

**FY 2022**

**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, \$218,475,000 [\$181,000,000], of which up to \$3,000,000 shall be made available *until expended* [through September 30, 2022], for the procurement of expert witnesses for enforcement litigation.

*(Department of Labor Appropriations Act, 2021.)*

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>AMOUNTS AVAILABLE FOR OBLIGATION</b>						
(Dollars in Thousands)						
	<b>FY 2020 Revised Enacted</b>		<b>FY 2021 Enacted</b>		<b>FY 2022 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>840</b>	<b>\$181,000</b>	<b>805</b>	<b>\$181,000</b>	<b>990</b>	<b>\$218,475</b>
CARES Act (P.L. 116-127)	6	\$1,000	4	\$552	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	0	\$0	26	\$10,000	0	\$0
No Surprises Act (P.L. 116-260)	0	\$0	60	\$8,615	0	\$0
<i>Subtotal Appropriation</i>	<i>846</i>	<i>\$182,000</i>	<i>895</i>	<i>\$200,167</i>	<i>990</i>	<i>\$218,475</i>
Offsetting Collections From:						
Reimbursements	0	\$7,016	0	\$8,000	0	\$8,000
<i>Subtotal</i>	<i>846</i>	<i>\$189,016</i>	<i>895</i>	<i>\$208,167</i>	<i>990</i>	<i>\$226,475</i>
<b>B. Gross Budget Authority</b>	<b>846</b>	<b>\$189,016</b>	<b>895</b>	<b>\$208,167</b>	<b>990</b>	<b>\$226,475</b>
CARES Act (P.L. 116-127)	-6	-\$1,000	-4	-\$552	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	0	\$0	-26	-\$10,000	0	\$0
No Surprises Act (P.L. 116-260)	0	\$0	-60	-\$8,615	0	\$0
Offsetting Collections To:						
Reimbursements	0	-\$7,016	0	-\$8,000	0	-\$8,000
Shared Services Realignment	-14	\$0	0	\$0	0	\$0
<i>Subtotal</i>	<i>826</i>	<i>\$181,000</i>	<i>805</i>	<i>\$181,000</i>	<i>990</i>	<i>\$218,475</i>
<b>C. Budget Authority Before the Committee</b>	<b>826</b>	<b>\$181,000</b>	<b>805</b>	<b>\$181,000</b>	<b>990</b>	<b>\$218,475</b>
Offsetting Collections From:						
Reimbursements	0	\$7,016	0	\$8,000	0	\$8,000
Unobligated Balances From:						
Brought Forward, October 1 (Expert Witness)	0	\$0	0	\$1,559	0	\$0
Brought Forward, October 1 (CARES Act)	0	\$0	0	\$552	0	\$0
<i>Subtotal</i>	<i>826</i>	<i>\$188,016</i>	<i>805</i>	<i>\$191,111</i>	<i>990</i>	<i>\$226,475</i>
<b>D. Total Budgetary Resources</b>	<b>826</b>	<b>\$188,016</b>	<b>805</b>	<b>\$191,111</b>	<b>990</b>	<b>\$226,475</b>
FTE Lapse and Unobligated Balance Expiring	-1	\$0	0	\$0	0	\$0
FTE Lapse and Unobligated Balance Carryover (Expert Witness)	0	-\$1,559	0	\$0	0	\$0
FTE Lapse and Unobligated Balance Carryover (CARES Act)	-4	-\$552	0	\$0	0	\$0
Shared Services Realignment	14	\$0	0	\$0	0	\$0
<b>E. Total, Estimated Obligations</b>	<b>835</b>	<b>\$185,905</b>	<b>805</b>	<b>\$191,111</b>	<b>990</b>	<b>\$226,475</b>

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2021 Enacted	FY 2022 Request	Net Change
<b>Budget Authority</b>			
General Funds	\$181,000	\$218,475	+\$37,475
<b>Total</b>	<b>\$181,000</b>	<b>\$218,475</b>	<b>+\$37,475</b>
 <b>Full Time Equivalents</b>			
General Funds	805	990	185
<b>Total</b>	<b>805</b>	<b>990</b>	<b>185</b>

### FY 2022 Change

Explanation of Change	FY 2021 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	805	\$94,829	0	\$0	0	\$2,588	0	\$2,588
Personnel benefits	0	\$32,291	0	\$0	0	\$1,390	0	\$1,390
Employee health benefits	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$0	0	\$0	0	\$0	0	\$0
Benefits for former personnel	0	\$30	0	\$0	0	\$0	0	\$0
Travel and transportation of persons	0	\$612	0	\$0	0	\$0	0	\$0
Transportation of things	0	\$5	0	\$0	0	\$0	0	\$0
Rental payments to GSA	0	\$8,953	0	\$0	0	\$0	0	\$0
Rental payments to others	0	\$31	0	\$0	0	\$0	0	\$0
Communications, utilities, and miscellaneous charges	0	\$428	0	\$0	0	\$0	0	\$0
Printing and reproduction	0	\$570	0	\$0	0	\$0	0	\$0
Advisory and assistance services	0	\$180	0	\$0	0	\$0	0	\$0
Other services from non-Federal sources	0	\$3,785	0	\$0	0	\$0	0	\$0
Working Capital Fund	0	\$27,267	0	\$0	0	\$0	0	\$0
Other Federal sources (DHS Charges)	0	\$670	0	\$0	0	\$0	0	\$0
Other goods and services from Federal sources	0	\$720	0	\$0	0	\$0	0	\$0
Research & Development Contracts	0	\$1,200	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	\$7,500	0	\$0	0	\$0	0	\$0

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

FY 2022 Change

Explanation of Change	FY 2021 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Supplies and materials	0	\$1,096	0	\$0	0	\$0	0	\$0
Equipment	0	\$475	0	\$0	0	\$0	0	\$0
Insurance claims and indemnities	0	\$0	0	\$0	0	\$0	0	\$0
<b>Built-Ins Subtotal</b>	<b>805</b>	<b>+\$180,642</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>+\$3,978</b>	<b>0</b>	<b>+\$3,978</b>
<b>B. Programs:</b>								
Enforcement Restoration	805	\$184,870	0	\$0	150	\$27,083	150	\$27,083
Racial and Economic Equity	805	\$184,870	0	\$0	35	\$6,522	35	\$6,522
<b>Programs Subtotal</b>			<b>0</b>	<b>\$0</b>	<b>185</b>	<b>+\$33,605</b>	<b>185</b>	<b>+\$33,605</b>
<b>Total Increase</b>	<b>805</b>	<b>+\$180,642</b>	<b>0</b>	<b>\$0</b>	<b>185</b>	<b>+\$37,583</b>	<b>185</b>	<b>+\$37,583</b>
<b>Decreases:</b>								
<b>A. Built-Ins:</b>								
To Provide For:								
Federal Employees' Compensation Act (FECA)	0	\$358	0	\$0	0	-\$108	0	-\$108
<b>Built-Ins Subtotal</b>	<b>0</b>	<b>+\$358</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$108</b>	<b>0</b>	<b>-\$108</b>
<b>B. Programs:</b>								
<b>Total Decrease</b>	<b>0</b>	<b>+\$358</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>-\$108</b>	<b>0</b>	<b>-\$108</b>
<b>Total Change</b>	<b>805</b>	<b>+\$181,000</b>	<b>0</b>	<b>\$0</b>	<b>185</b>	<b>+\$37,475</b>	<b>185</b>	<b>+\$37,475</b>



## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY</b>								
(Dollars in Thousands)								
	FY 2020 Revised Enacted		FY 2021 Enacted		FY 2022 Request		Diff. FY22 Request / FY21 Enacted	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>Enforcement and Participant Assistance</b>	<b>730</b>	<b>147,140</b>	<b>710</b>	<b>147,400</b>	<b>0</b>	<b>0</b>	<b>-710</b>	<b>-147,400</b>
General Funds	730	147,140	710	147,400	0	0	-710	-147,400
<b>Policy and Compliance Assistance</b>	<b>68</b>	<b>26,511</b>	<b>68</b>	<b>26,901</b>	<b>0</b>	<b>0</b>	<b>-68</b>	<b>-26,901</b>
General Funds	68	26,511	68	26,901	0	0	-68	-26,901
<b>Executive Leadership, Program Oversight and Administration</b>	<b>27</b>	<b>7,349</b>	<b>27</b>	<b>6,699</b>	<b>0</b>	<b>0</b>	<b>-27</b>	<b>-6,699</b>
General Funds	27	7,349	27	6,699	0	0	-27	-6,699
<b>Employee Benefits Security Programs</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>990</b>	<b>218,475</b>	<b>990</b>	<b>218,475</b>
General Funds	0	0	0	0	990	218,475	990	218,475
<b>Total</b>	<b>825</b>	<b>181,000</b>	<b>805</b>	<b>181,000</b>	<b>990</b>	<b>218,475</b>	<b>185</b>	<b>37,475</b>
<b>General Funds</b>	<b>825</b>	<b>181,000</b>	<b>805</b>	<b>181,000</b>	<b>990</b>	<b>218,475</b>	<b>185</b>	<b>37,475</b>

NOTE: 2020 reflects actual FTE.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

