field assistance bulletins addressing relevant interpretive issues raised by the regulated community or considered significant by the Department. With the proposed resources for employee benefits security programs in FY 2017, EBSA will be positioned to meet anticipated workload estimates for interpretive and other technical assistance projects. EBSA will complete an estimated 2,925 interpretive and other associated technical assistance projects/plan inquiries and instances of targeted technical assistance. EBSA will also pursue a proactive regulatory agenda that includes completing 299 regulatory projects for the advancement of health care reform and retirement security. These projects include providing guidance, developing regulatory standards, conducting statistical research, policy, and regulatory analysis, and issuing ERISA exemptions. The Agency estimates that over 45 percent of technical assistance to the regulated community and regulatory projects will be devoted to ACA-related health plan regulations and standards.

Finally, EBSA will review and process class and individual exemption applications with the ultimate objective of protecting plans and their participants and beneficiaries while facilitating necessary business transactions. Specifically, EBSA has allocated sufficient resources to close, propose or grant an estimated 60 individual exemption actions (includes EXPRO or PTE 96-62, which is technically the "Class Exemption to Permit Certain Authorized Transactions Between Plans and Parties in Interest."), complete project work on three (3) class exemptions and reduce exemption processing time to 300 days.

### ***Agency Oversight and Administrative Programs***

EBSA will continue to provide the leadership and administrative support for all of the agency's programs including enforcement, participant assistance, policy, compliance assistance, and regulatory initiatives. EBSA will utilize human capital, financial and other information systems to provide decision-makers with the timely analysis required to monitor and update strategic plans and to measure the results of program and management initiatives. Additionally, through this activity, EBSA will ensure the proper execution of responsibilities to sustain employee benefits security and health care reform.

Through the oversight and administrative function, EBSA will ensure effective and consistent employee and labor relations; promote a positive labor management relationship with the employees' exclusive representatives; plan and execute Executive Orders and Departmental special emphasis programs such as those for Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, Asian American and Pacific Islanders, and individuals with disabilities; develop policy and operational guidance regarding the prudent management and use of resources in compliance with governing laws and regulations; and, oversee the agency's procurement, travel and other financial management

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

activities. The budget level proposed for employee benefits security programs will ensure the execution of functions that include: (a) human capital management programs to build, sustain, and effectively deploy the skilled, knowledgeable, diverse, and high-performing workforce needed to meet current and emerging demands; (b) development of strategic training goals and delivery mechanisms that meet both programmatic and individual needs; (c) development of long-term and annual performance plans and reports; (d) development and implementation of the Agency Continuity of Operations Plan for continuation of critical agency operations in the event of a major disruption; (e) formulation, execution and evaluation of the Agency budget; and (f) overall facilities management planning including space, telecommunications, mail, and printing management.

Lastly, during FY 2017, EBSA will continue to effectively administer its responsibilities for the management of debts arising from the assessment of civil penalties under ERISA sections 502(c)(2), 502(i) and 502(l). This will be accomplished in accordance with the requirements of the Debt Collection and Debt Collection Improvement Acts.

### **FY 2016**

#### ***Enforcement, Compliance and Customer Assistance Programs***

In FY 2016, EBSA will continue to implement performance measurement changes designed to increase the effectiveness of its employee benefits security programs. An effective program has overlapping and related attributes that include: effective targeting; prompt detection and pursuit of violations; the successful pursuit of monetary recoveries; non-monetary results that promote compliance with ERISA; and the aggressive and timely pursuit of participant tips and complaints. Consequently, EBSA measures will continue to focus on the timeliness of the Agency's investigations and the investigative time spent on Major Cases. In FY 2016, a program priority will be to improve targeting methods that identify subjects for investigation. EBSA will also continue to report monetary recoveries and non-monetary results as performance indicators on an annual basis.