<b>BUDGET AUTHORITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
	Full-Time Equivalent				
	Full-time Permanent	826	801	986	185
	Other	4	4	4	0
	<b>Total</b>	<b>830</b>	<b>805</b>	<b>990</b>	<b>185</b>
	Average ES Salary	\$187,388	\$194,015	\$199,253	\$5,238
	Average GM/GS Grade	12/9	12/9	12/9	0
	Average GM/GS Salary	\$104,237	\$105,279	\$108,121	\$2,842
11.1	Full-time permanent	88,601	91,507	105,331	13,824
11.3	Other than full-time permanent	1,049	907	1,059	152
11.5	Other personnel compensation	1,633	2,415	2,337	-78
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>91,283</b>	<b>94,829</b>	<b>108,727</b>	<b>13,898</b>
12.1	Civilian personnel benefits	30,109	32,649	43,587	10,938
13.0	Benefits for former personnel	30	30	30	0
21.0	Travel and transportation of persons	1,092	612	1,337	725
22.0	Transportation of things	22	5	58	53
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	10,769	8,953	11,188	2,235
23.2	Rental payments to others	31	31	31	0
23.3	Communications, utilities, and miscellaneous charges	421	428	454	26
24.0	Printing and reproduction	600	570	600	30
25.1	Advisory and assistance services	1,050	180	1,050	870
25.2	Other services from non-Federal sources	6,463	3,785	8,546	4,761
25.3	Other goods and services from Federal sources 1/	25,956	28,657	28,657	0
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	1,127	1,200	1,477	277
25.7	Operation and maintenance of equipment	10,464	7,500	10,964	3,464
26.0	Supplies and materials	1,071	1,096	1,107	11
31.0	Equipment	512	475	662	187
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>218,475</b>	<b>37,475</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	24,566	27,267	27,267	0
	DHS Services	670	670	670	0
	GSA Services	0	597	0	-597
	HHS Services	720	123	720	597

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## SIGNIFICANT ITEMS IN FY 2021 APPROPRIATIONS' REPORTS

[EMPLOYEE BENEFITS SECURITY ADMINISTRATION]

House Report 116-450 (page 210) – Mental Health Parity.—The Committee recognizes the important role Mental Health parity laws have in ensuring access to medical care and treatment. The Mental Health Parity and Addiction Equality Act (MHPAEA) requires insurers to cover care for mental health and substance use disorders at the same level as other medical and surgical care services. However, without proper oversight and compliance, patients are left fighting for coverage of benefits. The Committee is concerned there is still a lack of compliance among insurance companies not adequately covering mental and behavioral health services and providers more than 11 years after MHPAEA passed. In FY 2017, the Department of Labor (DOL) conducted 187 investigations and found 92 insurers were noncompliant. Furthermore, in December 2019, the Government Accountability Office reported that this lack of compliance extends beyond the DOL and includes Health and Human Services (HHS) employer-sponsored health plans. The Committee directs the Secretary of HHS to coordinate with the Secretary of Labor and the Secretary of the Treasury to create guidelines, within 90 days of enactment, in which all employer-sponsored health plans are required to submit an annual public compliance report, with the application of non-quantitative treatment limitations while ensuring that any proprietary, personal, or confidential consumer information is protected. The public compliance report shall be based on the Department of Labor's Self-Compliance Tool for the MHPAEA. The Secretary of HHS shall also annually report any auditing and enforcement of all plans.

Response: The Department of Labor (DOL) has consulted with the Department of Health and Human Services (HHS) on this matter. The Department notes that subsequent changes in law, included in the Consolidated Appropriations Act, 2021, generally require employer-sponsored health plans to develop documentation regarding their compliance with MHPAEA's NQTL requirements, which was effective February 10, 2021 and to make such documentation available upon request of the Secretary. The Departments, together with the Department of the Treasury released guidance on these requirements in April 2021, which can be accessed here: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-45.pdf>. The law also requires an annual report to Congress regarding the documentation requested by the Departments, with the first report due by December 27, 2021. This report is in addition to the biannual compliance report prepared by the Department.

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## 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>
2012					
Base Appropriation...1/	\$197,528	\$159,363	\$195,528	\$183,153	1,003
2013					
Base Appropriation...2/	\$183,153			\$173,573	993
2014					
Base Appropriation...3/	\$179,104			\$178,500	985
2015					
Base Appropriation...4/	\$188,447			\$181,000	963
2016					
Base Appropriation...5/	\$207,455	\$180,699	\$168,930	\$181,000	949
2017					
Base Appropriation...6/	\$205,761			\$181,000	925
2018					
Base Appropriation...7/	\$183,926	\$175,600		\$181,000	860
2019					
Base Appropriation...8/	\$189,500			\$181,000	840
2020					
Base Appropriation...9/	\$193,500	\$183,155		\$181,000	826
2021					
Base Appropriation...10/	\$192,738			\$181,000	805
2022					
Base Appropriation	\$218,475				990

<sup>1</sup> Reflects a reduction of \$347 pursuant to the enacted rescission in P.L. 112-74 and does not reflect re-programming levels.

<sup>2</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>3</sup> Reflects the full appropriation pursuant to P.L. 113-76 without enacted rescissions.

<sup>4</sup> Reflects the full appropriation pursuant to P.L. 113-235 without enacted rescissions.

<sup>5</sup> Reflects the full appropriation pursuant to P.L. 114-113 without enacted rescissions.

<sup>6</sup> Reflects the full appropriation pursuant to P.L. 115-31 without enacted rescissions.

<sup>7</sup> Reflects the full appropriation pursuant to P.L. 115-141 without enacted rescissions.

<sup>8</sup> Reflects the full appropriation pursuant to P.L. 115-245 without enacted rescissions.

<sup>9</sup> Reflects the full appropriation pursuant to P.L. 116-93 without enacted rescissions and impact of Shared Services Realignment.

<sup>10</sup> Reflects the full appropriation pursuant to P.L. 116-260 without enacted rescissions.

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## OVERVIEW

### Introduction

EBSA's mission is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. Although EBSA is a small agency, currently employing less than 800 people, it is responsible for protecting more than 154 million workers, retirees and their families who are covered by approximately 722,000 private retirement plans, 2.5 million health plans, and 885,000 other welfare benefit plans. Together, these plans hold estimated assets of \$11.8 trillion. In addition, the Agency has important interpretive and regulatory responsibilities with respect to IRAs, which hold about \$10.8 trillion in assets, and audit responsibilities with respect to the federal Thrift Savings Plan (TSP), which is the world's largest employee contributory plan with more than 6.0 million participants and more than \$769 billion in assets.

Employer-sponsored benefit plans are vital to the financial security and physical wellbeing of millions of workers, retirees, and their families. EBSA protects the public interest in retirement, health, and other benefits, and increases confidence that promised benefits will be available when needed. EBSA carries out its mission in a complex and evolving economic and regulatory environment. In order to enhance benefits security and maintain public confidence in the private benefits system, EBSA administers an integrated program of regulation, compliance assistance, public education, civil and criminal enforcement, and research and analysis.

### Employee Benefits Security Programs

EBSA manages an active outreach, education, and participant assistance program to inform workers and their families of their rights and benefits as well as to educate the regulated community regarding their responsibilities and obligations under the law. The Agency's enforcement program uses a wide variety of approaches such as the establishment of national and regional priorities, voluntary compliance programs, civil and criminal litigation, regulations and guidance, and research-based analysis to accomplish its mission. The economic research program informs the agency's regulatory, enforcement, and legislative work, and provides important information to the public and policymakers on benefit plans. The employee benefits security program consists of budget activities for enforcement and participant assistance, policy and compliance assistance, and executive leadership, program oversight and administration. EBSA's integrated 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.

### Agency Operating Plan

EBSA is determined to protect and improve the security and integrity of the nation's private benefit system, provide excellent service to the public it serves, and effectively steward taxpayer dollars. It strives to improve compliance with ERISA, recover losses for individuals and employee benefit plans, restore unjust profits resulting from misconduct by plan fiduciaries and service providers, and deter misconduct that jeopardizes plan benefits. An effective employee

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

benefits security program has overlapping and related attributes that include the prompt detection and pursuit of violations, successful pursuit of monetary recoveries, plan reforms, and the aggressive and timely pursuit of participant tips and complaints. In FY 2022, EBSA will continue to pursue national enforcement priorities and policies designed to have the greatest possible positive impact on plans and their participants. Special areas of focus include the pursuit of major health investigations, including investigations of potential MHPAEA violations and health fraud and mismanagement (e.g., cases involving fraudulent Multiple Employer Welfare Arrangements (MEWAs)). Important new areas of focus will also include promoting cybersecurity and ensuring implementation of all the new rights and obligations created by the Consolidated Appropriations Act of 2021.

EBSA avoids the use of enforcement metrics that give undue weight to cases that yield quick and easy results, such as cases involving technical violations, bonding, small delays in payment, or technical reporting and disclosure violations. EBSA takes a careful approach to performance measurement that avoids reliance on the number of cases processed as an important component of its metrics for the enforcement program. Instead, EBSA's metrics promote the agency's shift in recent years to promoting investigations that maximize the impact of EBSA's scarce resources and promote the Agency's strategic objectives and outcomes. Metrics include efficiency measures:

- 1) Major case monetary recoveries per major case staff day (the total value of major case monetary recoveries during the fiscal year divided by the number of staff days devoted to major cases during the year);
- 2) Monetary recoveries on major cases closed per staff day (the total value of recoveries obtained in closed major cases divided by the total staff days devoted to those investigations over the entire life of the investigations);
- 3) Timeliness of civil non-major cases closed or referred for litigation; and
- 4) Timeliness of criminal cases closed or referred for prosecution.

The metrics measure Major Case efficiency during two different periods. The *Major Case Monetary Recoveries per Major Case Staff Day* metric focuses on the aggregate recoveries obtained and time spent on major cases during a single fiscal year, while *Monetary Recoveries on Major Cases Closed per Staff Day* measures recoveries and time spent on a Major Case during the entire life of the investigation—from case opening to closing. Measuring the efficiency and effectiveness of the Major Case priority in these two different ways is necessary because of the significant time-lag between when resources are spent (investigative time) and when recoveries are achieved. Both metrics measure efficiency by linking inputs (investigative time) to outcomes (monetary recoveries). The measures also reflect better resource management that will lead to the identification of bad actors, the recovery of benefits to participants, and the more efficient use of investigative time. These metrics combine to give EBSA a fuller understanding of the efficiency and effectiveness of the Major Case priority.

## **EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

EBSA will continue to focus on helping workers transform retirement savings into secure lifetime income, and on protecting participants in pension plans, health plans, and other welfare plans through an integrated approach. As a general matter, this integrated strategy is reflected in the following employee benefits security programs:

- 1) Strategic Enforcement;
- 2) Informative Compliance Assistance;
- 3) Regulation;
- 4) Targeted Research;
- 5) Consumer Outreach and Public Education; and,
- 6) Participant Assistance and Customer Service.

EBSA is also making greater use of cross-regional and cross-office initiatives, as well as the development and deployment of teams of employees who have developed specialized expertise in particular enforcement or regulatory areas. The agency promotes efficiency by drawing on resources and expertise throughout the agency, rather than narrowly staffing cases based on rigid geographic office boundaries. EBSA has also rerouted incoming inquiries to our Benefits Advisor (BA) Program from one region to another, as necessary, to manage resource constraints.

EBSA is committed to achieving objectives delineated in the Agency Operating Plan and an Enterprise Shared Services delivery model for administrative functions. The purpose of the Enterprise Shared Services initiative is to create an administrative services delivery model that is streamlined, consistent, and efficient. Instead of directly funding information technology, procurement, personnel security, and human resources functions, the Department's current plan is that EBSA will use a shared services provider through the Working Capital Fund (WCF) and the proposed IT Working Capital Fund (IT WCF).

### **American Jobs Plan**

It is critical to ensure that good jobs created through the investments in the President's American Jobs Plan remain good jobs. To make this a reality, the Budget includes \$7.5 billion in mandatory funding for the Department's Worker Protection agencies to protect against discrimination, protect wages and benefits, enforce health and safety protections, and safeguard workers' rights.

### **FY 2022 Request**

Consistent with immediate Administration priorities to contain the COVID-19 crisis, advance a program of racial and economic equity, and expand Americans' access to quality, affordable health care, EBSA seeks \$218,475,000 and 990 FTEs. This resource request includes a program increase of \$33,605,000 and 185 FTEs for restoration of the enforcement program to levels prior to reductions pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act issued on March 1, 2013; the advancement of racial and economic equity with strong health enforcement, regulation, outreach, and education; as well as mandatory built-in increases totaling \$3,978,000 for estimated enacted pay and benefits adjustments.



## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

DOL also seeks an appropriations language change to make EBSA's account for the procurement and administration of expert witnesses for enforcement litigation available until expended (no-year funds), rather than available for 2 years as currently provided. An appropriation authorizing "no-year" funding for the expert witness program will create a flexible funding stream that could be used exclusively to fund and administer expert witness contracts. Having a funding stream that would remain available until expended enables the agency to procure the services of expert witnesses to support litigation of complex (health care and retirement security) cases for ERISA enforcement without interruption or disruption throughout the year. The Agency would be able to expend expert resources based on the needs of the case and court-imposed timelines, rather than the peculiarities of the procurement and budget calendars, which often are not well-aligned with court deadlines. The resource request encompasses programmatic efforts as follows:

**\$27,083,000 and 150 FTEs for Enforcement Program Restoration.** EBSA's budget remained flat for seven consecutive years, while it absorbed annual mandatory increases in salaries, working capital fund assessments, and other expenses.<sup>1</sup> As the agency budget has declined in real dollars, EBSA has had no option but to downsize. The impact on the enforcement program has been particularly severe, as EBSA has been unable to pursue many critical investigations necessary to ensure the solvency of self-funded health plans, the security of retirement benefits, and the integrity of plan assets. Despite an austere budget environment, EBSA continued to pursue Major Cases and enforcement priorities designed to have the greatest impact on plans and their participants. An especially stark example of the impact of the agency's limited budget on health protections is its inability to take an effective and proactive approach to protecting plan participants from fraudulent and mismanaged Multiple Employer Welfare Arrangements (MEWAs). While EBSA implemented strategies to leverage its limited investigative resources, it has also had to forgo targeting and conducting investigations in multiple areas, for example emerging investments in the financial markets, employing more aggressive targeting of M-1 non-filers of MEWAs, and resource intensive cases like disability plans. Similarly, EBSA has been unable to dedicate sufficient investigative resources to cases involving risky investment practices involving illiquid and hard to value assets, cybersecurity, and numerous categories of cases involving health and disability plans.

The opportunity cost to America's workers, retirees, and health plan participants of inadequately funding EBSA's enforcement program is severe. From the end of FY 2015 to the end of FY 2020, EBSA lost 89 investigators, which it cannot currently afford to replace. If each of those lost investigators had merely obtained the average recovery for EBSA investigators in FY 2020, the agency would have recovered an additional \$3.4 million per day – or, on an annual basis, more than three times EBSA's entire \$181 million budget. While EBSA does not expect to continue to obtain such extraordinarily large per-investigator recoveries as it gives increased attention to important health cases, such as MHPAEA cases, that are likely to generate less quantifiable results, it expects to continue to provide far greater benefits for each additional FTE than the costs it incurs. EBSA currently has less than one investigator for every twelve-thousand plans.

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<sup>1</sup> However, please note EBSA received Multi-Year Supplemental Appropriations in FY 2021.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

**\$6,522,000 and 35 FTEs for Advancement of Racial and Economic Equity.** To promote racial and economic equity, EBSA seeks \$6,522,000 and 35 FTEs to vigorously enforce ERISA health provisions. The investigation of fraudulent and mismanaged health arrangements, as well as enforcement of ERISA Part 7 protections will require additional resources. Further, the EBSA missing participant program has recovered billions of dollars in retirement benefits for elderly retirees and beneficiaries that plans had treated as “missing.” As part of its missing participant effort, the agency also intends to refocus on multiemployer and single employer plans with large participant populations of low wage earners, immigrants, and undocumented workers because of the increased danger of abuse and exploitation. This program plays a significant role in improving economic equity because of the vulnerable population it assists. With additional resources, EBSA will have the capacity to conduct additional health investigations and to continue its missing participant and abandoned plan efforts without diverting resources from other critical enforcement activities.

### **Multi-Year Supplemental Appropriations**

In the last year, EBSA has received three (3) supplemental appropriations:

- EBSA’s enforcement efforts regarding COVID-19 testing and vaccines include, but are not limited to, review of diagnosis codes related to COVID-19 to ensure that plans do not impose illegal cost-sharing requirements (including deductibles, copayments, and coinsurance) of any kind. EBSA is examining compliance with the COVID-19 payment mandates set forth in the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 in more than 30 pending investigations. The agency received a special appropriation of \$1,000,000 to undertake this and related work.
- The Omnibus and COVID Relief and Response Act of 2021 (the Act) included many amendments to ERISA that give health plan participants important new rights and imposed enormous new obligations on EBSA to write regulations and sub regulatory guidance, create new regulatory and dispute resolution structures, and enforce the law. The new provisions include fundamental changes to the law governing surprise medical bills, price transparency, fee disclosure, prescription drug coverage, reporting requirements, and enforcement of the legal requirements for parity between mental health and medical/surgical benefits. Implementing these new provisions will require EBSA and the Department to hire new staff with diverse backgrounds in legal, economic, and policy analysis; develop new analytic tools and structures; dramatically improve its health enforcement efforts, particularly with respect to the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA); and conduct training, education, and outreach. The Act also imposes aggressive statutory deadlines for rulemaking, as well as reporting requirements, including reports on full implementation and enforcement. Recognizing the size of the tasks assigned to the agencies, the Act appropriates up to \$500 million dollars over a four-year period for implementation. Those funds, however, had to be allocated between the Department of Labor, the Department of Health and Human Services (HHS), and the Treasury. Congress did not specify the allocation of funds between agencies, and EBSA has received \$8,615,000 in FY 2021 pursuant to that funding. Additional resources will be allocated for future fiscal years.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

- The American Rescue Plan Act of 2021 (ARPA) passed by Congress created an expansive program to subsidize Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage through September 30, 2021. EBSA has interpretive responsibility for the new provisions and responsibility to issue several model notices within 30 (or 45) days of passage, which it has done. In addition, EBSA is obligated to conduct public education and enrollment assistance, and to help plans comply with the law and plan participants to receive the benefits to which they are entitled. The relief proposal granted EBSA \$10 million in appropriations for implementation that is available until expended.