In FY 2016, EBSA has committed to place particular investigative emphasis on the following national enforcement projects:

- **Contributory Plans Criminal Project (CPCP)** — CPCP targets the most egregious and persistent violators, and protects the most vulnerable populations, by pursuing the criminal prosecution of individuals who commit crimes involving contributory health and retirement plans;
- **Health Benefits Security Project (HBSP)** — HBSP focuses on group health plans and their service providers to achieve impactful results through targeted investigations that seek monetary recoveries and global corrections of problematic practices or plan terms that violates ERISA.
- **Rapid ERISA Action Team (REACT)** — REACT provides an expedited response to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy.

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

- Employee Stock Ownership Plan (ESOP) — ESOP transactions present the potential for fiduciary self-dealing and conflicted interests. This project ensures that such transactions are primarily for the benefit of participants and beneficiaries, particularly regarding material issues such as the valuation of employer securities in purchase and sale transactions involving these plans.
- Plan Investment Conflicts Project (PIC) — PIC continues agency enforcement efforts to promote transparency by service providers of direct and indirect compensation and mitigates fiduciary service provider self-dealing.

EBSA will provide compliance assistance to the regulated community to promote understanding of applicable law and regulations. Promoting health benefit plans' compliance with ERISA and the ACA, in particular, is a top priority of the Agency's compliance and consumer outreach and education activities. Related to these activities, EBSA will also educate consumers on health benefit laws, including new ACA protections, and continue to train EBSA staff so that EBSA can provide quick and accurate responses to both plan sponsors and participants who have questions about the law and regulations.

EBSA will continue legacy employee benefits security program workload and demand measures involving criminal indictments, voluntary compliance program applications, reporting compliance reviews, EFAST help-desk inquiries, participant inquiries, rapid response sessions, Congressional office briefings, Webcasts and compliance seminars. EBSA will also continue the primary education campaigns for retirement savings education, health benefits education, and fiduciary education in FY 2016.

EBSA will continue to contract with qualified non-governmental organizations to provide Thrift Savings Plan (TSP) audit services consistent with Federal Employees' Retirement System Act of 1986 (FERSA). While base TSP audit funding has increased marginally over the last 20 years, the TSP's assets have grown exponentially over that same period, and the audit challenges have increased commensurate with that growth. In FY 2016, efforts will be focused on addressing several highly publicized security breaches that have focused public and congressional attention on potential deficiencies in management of its IT program.

### ***Regulatory and Research Programs***

In FY 2016, EBSA will continue its collaboration with the Departments of Health and Human Services (HHS) and Treasury to support and participate in the development of regulations, regulatory impact statements and economic analyses, and guidance needed for implementation of In FY 2016, EBSA will continue its collaboration with the Departments of Health and Human Services (HHS) and Treasury to support and participate in the development of regulations, regulatory impact statements and economic analyses, and guidance needed for implementation of health care reform initiatives. Through employee benefits security programs, EBSA will: (1) continue to develop regulations to implement health benefits security initiatives within specified timeframes; (2) continue to administer new responsibilities for the registration requirements of and enforcement tools for Multiple Employer Welfare Arrangements; (3) continue to support new and comprehensive compliance assistance programs; (4) continue the implementation of

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

new and expanded enforcement strategies; and (5) support a number of health benefit related research studies.

EBSA will continue to carry out the agency's interpretive work concerning the provisions of ERISA and related statutes through the issuance of advisory opinions and field assistance bulletins addressing relevant interpretive issues raised by the regulated community or considered significant by the Department. In FY 2016, EBSA will be positioned to meet the anticipated workload for interpretative and other technical assistance projects. EBSA will complete an estimated 2,925 interpretive and other associated technical assistance projects/plan inquiries and instances of targeted technical assistance. EBSA will also pursue a proactive regulatory agenda that includes completing 290 regulatory projects for the advancement of health care reform and retirement security. These projects include providing guidance, developing regulatory standards, conducting statistical research, policy, regulatory analysis, and issuing ERISA exemptions.