### **FY 2022 Activities, Strategies, and Program Workload**

EBSA will continue to focus its employee benefits security program on major cases. The Major Case Initiative concentrates resources on those investigations and issues that have the greatest impact on the protection of plan assets and participants' benefits (e.g., cases involving professional fiduciaries and service providers with responsibility for large numbers of plans and large amounts of plan assets and benefits). Special areas of focus include the pursuit of major health investigations, including investigations of potential MHPAEA violations and health fraud and mismanagement (e.g., cases involving fraudulent Multiple Employer Welfare Arrangements (MEWAs)), as well as investigations relating to the claims regulation, improper denial notices, and wrongful denials. Important new areas of focus will also include promoting cybersecurity and enforcing the new rights and obligations created by the Consolidated Appropriations Act of 2021. The agency will also continue to pursue claims based on the mismanagement of retirement assets, missing participants, and the full range of issues arising under Title I of ERISA.

In addition to its current MHPAEA initiative, EBSA intends to give increased attention to a wide variety of critical health enforcement topics, including investigations related to preventive services, pharmacy benefits managers (PBMs), newborn screening rules, expansion of the Women's Health and Cancer Rights Act (WHCRA) initiative, the adequacy and reasonableness of explanations of benefits (EOB) and other plan disclosures, compliance with the claims regulation, and work with States on MHPAEA compliance (including compliance with respect to fully-insured small group products), Employee benefits security program workload and demand measures continuing into FY 2022 include, but are not limited to: responding to an estimated 175,000 participant inquiries; obtaining 120 indictments through the criminal investigation program; completing 3,600 reporting compliance reviews; conducting 700 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 12 webcasts and 12 compliance seminars for plan sponsors and participants.

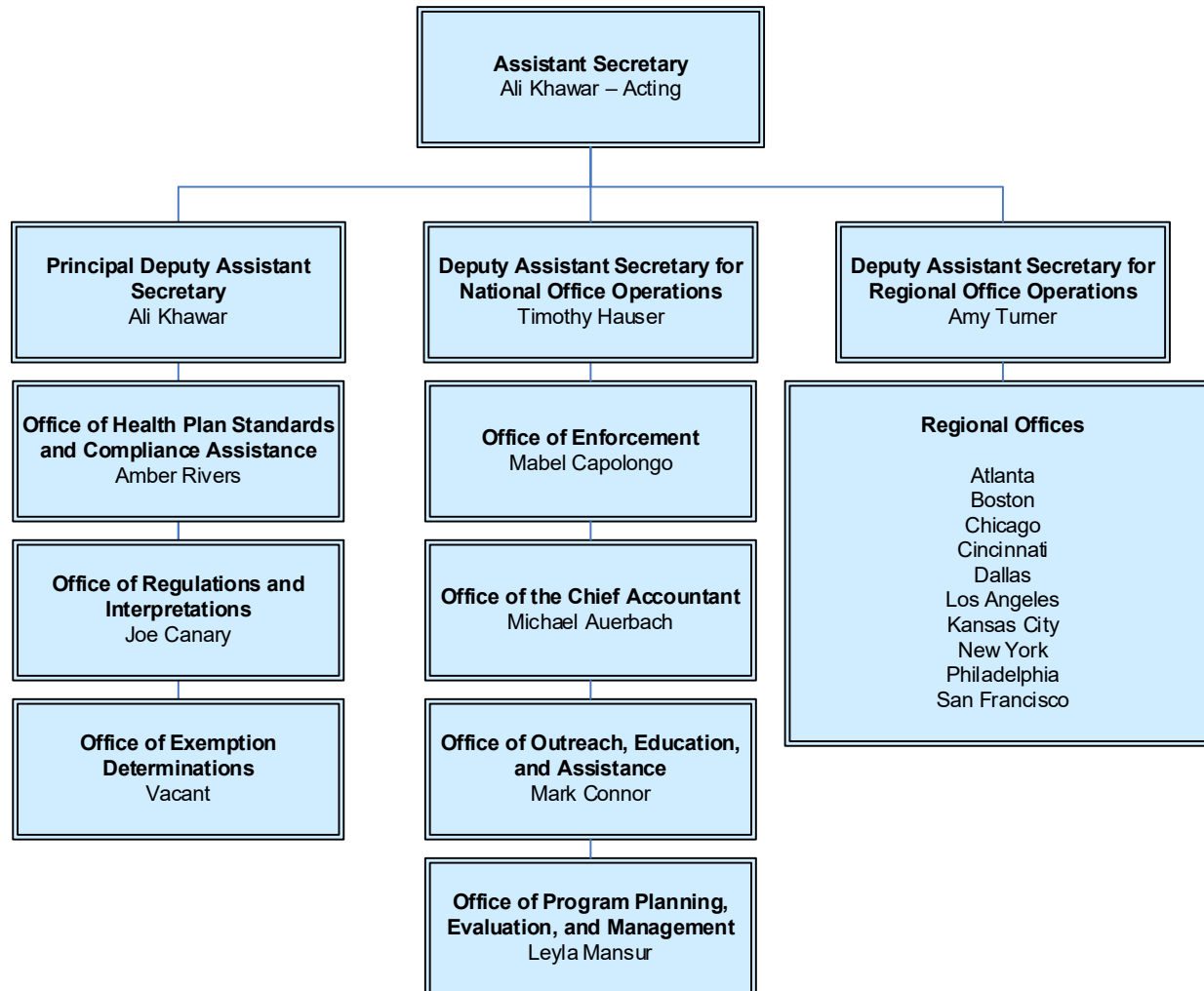
EBSA will continue to carry out the agency's interpretive activities concerning the provisions of ERISA and related statutes through the timely issuance of advisory opinions and field assistance bulletins addressing relevant interpretive issues raised by the regulated community or considered significant by the Department. EBSA will complete an estimated 3,864 interpretive and other associated technical assistance projects/plan inquiries and targeted technical assistance. EBSA will also pursue a proactive regulatory agenda that includes completing 351 regulatory projects

## **EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

to better protect health care and retirement benefits. These projects include providing guidance, developing regulatory standards, conducting statistical research, policy work, regulatory analysis, and issuing ERISA exemptions. EBSA has allocated sufficient resources to close, propose or grant an estimated 40 individual exemption actions (includes EXPRO), complete project work on four (4) class exemptions (including projects closed, proposed, or granted) and attain an exemption processing time of less than 375 days.

# EMPLOYEE BENEFITS SECURITY ADMINISTRATION

## ORGANIZATION CHART





## ENFORCEMENT AND PARTICIPANT ASSISTANCE

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
<b>Activity Appropriation</b>	<b>147,140</b>	<b>147,400</b>	<b>0</b>	<b>-147,400</b>
FTE	730	710	0	-710

NOTE: FY 2020 reflects actual FTE. Authorized FTE for FY 2020 was 730.

### **Introduction**

Through this budget activity, EBSA develops and implements a comprehensive enforcement program using civil and criminal investigations that focus on 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 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.

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 resolve disputes informally thereby obtaining benefits for workers and their families. This informal dispute resolution process enables EBSA to respond effectively to participant complaints without using 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 may never 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. Plan participants are in the best position to ensure they receive all the benefits to which they are entitled and to bring

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

potential violations to the attention of EBSA, when they know their rights. Accordingly, EBSA's 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 endeavors to work 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 promotes 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 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 activities, comprise essential databases for the agency's research and regulatory activities, and are the primary sources of employee benefit plan information for 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 data provided by the electronic filing system support IRS oversight of private-sector retirement and health plans and directly affect the PBGC's ability to manage the risks associated with underfunded defined benefit plans.

### **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 work involving pension or health care issues performed on the other agencies' behalf.

FY 2022 Request: The FY 2022 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.



# ENFORCEMENT AND PARTICIPANT ASSISTANCE

## Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2017	\$147,400	821
2018	\$147,400	762
2019	\$147,400	744
2020	\$147,400	730
2021	\$147,400	710

## FY 2022

EBSA seeks \$178,348,000 and 863 FTEs for the enforcement and participant assistance budget activity. This resource request includes program increases totaling \$27,716,000 and 153 FTEs to contain the COVID-19 crisis, advance a program of racial and economic equity, expand Americans' access to quality, affordable health care, and restore EBSA to former staffing levels as necessary to effectively safeguard the security and integrity of retirement, health, and other welfare benefits. This request also includes \$3,340,000 for mandatory built-in increases for estimated enacted pay and benefits adjustments.

Because the agency budget had been held flat for seven consecutive years, EBSA has had no option but to downsize<sup>2</sup>. The impact on the enforcement program has been particularly severe, as EBSA has found it difficult to pursue critical investigations necessary to ensure the solvency of self-funded health plans, the security of retirement benefits, and the integrity of plan assets. The opportunity cost to America's workers, retirees, and health plan participants of inadequately funding EBSA's enforcement program is severe. From the end of FY 2015 to the end of FY 2020, EBSA lost 89 investigators, which it cannot currently afford to replace. If each of those lost investigators had merely obtained the average recovery for EBSA investigators in FY 2020, the agency would have recovered an additional \$3.4 million per day – or, on an annual basis, more than three times EBSA's entire \$181 million budget. EBSA currently has less than one investigator for every twelve-thousand plans. Accordingly, EBSA is proposing a program increase of \$22,389,000 and 124 FTEs to partially restore enforcement resources to levels prior to reductions pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act issued on March 1, 2013. While this does not fully restore EBSA's staffing to its former levels, it does vastly improve EBSA's ability to pursue numerous categories of important under-resourced enforcement issues effectively. Some examples follow:

- **MEWA enforcement:** EBSA could take a more proactive approach to MEWA enforcement with additional resources. Self-funded MEWAs, in particular, are prone to fraud and mismanagement. All too often, they collapse, leaving millions of dollars in unpaid health claims and tens of thousands of participants uninsured. As a rule, however, EBSA only learns about these cases after catastrophe has occurred and participants complain about unpaid bills. This request begins to provide the resources necessary to review the financial records and management practices of these entities before it is too late to prevent serious injury. With these resources, EBSA could begin to pursue a

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<sup>2</sup> However, please note as detailed on p. 5, EBSA received Multi-Year Supplemental Appropriations in FY 2021.

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

better strategy to support expanded and enhanced civil and criminal investigations (including a periodic review of all filers); development of effective early warning systems for the detection of fraud and insolvency; expanded analytic capabilities (and authorities) for the review of MEWAs' financial condition; increased regulatory work to strengthen MEWAs' annual filing requirements; and far greater compliance support and assistance than EBSA can currently afford.

- **Financial enforcement:** EBSA's ability to monitor plans and fiduciaries to ensure that assets are held and invested in a prudent manner would be enhanced with these additional resources. Accordingly, EBSA would begin to move beyond only investigating a very small percentage of cases involving important financial vehicles and practices. With more robust investigations, EBSA could do a far better job of protecting plan participants from injuries caused by violations of ERISA's prudence, loyalty, and prohibited transaction requirements:
  - Collective investment trusts have become a growing source of plan investments, holding 29 percent of plan assets in 2018. But the Form 5500, as currently constituted does not capture the data EBSA would need to readily identify the arrangements' underlying assets. EBSA's ability to police these arrangements would be improved with greater funding and access to better data.
  - Alternative investments, hedge funds, private equity and real estate are often high-risk, high-fee, and illiquid investments. There are chronic issues of imprudence, self-dealing, and excessive fees with respect to these investments, but EBSA has lacked the resources necessary to pursue investigations of these categories of investments effectively.
  - Under the Secure Act, pooled plan providers have begun offering a new type of employee benefit plan that does not have the same nexus between participating employers as was previously required of ERISA plans. Because of the financial opportunity these arrangements present for large financial institutions, they are likely to grow quite large quite quickly. Through this request, EBSA could add staff to monitor the providers, develop guidance, and provide oversight. The early days of a new program like this could be critical for the future. These additional resources are necessary for training investigators, hiring financial analysts, developing and acquiring performance analysis software and training, hiring expert witnesses, developing tools for financial investigations, and obtaining Bloomberg terminals.
- **Cybersecurity.** Through this request, EBSA expects to expand the number of civil and criminal investigations involving identity theft and/or cybersecurity breaches. Recent cyberattacks against pension and welfare plans illustrate third party administrators' (TPAs') vulnerability to cybersecurity risk. With additional enforcement funds, EBSA could expand targeting efforts to focus on unregulated

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

TPAs to identify patterns of weak security systems instead of relying on complaints; hire or develop cybersecurity experts; include effective cyber-security reviews as part of the routine audit opened under other issues; expand its data systems to capture cyber-security complaints; and take other actions.

EBSA seeks to advance a program of racial and economic equity through increased enforcement of ERISA health provisions other than those implicated by the Consolidated Appropriations Act of 2021, as well as the continued pursuit of the agency's missing participant program. To this end, EBSA seeks a program increase of \$5,327,000 and 29 FTEs as part of the FY 2022 budget request. The investigation of fraudulent and mismanaged health arrangements, as well as enforcement of ERISA Part 7 protections will require additional resources. These cases include investigations involving health fraud and mismanagement, as well as cases relating to the claims regulation, improper denial notices, and wrongful denials.

Further, the EBSA missing participant program has recovered billions of dollars in retirement benefits for elderly retirees and beneficiaries that plans had treated as "missing." As part of its missing participant effort, the agency also intends to refocus on multiemployer and single employer plans with large participant populations of low wage earners, immigrants, and undocumented workers because of the increased danger of abuse and exploitation. This program plays a significant role in improving economic equity because of the vulnerable population the agency has been able to assist. With additional resources, EBSA will have the capacity to conduct additional health investigations and to vigorously continue its missing participant and abandoned plan efforts without diverting resources from other critical enforcement activities. Through this program, EBSA has been enormously successful at protecting vulnerable elderly populations by ensuring that retirees and their beneficiaries receive promised benefits after they are no longer wage-earners and often have little other income. In many of EBSA's cases, the participants were struggling to make ends meet with small social security checks and wholly unaware that they were entitled to retirement incomes. The agency has protected workers from having to choose between their medicine and their groceries and restored a measure of financial security to struggling retirees. During FY 2020, EBSA restored lost pension benefits worth nearly \$1.5 billion to over 29,600 terminated vested participants. EBSA also recovered an additional \$500 million for participants in abandoned plans. These figures reflect dollars restored to individuals, not paper transactions or fines paid to the Treasury.

EBSA will also 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., cases involving professional fiduciaries and service providers with responsibility for large amounts of plan assets and benefits). Because DOL shares interpretive and enforcement jurisdiction over MHPAEA with the Departments of Health and Human Services and the Treasury, EBSA will continue to work with its federal and state agency partners to ensure timely promulgation of regulations and consistent enforcement of mental health law provisions. 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. EBSA will update, print and distribute publications which explain participant rights and plan sponsor responsibilities. The Agency will also conduct local seminars and national webcasts for its compliance assistance constituencies.

## **ENFORCEMENT AND PARTICIPANT ASSISTANCE**

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), American Association For Retired Persons (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.

### **FY 2021**

EBSA Major Case time performance metrics measure efficiency by linking outputs (investigative time) to outcomes (monetary recoveries). EBSA anticipates closing or referring for litigation 76 percent of its non-major cases (includes delinquent employee contribution, abandoned plan, bonding, health part 7 and non-fiduciary breach cases) within 18 months of case opening. Legacy benefits security program workload and demand measures continuing into FY 2021 include, but are not limited to: responding to an estimated 175,000 participant inquiries; processing an estimated 21,700 applications through the Agency's voluntary compliance programs (Voluntary Fiduciary Correction Program and Delinquent Filer Voluntary Compliance Program); obtaining 102 indictments through the criminal investigation program; completing 3,300 reporting compliance reviews; responding to approximately 47,000 Electronic Filing Acceptance System help-desk inquiries; conducting 600 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 10 webcasts and 12 compliance seminars for plan sponsors and participants.

### **FY 2020**

In FY 2020, EBSA closed 1,122 civil investigations with 754 of those cases (67 percent) resulting in monetary results for plans or other corrective action. Recoveries on behalf of terminated vested participants played a large role in these results. In total, EBSA's enforcement program helped over 29,600 terminated vested participants in defined benefit plans collect benefits of over \$1.48 billion owed to them. Terminated vested results represent a combination of the present values of lifetime annuity payments made to participants and beneficiaries, or cash-out lump sum balance payments, plus interest distributions paid as either retroactive lump sums or included in actuarially adjusted future annuity amounts.

In addition to monetary results, EBSA's enforcement program also obtains non-monetary corrections and injunctive relief that result in increased protections for plan assets or benefits.

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

These actions can range from removing or barring plan fiduciaries from positions of plan responsibility to the appointment of independent fiduciaries and implementation of new plan procedures. During FY 2020, EBSA obtained significant non-monetary results in over 400 cases. EBSA often pursues voluntary compliance as a means to correct violations and restore losses to employee benefit plans. However, in cases where voluntary compliance efforts have failed, or are inappropriate, EBSA forwards a recommendation to the Solicitor of Labor to initiate litigation. In FY 2020, EBSA referred 82 cases for litigation. Together, EBSA and the Solicitor of Labor determine which cases are appropriate for litigation, after considering the ability to obtain meaningful relief through litigation, the cost of litigation, viability of other enforcement options, and agency enforcement priorities. Even after referral to the Solicitor of Labor for litigation, the Department can often resolve the claims for monetary relief without filing suit.

EBSA also has responsibility to investigate potential violations of the criminal provisions of ERISA and those provisions of Title 18 of the United States Code that relate to employee benefit plans. EBSA conducts most of its criminal investigations with other federal law enforcement agencies under the direction of the United States Attorney for that jurisdiction. Other investigations are conducted in consultation with the appropriate state or local law enforcement authority. In FY 2020, EBSA closed 230 criminal investigations. EBSA's criminal investigations, including investigations worked in tandem with other law enforcement agencies, led to the indictment of 70 individuals – including plan officials, corporate officers, and service providers – for offenses related to employee benefit plans.