EBSA's FY 2016 regulatory program also includes initiatives involving the conflict of interest rule – investment advice; an amendment to the disability claims procedure regulation; a revision of the Form 5500 Series and implementing regulations under ERISA; savings arrangements established by States for non-governmental employees; an amendment of the regulation establishing the abandoned plan program; the electronic filing of apprenticeship and training notices, and top hat plan statements; the adoption of amended and restated voluntary fiduciary correction program; and final rules under the affordable care act for grandfathered plans, preexisting condition exclusions, lifetime and annual limits, rescissions, dependent coverage, appeals, and patient protections.

Finally, EBSA will review and process class and individual exemption applications with the objective of protecting plans and their participants and beneficiaries while facilitating beneficial business transactions. Specifically, EBSA has allocated sufficient resources to close, propose or grant an estimated 60 individual exemption actions (includes exemption actions that meet requirements for expeditious processing – EXPRO), complete project work on nine (9) class exemptions and reduce average exemption processing time to 300 days. Through these programs, EBSA provides guidance and engage the regulated community in achieving compliance while protecting the benefits of workers, retirees and their families.

### ***Agency Oversight and Administrative Programs***

In FY 2016, the Executive Leadership, Program Oversight and Administration budget activity will continue to ensure the execution of functions that include: (a) human capital management programs to build, sustain, and effectively deploy the skilled, knowledgeable, diverse, and high-performing workforce needed to meet current and emerging needs; (b) development of strategic training goals and delivery mechanisms that meet both programmatic and individual needs; (c) development of long term and annual performance plans and reports; (d) development and implementation of the agency Continuity of Operations Plan for continuation of critical agency operations in the event of a major disruption; (e) formulation, execution and evaluation of the agency budget; and (f) overall facilities management planning including space, telecommunications, mail, and printing management.

# EMPLOYEE BENEFITS SECURITY PROGRAMS

## FY 2015

### **Performance/Program Results**

#### *Enforcement, Compliance and Customer Assistance Programs*

In FY 2015, EBSA processed 2,441 civil cases that included 1,640 cases closed with a result that benefited plan participants. EBSA focused on monetary recoveries that were directly paid to plans, participants, and their beneficiaries, whether in the form of loss recoveries, disgorgement of unjust enrichment, or increased benefit payments. To that end, EBSA recovered \$73,225,000 in participant benefits through formal civil investigations involving abandoned plans, delinquent employee contributions, imprudence, benefit payments and health. EBSA also restored \$402,893,000 to plans and participants through the informal dispute resolution of participant complaints received by Agency Benefits Advisors. Additionally, EBSA restored \$184,767,000 to benefit plans through civil and criminal investigations for a total of \$660,885,000. EBSA enforcement efforts also included documented “prohibited transactions corrected” of \$69,604,000 and the protection of plan assets involving \$71,578,000.

EBSA also specifically recovered \$7,287,000 in monetary results under the civil health enforcement program in FY 2015. Under the Abandoned Plan Program, EBSA facilitated the distribution of 1,624 account balances totaling \$13,809,000 to plan participants. In partnership with other Departmental, federal, state, and local authorities, EBSA also closed 275 criminal cases that resulted in 61 indictments and 67 cases closed with guilty pleas and/or convictions. This demonstrates that EBSA’s strategies for enforcement targeting and partnering with other law enforcement organizations is effective in finding the most egregious and persistent violators.

EBSA also actively involved the regulated community in efforts to identify and remedy violations through two highly successful self-correction programs designed to encourage voluntary compliance. The Voluntary Fiduciary Correction Program (VFCP) and the Delinquent Filer Voluntary Compliance Program (DFVCP) encourage plan officials to identify and remedy certain ERISA violations. During FY 2015, EBSA verified \$14,305,000 in restored assets by closing 1,480 applications under the VFCP and 22,855 delinquent filers came into compliance with ERISA’s filing requirements under the DFVCP. In FY 2015, EBSA conducted oversight audits of the Thrift Savings Plan (TSP) to identify and address significant IT security system related risks.