The Abandoned Plan Program facilitates the termination of, and distribution of benefits from individual account pension plans abandoned by their sponsoring employers. During FY 2020, EBSA received 1,161 applications from Qualified Termination Administrators and closed 1,110 applications with terminations approved. In total, 882 plans made distributions of \$54 million directly to participants pursuant to such terminations. The Abandoned Plan Program has steadily grown over the years. The growth is attributable to several factors. First, as an outcome of EBSA's enforcement actions, a number of service providers have adopted internal procedures to continually identify and wind up abandoned plans pursuant to the Abandoned Plan Program. In addition, as service providers build internal competencies, they increase their engagement with the program. For example, one Qualified Termination Administrator had increased the amount of plan assets distributed from approximately \$5.9 million in FY 2019 to \$13.9 million in FY 2020. Finally, the size of the plans terminated in the program has increased from FY 2019 to FY 2020. In FY 2019, only three plans had distributions in excess of \$1 million, while in FY 2020 eight plans had more than \$1 million in total distributions. EBSA expects this growth pattern to continue during the coming years as enforcement efforts continue to draw more applications into the program. For example, we expect 5,000 applications related to \$524 million to be submitted under the program if two current investigations are successful. EBSA plans to continue to focus on custodial abandoned plans to ensure providers have procedures in place to handle abandoned plans as they occur.

EBSA's Voluntary Fiduciary Correction Program (VFCP) and Delinquent Filer Voluntary Compliance Program (DFVCP) encourage the correction of violations of ERISA by providing significant incentives for fiduciaries and others to self-correct. The VFCP allows plan officials who have identified specified violations of ERISA to take corrective action to remedy the

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

breaches and voluntarily report the violations to EBSA, without becoming the subject of an enforcement action. In FY 2020, EBSA received 1,309 applications for the VFCP. The DFVCP encourages plan administrators to bring their plans into compliance with ERISA's filing requirements. EBSA received 19,624 annual reports through this program in FY 2020. Additionally, the EFAST2 Help Desk handled over 20,000 filer inquiries to help filers meet their reporting obligations.

When workers experience a problem with an employee benefit plan, they can directly contact EBSA Benefit Advisors for assistance. In FY 2020, EBSA's Benefits Advisors closed more than 171,000 inquiries and recovered \$456.3 million in benefits on behalf of workers and their families through informal resolution of individual complaints. Many of the inquiries came through via EBSA's toll-free number 1-866-444-EBSA (3272), and the website at [askebsa.dol.gov](http://askebsa.dol.gov). These inquiries sometimes lead to enforcement actions. When EBSA becomes aware of repeated complaints with respect to a particular plan, employer, or service provider, or when there is information indicating a violation of ERISA, the matter will be referred for investigation. In FY 2020, EBSA opened 357 new investigations from Benefits Advisors referrals.

EBSA also conducts education and outreach events for workers, employers, plan officials and members of Congress. These nationwide activities include assisting dislocated workers who are facing job loss, educating employers of their obligations under ERISA, using a train-the-trainer format to inform Congressional staff of EBSA programs for their use in constituent services, and providing employees with information concerning their rights under the law. In FY 2020, EBSA conducted 3,425 activities reaching 40,371 individuals. Outreach conducted included 3,163 events for dislocated workers who are facing job loss, 240 compliance assistance events to educate employers about their obligations under ERISA, and 218 Congressional service staff briefings.

EBSA also reaches workers, retirees, employers, plan service providers, and the public through its printed materials and website at [www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa). English and Spanish language publications featuring participant and compliance assistance information are available through EBSA's toll-free number. Publications are also available electronically on its website. Visitors to the EBSA website can view and receive consumer information, relevant laws and regulations, technical guidance, seminar and webcast schedules, and other valuable resources. EBSA believes these results demonstrate a strong, fair, and effective program that protects the benefits of America's workers and retirees.

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

<b>WORKLOAD AND PERFORMANCE SUMMARY</b>					
		<b>FY 2020 Revised Enacted</b>		<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>
		<b>Target</b>	<b>Result</b>	<b>Target</b>	<b>Target</b>
<b>Enforcement and Participant Assistance</b>					
<b>Strategic Goal 12 - Ensure Safe Jobs, Essential Protections, and Fair Workplaces</b>					
<b>Strategic Objective 2.3 - Improve the security of retirement, health, and other workplace-related benefits for America’s workers and their families.</b>					
EBSA-OE-01	Major Case Monetary Recoveries per Major Case Staff Day	\$39,996	\$135,288	\$69,871	\$69,871
EBSA-OE-01a	Monetary Recoveries on Major Cases Closed per Staff Day	\$29,271	\$86,759	\$61,288	\$61,288
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	76%	84%	76%	76%

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

## **ENFORCEMENT AND PARTICIPANT ASSISTANCE**

### **Workload and Performance Summary**

#### **FY 2022**

EBSA anticipates closing or referring for litigation 76 percent of its non-Major Cases (includes delinquent employee contribution, abandoned plan, bonding, health part 7 and non-fiduciary breach cases) within 18 months of case opening. Other benefits security program workload and demand measures continuing into FY 2022 include, but are not limited to: responding to an estimated 175,000 participant inquiries; processing an estimated 21,300 applications through the Agency's voluntary compliance programs (Voluntary Fiduciary Correction Program and Delinquent Filer Voluntary Compliance Program); obtaining 120 indictments through the criminal investigation program; completing 3,600 reporting compliance reviews; responding to approximately 20,500 Electronic Filing Acceptance System help-desk inquiries; conducting 700 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 12 webcasts and 12 compliance seminars for plan sponsors and participants.

#### **FY 2021**

EBSA anticipates closing or referring for litigation 76 percent of its non-Major Cases (includes delinquent employee contribution, abandoned plan, bonding, health part 7 and non-fiduciary breach cases) within 18 months of case opening. Other benefits security program workload and demand measures continuing into FY 2021 include, but are not limited to: responding to an estimated 175,000 participant inquiries; processing an estimated 21,700 applications through the Agency's voluntary compliance programs (Voluntary Fiduciary Correction Program and Delinquent Filer Voluntary Compliance Program); obtaining 102 indictments through the criminal investigation program; completing 3,300 reporting compliance reviews; responding to approximately 47,000 Electronic Filing Acceptance System help-desk inquiries; conducting 600 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 10 webcasts and 12 compliance seminars for plan sponsors and participants.

#### **FY 2020**

In FY 2020, EBSA restored over \$3.1 billion to employee benefit plans, participants and beneficiaries. Over \$2.6 billion of these recoveries resulted from investigations. EBSA investigations also led to the indictment of 70 persons for crimes related to employee benefit plans. EBSA received 1,161 applications from Qualified Termination Administrators and closed 1,110 applications with terminations approved. In total, 882 plans made distributions of \$54 million directly to participants pursuant to such terminations.

EBSA's Voluntary Fiduciary Correction Program (VFCP) and Delinquent Filer Voluntary Compliance Program (DFVCP) encourage the correction of violations of ERISA by providing significant incentives for fiduciaries and others to self-correct. The VFCP allows plan officials who have identified specified violations of ERISA to take corrective action to remedy the



## **ENFORCEMENT AND PARTICIPANT ASSISTANCE**

breaches and voluntarily report the violations to EBSA, without becoming the subject of an enforcement action. In FY 2020, EBSA received 1,309 applications for the VFCP. The DFVCP encourages plan administrators to bring their plans into compliance with ERISA's filing requirements. EBSA received 19,624 annual reports through this program in FY 2020. Additionally, the EFAST2 Help Desk handled over 20,000 filer inquiries to help filers meet their reporting obligations.

When workers experience a problem with an employee benefit plan, they can directly contact EBSA Benefit Advisors for assistance. In FY 2020, EBSA's Benefits Advisors closed more than 171,000 inquiries and recovered \$456.3 million in benefits on behalf of workers and their families through informal resolution of individual complaints. EBSA also conducts education and outreach events for workers, employers, plan officials and members of Congress. These nationwide activities include assisting dislocated workers who are facing job loss, educating employers of their obligations under ERISA, using a train-the-trainer format to inform Congressional staff of EBSA programs for their use in constituent services, and providing employees with information concerning their rights under the law. In FY 2020, EBSA conducted over 3,420 education and outreach events. EBSA believes these results demonstrate a strong, fair, and effective program that protects the benefits of America's workers and retirees.

## ENFORCEMENT AND PARTICIPANT ASSISTANCE

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
11.1	Full-time permanent	74,754	78,531	0	-78,531
11.3	Other than full-time permanent	942	697	0	-697
11.5	Other personnel compensation	1,293	2,012	0	-2,012
11.8	Special personal services payments	0	0	0	0
11.9	<b>Total personnel compensation</b>	<b>76,989</b>	<b>81,240</b>	<b>0</b>	<b>-81,240</b>
12.1	Civilian personnel benefits	24,470	26,354	0	-26,354
13.0	Benefits for former personnel	30	30	0	-30
21.0	Travel and transportation of persons	980	469	0	-469
22.0	Transportation of things	22	5	0	-5
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	8,916	7,358	0	-7,358
23.2	Rental payments to others	31	31	0	-31
23.3	Communications, utilities, and miscellaneous charges	291	183	0	-183
24.0	Printing and reproduction	440	367	0	-367
25.1	Advisory and assistance services	1,050	180	0	-180
25.2	Other services from non-Federal sources	5,960	3,435	0	-3,435
25.3	Other goods and services from Federal sources 1/	19,217	20,918	0	-20,918
25.4	Operation and maintenance of facilities	0	0	0	0
25.7	Operation and maintenance of equipment	7,976	6,095	0	-6,095
26.0	Supplies and materials	501	485	0	-485
31.0	Equipment	267	250	0	-250
38.0	Depreciation Expense - Unfunded	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	<b>Total</b>	<b>147,140</b>	<b>147,400</b>	<b>0</b>	<b>-147,400</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	18,073	19,774	0	-19,774
	DHS Services	547	547	0	-547
	GSA Services	0	597	0	-597
	HHS Services	597	0	0	0

# ENFORCEMENT AND PARTICIPANT ASSISTANCE

## CHANGES IN FY 2022

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$2,173
Personnel benefits	1,167
Federal Employees' Compensation Act (FECA)	-108
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
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	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	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** **\$3,232**

**Net Program** **\$27,716**

**Direct FTE** **153**

	Estimate	FTE
<b>Base</b>	<b>\$150,632</b>	<b>710</b>
<b>Program Increase</b>	<b>\$27,716</b>	<b>153</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>



## POLICY AND COMPLIANCE ASSISTANCE

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
<b>Activity Appropriation</b>	<b>26,511</b>	<b>26,901</b>	<b>0</b>	<b>-26,901</b>
FTE	68	68	0	-68

NOTE: FY 2020 reflects actual FTE. Authorized FTE for FY 2020 was 71.

### **Introduction**

EBSA constantly seeks to improve policy and regulatory programs and routinely evaluates and adjusts regulatory activities. 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 continue its research activities relating to employer-sponsored pension and health benefit plans. 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 pension plans (and also authorizes the Secretary to do so with respect to health and other welfare benefit plans);
- *Self-insured health plans* – The Patient Protection and Affordable Care Act (P.L. 111-148) requires the Secretary of Labor to submit to Congress an annual report on self-insured employee health benefit plans; and
- *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.

Through this budget activity, EBSA pursues discretionary research on health and other benefits, and assists in the development of Administration legislative policy to promote the President’s priorities. 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 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.

## POLICY AND COMPLIANCE ASSISTANCE

### Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2017	\$26,901	79
2018	\$26,901	73
2019	\$26,901	71
2020	\$26,901	71
2021	\$26,901	68

### FY 2022

EBSA seeks \$31,807,000 and 92 FTEs for the policy and compliance assistance budget activity. The request level for this budget activity includes a program increase of \$4,430,000 and 24 FTEs for the restoration of critical staff necessary to support regulatory and rulemaking priorities promulgated by the Unified Regulatory Agenda and to support regulatory and compliance assistance efforts to advance a program of racial and economic equity through guidance related to missing participants. This request also includes mandatory built-in increases totaling \$476,000 for estimated enacted pay and benefits adjustments.

This budget provides resources that enable EBSA to sustain and support priorities established in the unified regulatory agenda. Fiduciary education, regulations, exemptions, compliance assistance, policy and research, and interpretive guidance substantially contribute to the protection of employee pension and health benefits. 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 FY 2022, EBSA will continue to carry out interpretive activities concerning the provisions of ERISA and related statutes through the timely issuance of advisory opinions, FAQs, field assistance bulletins and other documents addressing relevant interpretive issues raised by the regulated community or considered significant by the Department. EBSA will also pursue a regulatory agenda that includes completing regulatory projects for the advancement of health care reform (includes surprise medical billing provisions) and retirement security. These projects include providing guidance, developing regulatory standards, conducting statistical research, policy, regulatory analysis, and issuing ERISA exemptions.

EBSA will also 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). Through these comprehensive compliance assistance and regulatory programs, EBSA provides guidance, engages with the regulated community and promotes compliance while protecting the benefits of workers, retirees and their families.

## **POLICY AND COMPLIANCE ASSISTANCE**

### **FY 2021**

In FY 2021, 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. EBSA will also pursue a regulatory agenda that includes completing regulatory projects for the advancement of health care reform (including surprise medical billing provisions) and retirement security. EBSA will also continue to advance the Administration priority to expand Americans' access to quality, affordable health care 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 also conduct rulemaking and regulatory efforts required by the Consolidated Appropriations Act of 2021, and work proactively to enforce and administer these new provisions.

EBSA will provide guidance, engage with the regulated community and promote compliance while protecting the benefits of workers, retirees and their families. In addition, the agency will engage in demanding program activities related to Multiple Employer Welfare Arrangements (MEWA), the Mental Health Parity and Addiction Equity Act (MHPAEA), and the Consolidated Appropriations Act of 2021. These program activities will increase the agency's workload substantially in FY 2021. EBSA estimates that it will respond to approximately 3,401 interpretive, targeted, and other associated technical assistance inquiries (including 195 related to MEWAs and 445 for MHPAEA implementation). EBSA also estimates completing 315 regulatory projects involving interpretive issues, health plan standards, research projects, and policy, legislative, and regulatory analysis projects, MHPAEA implementation and MEWA registration and other requirements, and issuing ERISA exemptions. The FY 2021 Consolidated Appropriations Act places additional workload burden on the policy and compliance assistance budget activity because of its impact on a broad spectrum of the agency's central functions and activities.

In FY 2021, 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 35 individual exemption actions (includes EXPRO), complete project work on three (3) class exemptions (includes closed, proposed, or granted) and attain an exemption processing time of less than 375 days.

### **FY 2020**

In FY 2020, EBSA pursued a proactive regulatory agenda that included completing 392 regulatory projects to better protect employee health benefits and retirement security. The projects included interpretive guidance, health plan standards, MHPAEA implementation, MEWA registration, class exemptions (closed, proposed or granted), statistical research, policy and legislative analysis, and regulatory analysis. Important related regulations include rules relating to the use of financial factors in selecting plan investments and ensuring transparency in health plan coverage. The transparency rulemaking implemented portions of Executive Order

## **POLICY AND COMPLIANCE ASSISTANCE**

13877 (“Improving Price and Quality Transparency in American Health to Put Patients First”, June 24, 2019), which charged the Secretaries of Health and Human Services, the Treasury, and Labor with facilitating access to information about expected health care costs for patients before they receive care. In addition, EBSA addressed 3,164 technical and compliance assistance inquiries or projects involving Part 7 of ERISA by providing interpretive and other technical assistance to plan sponsors and employers for program areas encompassing: 1,765 technical and compliance assistance projects for health plan standards involving benefits security; 604 interpretive and technical assistance inquiries or projects; 465 inquiries or projects involving the Mental Health Parity and Addiction Equality Act (MHPAEA) implementation; 289 projects involving MEWA administration and registration and 41 miscellaneous guidance and compliance assistance regulatory exemption projects in FY 2020.

In FY 2020, EBSA transmitted the Mental Health Parity and Addiction Equality Act (MHPAEA) Report to Congress. The 2020 Report provides an overview of the Department’s partnership efforts across the Government, as well as with plans, issuers, consumers, providers, states, and other stakeholders. Also detailed in the report is the Department’s intent to use the information gathered from these partnerships to develop a roadmap to compliance for the regulated community so that health plan participants and beneficiaries are able to realize the full benefits of MHPAEA. EBSA also processed 21 individual exemption actions (including EXPRO), and exemption applications were closed within an average of 443 days.

### **Workload and Performance Summary**

#### **FY 2022**

Through the Policy and Compliance budget activity, EBSA will provide guidance, engage with the regulated community and promote compliance with the law while protecting the benefits of workers, retirees and their families. The expansive new obligations imposed upon EBSA by the Consolidated Appropriations Act, as well as increased focus on Multiple Employer Welfare Arrangements (MEWAs) and the Mental Health Parity and Addiction Equity Act (MHPAEA) will result in significant increases to EBSA’s workload in FY 2022 and beyond. EBSA estimates that it will respond to approximately 3,864 interpretive and other associated technical assistance inquiries (including 229 relating to MEWAs and 520 for MHPAEA implementation). EBSA also estimates completing 351 regulatory projects involving interpretive issues, health plan standards, research projects, and policy, legislative, and regulatory analysis projects, MHPAEA implementation and MEWA registration and other requirements, and ERISA exemptions. EBSA will continue to address ongoing rulemaking and regulatory efforts under the FY 2021 Consolidated Appropriations Act.

In FY 2022, 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 40 individual exemption actions (includes EXPRO), complete project work on four (4) class exemptions (includes closed, proposed, or granted) and attain an exemption processing time of less than 375 days.



## **POLICY AND COMPLIANCE ASSISTANCE**

### **FY 2021**

In FY 2021, EBSA will continue to carry out interpretive activities concerning the provisions of ERISA and related statutes through the timely issuance of advisory opinions, FAQs, field assistance bulletins, and other guidance documents addressing relevant interpretive issues raised by the regulated community or considered significant by the Department. EBSA will also pursue a regulatory agenda that includes completing regulatory projects for the advancement of health care reform (including surprise medical billing and MHPAEA provisions) and retirement security. EBSA will also continue to advance the Administration priority to expand Americans' access to quality, affordable health care 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 also engage in a large number of required rulemaking and regulatory efforts under the Consolidated Appropriations Act of 2021, and take a proactive approach to the enforcement and administration of these new provisions.