#### *Outreach and Education*

Through employee benefits security programs, EBSA assists workers in obtaining promised benefits that have been inappropriately denied and helps workers understand their benefits rights so they can make informed decisions about their health and retirement benefits. During FY 2015, EBSA’s benefits advisors responded to 201,894 inquiries (including 12,215 Affordable Care Act-related inquiries) and recovered \$402,893,000 for participants through informal dispute resolution. Since FY 2010, EBSA has been responding to the increase in inquiries resulting from the passage of the ACA and will continue to do so.

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

During FY 2015, EBSA conducted education and outreach events for workers, employers, plan officials, service providers and members of Congress and their staffs. These nationwide activities included assisting dislocated workers who are facing job loss by participating in 692 rapid response sessions reaching 20,949 workers; using a train-the-trainer format to inform Congressional staff in 261 district offices of EBSA programs for their use in constituent services; providing employees with information concerning their rights under the law and educating employers and their service providers of their obligations under ERISA. During FY 2015, EBSA conducted a total of 1,894 outreach activities reaching 73,317 individuals. The nationwide outreach program activities encompassed: 403 compliance assistance activities that included 22 briefings, 326 presentations, and 44 workshops that reached 22,808 participants; 999 regional participant assistance activities that included 31 briefings, 17 exhibits, 194 presentations, and 14 workshops that reached 36,567 participants; and 492 public awareness activities that included 169 briefings, 75 exhibits, 95 presentations and a workshop that reached 13,942 participants or stakeholders of the regulated community.

During FY 2015, EBSA conducted 300 ACA specific outreach activities reaching 14,363 individuals and nearly 430,000 publications were distributed via EBSA's toll-free publication hotline and at outreach events. All the publications were available and accessible on line. EBSA's Web site has become the Agency's primary means of reaching the public and in FY 2015 the Web site hosted over 7.7 million visitors, viewing over 9.6 million pages.

### ***Regulatory and Research Programs***

In FY 2015, EBSA pursued a proactive regulatory agenda that included completing 303 regulatory projects for the advancement of health care reform and retirement security, including 58 ACA projects. Specifically, 19 percent of regulatory projects (58 of 303 projects) were directly related to the implementation and administration of health care reform initiatives in areas involving health plan standards, MEWA registration, statistical research, policy and legislative analysis, and regulatory analysis. The Agency's regulatory efforts included projects involving: conflicts of interest rule – definition of fiduciary investment advice; target date fund disclosure regulatory initiative; pension benefit statement regulatory initiative; and Form 5500 modernization initiative.

On April 20, 2015, EBSA published a proposed rule for conflict of interest rule-retirement investment advice and related proposed prohibited transaction exemptions. The proposal was the subject of extensive public comments as well as a four-day public hearing. The proposed rule and associated exemptions update the rules and requirements governing investment advice so that retirement advisors put the best interests of their clients ahead of their own financial interests. EBSA and the Council of Economic Advisers have concluded that retirement investors currently lose billions of dollars each year as a result of investment advisers' conflicts of interest. The proposal will make more advisers fiduciaries; mitigate or eliminate dangerous conflicts of interest; and ensure that retirement investors can hold advisers accountable when they breach basic standards of fiduciary conduct and fair dealing.

Additionally, EBSA completed 1,317 technical and compliance assistance projects involving Part 7 of ERISA by providing technical/compliance assistance to plan sponsors and employers

## EMPLOYEE BENEFITS SECURITY PROGRAMS

for health plan standards involving health care reform; 370 technical and compliance assistance projects for health plan standards involving benefits security; 773 interpretive and technical assistance projects; 386 projects involving Mental Health Parity and Addiction Equity Act (MHPAEA) implementation; and 76 projects involving MEWA registration in FY 2015.

On March 30, 2015, EBSA transmitted the 2015 annual Self-Insured Group Health Plan Report to Congress. The Agency will coordinate with HHS and Treasury regarding a methodology for the third Mental Health Parity and Addiction Equity Act (MHPAEA) Report to Congress. EBSA will also consider any supplements to the second MHPAEA compliance report as more data becomes available. In addition to specific exemptions proposed for the conflict of interest rule, EBSA completed 77 individual exemption actions (includes EXPRO), processed nine (9) class exemptions and processed these exemptions within an average of 345 days in FY 2015.

### *Agency Oversight and Administrative Programs*

Effective human capital management requires the Agency to identify and recruit qualified candidates, train and develop them for current positions and prepare them for progressively more responsible positions within EBSA. To identify and recruit qualified, diverse entry-level employees, the Agency's recruitment teams conducted on-campus recruiting at local colleges and universities throughout the country. EBSA utilized internship programs at undergraduate, graduate and professional institutions. In FY 2015, a total of 75 employees were hired through recruitment and hiring programs (includes 26 employees through the Career Pathways Program). To enhance employee development and succession planning, the Agency utilized intra-agency development assignments, OPM-sponsored management development training, USDA Graduate School sponsored classes and seminars, and other management development assignments (e.g., developmental details, EBSA management courses and seminars, annual employee needs assessments). One hundred and thirty (130) EBSA employees completed such developmental assignments during FY 2015.

EBSA developed an extensive internal training curriculum to ensure that its employees have the technical knowledge needed to successfully meet strategic and performance goals. The training curriculum consisted of a two-part Basic Training Course, Benefits Advisor Training Course, Criminal Enforcement Training Course, Benefit Plan Accounting Course, Advanced Issues Course and an independent study course for the Introduction to Employee Benefits and Fiduciary Conduct. In FY 2015, EBSA trained approximately 419 employees in technical, professional and leadership areas, resulting in over 21,500 hours of training. These courses were designed to provide a foundation of legal knowledge and an understanding of industry practices required to effectively regulate the employee benefits industry and provide compliance assistance.

Lastly, EBSA effectively administered its responsibilities under the Debt Collection and Debt Collection Improvement Acts resulting in net final assessments of approximately \$17,591,715 and net collections of approximately \$17,824,646 in FY 2015<sup>2</sup>.

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<sup>2</sup> Civil penalties are assessed and collected on a continuing basis and may result in net collections exceeding net assessments in a given fiscal year.

## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>DETAILED WORKLOAD AND PERFORMANCE</b>					
		<b>FY 2015 Enacted</b>		<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>
		<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Employee Benefits Security Programs</b>					
<b>Strategic Goal 4 - Secure retirement, health, and other employee benefits and, for those not working, provide income security</b>					
<b>Strategic Objective 4.2 - Improve health benefits and retirement security for all workers</b>					
<b>Investigations Processed:</b>					
EBSA-1	Civil Investigations Processed	3,106	2,441	--	--
EBSA-2	Criminal Investigations Processed	332	275	--	--
EBSA-1a	Health Related Civil Investigations Processed	932	557	--	--
EBSA-2a	Health Related Criminal Investigations Processed	100	104	--	--
<b>Interpretations &amp; Other Technical Assist</b>					
	Health Plan Standards	2,800	2,149	2,150	2,150
	Regulations & Interpretations	775	773	775	775
EBSA-ENF	Delinquent Filer Voluntary Compliance Program Applications Processed	20,500	22,855	20,500	20,500
EBSA-ENF	Indictments	97[e]	61	97[e]	97[e]
EBSA-ENF	Reporting Compliance Reviews	4,330	4,020	4,330	4,330
EBSA-ENF	CPA Firm Inspections	10	2	10	10
EBSA-OEA	Rapid Response Sessions Held for Individuals Facing Job Loss	734[p]	692	734[p]	734[p]
EBSA-ENF	EFAST Help Desk Inquiries by Contractors	58,000	32,358	58,000	58,000



## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>DETAILED WORKLOAD AND PERFORMANCE</b>					
		<b>FY 2015 Enacted</b>		<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>
		<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
EBSA-OEA	EFAST Help Desk inquiries referred to EBSA	7,000	4,153	7,000	7,000
	Participant assistance program customer satisfaction index	72.00%	72.20%	72.00%	72.00%
	Regulations/Projects	267	303	290	299
	Individual Exemptions & EXPRO (Proposed & Granted)	80[e]	77	60[e]	60[e]
	Section 502(l) Waivers	2	9	3	3
	Exemption Processing Time (avg #days)	350	345	300	300
EBSA-OEA	Inquiries Answered (Participants)	250,000	201,894	250,000	250,000
EBSA-OE-01	Total Investigative Staff Time Spent on Major Cases	12.00%	18.00%	15.00%	15.00%
EBSA-OE-02	Civil Non-Major Case Timeliness – Percent of Non-Major Civil Cases Closed or Referred for Litigation in the fiscal year within 30 Months of Case Opening Except for Category EBSA-OE-02a Cases	85.00%	84.00%	86.00%	86.00%
EBSA-OE-02a	Percent of Delinquent Employee Contribution, Abandoned Plan, Bonding, Health-Part 7 Violation, and other Reporting and Disclosure Non-Fiduciary Breach Cases Closed or Referred for Litigation in the fiscal year within 18 Months of Case Opening	71.00%	71.00%	69.00%	69.00%
EBSA-OE-02b	Criminal Case Timeliness – Percent of Criminal Cases Closed or Referred for Litigation in the fiscal year within 18 Months of Case Opening	75.00%	87.00%	75.00%	75.00%
EBSA-OE-03	Voluntary Fiduciary Correction Program Applications Processed	1,600[p]	1,480	1,400[p]	1,400[p]

Legend: (r) Revised (e) Estimate (base) Baseline -- Not Applicable TBD - To Be Determined [p] - Projection

# EMPLOYEE BENEFITS SECURITY PROGRAMS

## Workload Summary

### *Enforcement, Compliance and Customer Assistance Programs*

Based on refinements in enforcement program direction and performance reporting, EBSA estimates increasing participant benefit recoveries and assets restored to plans by two to five percent from the current five-year rolling average of \$224,800,000. Successfully meeting this estimate will result in a \$4,496,000 to \$11,240,000 increase in monetary recoveries that are directly paid to plans, participants, and their beneficiaries, whether in the form of loss recoveries, disgorgement of unjust enrichment, or increased benefits payments. In the conduct of civil and criminal investigations, EBSA anticipates allocating 15 percent of total investigative time on major case enforcement, closing or referring for litigation 86 percent of its non-major cases within 30 months of case opening, closing or referring for litigation 69 percent of its other non-major cases (includes delinquent employee contribution, abandoned plan, bonding, health-part 7 and non-fiduciary breach cases) within 18 months of case opening, and closing or referring 75 percent of criminal cases for prosecution within 18 months of case opening.

Legacy workload and demand measures continuing into FY 2017 include, but are not limited to: securing 97 indictments through the criminal enforcement program; completing 4,330 reporting compliance reviews; processing an estimated 21,900 applications through voluntary compliance programs (Voluntary Fiduciary Correction Program and Delinquent Filer Voluntary Compliance Program); and responding to approximately 65,000 Electronic Filing Acceptance System help-desk inquiries. EBSA will continue to contract with qualified non-governmental organizations to provide Thrift Savings Plan (TSP) audit services with increasing focus on TSP's management of its IT systems, and the security of those systems.

EBSA will continue to operate and administer a strong consumer outreach and public education program in FY 2017. The Agency anticipates receiving 250,000 participant inquiries and estimates that recoveries obtained through informal, voluntary resolution of benefit disputes between employers, plan officials and participants will be approximately \$215,000,000. Additionally, EBSA will: conduct 734 rapid response sessions held for individuals facing job loss; conduct 250 Congressional office briefings; and complete 10 webcasts and 10 compliance seminars for plan sponsors and participants.

### *Regulatory and Research Programs*

EBSA will be positioned to effectively complete interpretative and other technical assistance projects. EBSA will complete an estimated 2,925 interpretive and other associated technical assistance projects/plan inquiries and targeted technical assistance. EBSA also estimates completing 299 regulatory projects involving interpretive issues, health plan standards, research statistical projects, policy and legislative analysis projects, regulatory analysis projects, MHPAEA implementation and MEWA registration requirements.

Additionally, EBSA will review and process class and individual exemption applications with the ultimate objective of protecting plans and their participants and beneficiaries while facilitating necessary business transactions. Specifically, EBSA has allocated sufficient

## **EMPLOYEE BENEFITS SECURITY PROGRAMS**

resources to close, propose or grant an estimated 60 individual exemption actions (includes EXPRO), complete project work on three (3) class exemptions and reduce exemption processing time to 300 days. Through these programs, the Agency provides guidance and engages the regulated community in achieving compliance while protecting the benefits of workers, retirees and their families.

### ***Agency Oversight and Administrative Programs***

EBSA will continue to ensure the execution of functions that include: (a) human capital management programs to build, sustain, and effectively deploy the skilled, knowledgeable, diverse, and high-performing workforce needed to meet current and emerging needs; (b) development of strategic training goals and delivery mechanisms that meet both programmatic and individual needs; (c) development of long term and annual performance plans and reports; (d) development and implementation of the agency Continuity of Operations Plan for continuation of critical agency operations in the event of a major disruption; (e) formulation, execution and evaluation of the agency budget; and (f) overall facilities management planning including space, telecommunications, mail, and printing management.

## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2015 Enacted</b>	<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>	<b>Diff. FY17 Request / FY16 Enacted</b>
11.1	Full-time permanent	89,722	90,675	94,555	3,880
11.3	Other than full-time permanent	1,363	1,047	1,061	14
11.5	Other personnel compensation	1,143	1,000	1,000	0
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>92,228</b>	<b>92,722</b>	<b>96,616</b>	<b>3,894</b>
12.1	Civilian personnel benefits	28,194	28,973	31,110	2,137
13.0	Benefits for former personnel	75	75	0	-75
21.0	Travel and transportation of persons	2,659	2,659	2,846	187
22.0	Transportation of things	16	20	28	8
23.1	Rental payments to GSA	11,231	10,550	11,499	949
23.2	Rental payments to others	0	41	0	-41
23.3	Communications, utilities, and miscellaneous charges	445	436	486	50
24.0	Printing and reproduction	633	750	750	0
25.1	Advisory and assistance services	717	0	0	0
25.2	Other services from non-Federal sources	7,988	7,043	17,113	10,070
25.3	Other goods and services from Federal sources 1/	14,391	17,305	18,071	766
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	5,000	4,500	4,500	0
25.7	Operation and maintenance of equipment	14,991	13,700	20,427	6,727
26.0	Supplies and materials	930	975	991	16
31.0	Equipment	1,502	1,251	1,324	73
38.0	Depreciation Expense - Unfunded	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>181,000</b>	<b>181,000</b>	<b>205,761</b>	<b>24,761</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	13,721	16,635	17,401	766
	DHS Services	670	670	670	0

# EMPLOYEE BENEFITS SECURITY PROGRAMS

## CHANGES IN FY 2017

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$1,108
Personnel benefits	1,199
Two days less of Pay	-960
Federal Employees' Compensation Act (FECA)	4
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	469
Rental payments to others	0
Communications, utilities, and miscellaneous charges	0
Printing and reproduction	0
Advisory and assistance services	0
Other services from non-Federal sources	0
Working Capital Fund	766
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of facilities	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
Insurance claims and indemnities	0

**Built-Ins Subtotal** **\$2,586**

**Net Program** **\$22,175**

**Direct FTE** **16**

	Estimate	FTE
<b>Base</b>	<b>\$183,586</b>	<b>949</b>
<b>Program Increase</b>	<b>\$22,175</b>	<b>16</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>