EBSA will provide guidance, engage with the regulated community and promote compliance, while protecting the benefits of workers, retirees and their families. The expansive new obligations imposed upon EBSA by the Consolidated Appropriations Act, as well as increased focus on Multiple Employer Welfare Arrangements (MEWAs) and the Mental Health Parity and Addiction Equity Act (MHPAEA) will result in significant increases to EBSA's workload in FY 2021. EBSA estimates that it will respond to approximately 3,401 interpretive, targeted, and other associated technical assistance inquiries (including 195 related to MEWAs and 445 to MHPAEA). EBSA also estimates completing 315 regulatory projects involving interpretive issues, health plan standards, research projects, and policy, legislative, and regulatory analysis projects, and exemptions. In FY 2021, 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 35 individual exemption actions (includes EXPRO), complete project work on three (3) class exemptions (includes closed, proposed, or granted) and attain an exemption processing time of less than 375 days.

### **FY 2020**

In FY 2020, EBSA pursued a proactive regulatory agenda that included completing 392 regulatory projects to better protect employee health benefits and retirement security. The projects covered a broad range of activities including interpretive guidance, health plan standards, MHPAEA implementation, MEWA registration, class exemptions, statistical research, policy and legislative analysis, and regulatory analysis.

EBSA addressed 3,164 technical and compliance assistance inquiries or projects involving Part 7 of ERISA by providing interpretive and other technical assistance to plan sponsors and employers for program areas encompassing: 1,765 technical and compliance assistance projects for health plan standards involving benefits security; 604 interpretive and technical assistance inquiries or projects; 465 inquiries or projects involving the Mental Health Parity and Addiction Equality Act (MHPAEA); 289 projects involving MEWA administration and registration and 41

## **POLICY AND COMPLIANCE ASSISTANCE**

miscellaneous guidance and compliance assistance regulatory exemption projects in FY 2020. EBSA also processed 21 individual exemption actions (including EXPRO) and processed these exemptions within an average of 443 days.

## POLICY AND COMPLIANCE ASSISTANCE

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
11.1	Full-time permanent	10,114	9,643	0	-9,643
11.3	Other than full-time permanent	90	193	0	-193
11.5	Other personnel compensation	230	289	0	-289
11.9	<b>Total personnel compensation</b>	<b>10,434</b>	<b>10,125</b>	<b>0</b>	<b>-10,125</b>
12.1	Civilian personnel benefits	3,957	4,763	0	-4,763
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	52	83	0	-83
22.0	Transportation of things	0	0	0	0
23.1	Rental payments to GSA	1,528	1,333	0	-1,333
23.3	Communications, utilities, and miscellaneous charges	105	220	0	-220
24.0	Printing and reproduction	150	195	0	-195
25.1	Advisory and assistance services	0	0	0	0
25.2	Other services from non-Federal sources	325	300	0	-300
25.3	Other goods and services from Federal sources 1/	5,695	6,581	0	-6,581
25.5	Research and development contracts	1,127	1,200	0	-1,200
25.7	Operation and maintenance of equipment	2,473	1,395	0	-1,395
26.0	Supplies and materials	550	596	0	-596
31.0	Equipment	115	110	0	-110
	<b>Total</b>	<b>26,511</b>	<b>26,901</b>	<b>0</b>	<b>-26,901</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	5,488	6,374	0	-6,374
	DHS Services	90	90	0	-90
	HHS Services	117	117	0	-117

# POLICY AND COMPLIANCE ASSISTANCE

## CHANGES IN FY 2022

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$310
Personnel benefits	166
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	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	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0

**Built-Ins Subtotal** **\$476**

**Net Program** **\$4,430**

**Direct FTE** **24**

	Estimate	FTE
<b>Base</b>	<b>\$27,377</b>	<b>68</b>
<b>Program Increase</b>	<b>\$4,430</b>	<b>24</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>

**EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND  
ADMINISTRATION**

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
<b>Activity Appropriation</b>	<b>7,349</b>	<b>6,699</b>	<b>0</b>	<b>-6,699</b>
FTE	27	27	0	-27

NOTE: FY 2020 reflects actual FTE. Authorized FTE for FY 2020 was 25.

**Introduction**

Through this budget activity, EBSA ensures overall leadership and direction for the policy, regulatory, enforcement and all other program and administrative activities. This program function supports EBSA’s component program offices of enforcement and regulatory programs that 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 for the management of debts arising from the assessment of civil penalties under ERISA sections 502(c)(2), 502(i) and 502(l). This is accomplished in accordance with the requirements of the Debt Collection and Debt Collection Improvement Acts.

# EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION

## Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2017	\$6,699	25
2018	\$6,699	25
2019	\$6,699	25
2020	\$6,699	25
2021	\$6,699	27

## FY 2022

EBSA seeks \$8,320,000 and 35 FTEs for the Executive Leadership, Program Oversight and Administration budget activity. The request level for this budget activity includes a program increase of \$1,459,000 and 8 FTEs for the restoration of critical administrative staff and to advance a program of racial and economic equity. This request also includes mandatory built-in increases totaling \$162,000 for estimated enacted pay and benefits adjustments.

This budget enables EBSA to 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.

In FY 2022, 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 2021

In FY 2021, 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.

## **EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION**

EBSA will also 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 2020**

To enhance employee development and succession planning, EBSA utilized intra-agency development assignments, OPM-sponsored management development training, FLETC (HHS) sponsored training, online “SkillSoft” courses, and other management development assignments (e.g., developmental details, EBSA management courses and seminars, annual employee needs assessments). Approximately 200 EBSA employees completed such developmental assignments and 135 supervisors and managers completed the DOL leadership development curriculum in FY 2019. In addition, approximately 70 first-line supervisors attended management training at the annual Agency managers’ conference.

EBSA continued to develop an extensive internal training curriculum to ensure that our employees maintain the technical knowledge needed to successfully meet the agency’s strategic and performance goals. The training curriculum consists of a Basic Training Course, two Techniques Courses (one each for Investigators and Benefits Advisors), Criminal Enforcement Training Course, Benefit Plan Accounting and Finance Course, Advanced Issues Course, Health Plan Investigation Course and an independent self-study course for the Introduction to Employee Benefits and Fiduciary Conduct. In FY 2020, EBSA trained approximately 150 employees in technical and professional areas, resulting in over 8,500 hours of training. These courses are 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.

EBSA effectively administered its responsibilities under the Debt Collection and Debt Collection Improvement Acts resulting in net final assessments of approximately \$31,602,518 and net collections of approximately \$28,436,904 in FY 2020.

### **Workload and Performance Summary**

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.

**EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND  
ADMINISTRATION**

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
11.1	Full-time permanent	3,733	3,333	0	-3,333
11.3	Other than full-time permanent	17	17	0	-17
11.5	Other personnel compensation	110	114	0	-114
11.9	<b>Total personnel compensation</b>	<b>3,860</b>	<b>3,464</b>	<b>0</b>	<b>-3,464</b>
12.1	Civilian personnel benefits	1,682	1,532	0	-1,532
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	60	60	0	-60
22.0	Transportation of things	0	0	0	0
23.1	Rental payments to GSA	325	262	0	-262
23.2	Rental payments to others	0	0	0	0
23.3	Communications, utilities, and miscellaneous charges	25	25	0	-25
24.0	Printing and reproduction	10	8	0	-8
25.1	Advisory and assistance services	0	0	0	0
25.2	Other services from non-Federal sources	178	50	0	-50
25.3	Other goods and services from Federal sources 1/	1,044	1,158	0	-1,158
25.7	Operation and maintenance of equipment	15	10	0	-10
26.0	Supplies and materials	20	15	0	-15
31.0	Equipment	130	115	0	-115
	<b>Total</b>	<b>7,349</b>	<b>6,699</b>	<b>0</b>	<b>-6,699</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	1,005	1,119	0	-1,119
	DHS Services	33	33	0	-33
	HHS Services	6	6	0	-6



# EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION

## CHANGES IN FY 2022

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$105
Personnel benefits	57
Federal Employees' Compensation Act (FECA)	0
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
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	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0

**Built-Ins Subtotal** **\$162**

**Net Program** **\$1,459**

**Direct FTE** **8**

	Estimate	FTE
<b>Base</b>	<b>\$6,861</b>	<b>27</b>
<b>Program Increase</b>	<b>\$1,459</b>	<b>8</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>



## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>BUDGET AUTHORITY BEFORE THE COMMITTEE</b>				
(Dollars in Thousands)				
	<b>FY 2020 Revised Enacted</b>	<b>FY 2021 Enacted</b>	<b>FY 2022 Request</b>	<b>Diff. FY22 Request / FY21 Enacted</b>
<b>Activity Appropriation</b>	<b>0</b>	<b>0</b>	<b>218,475</b>	<b>218,475</b>
FTE	0	0	990	990

### Introduction

A separate introduction for the employee benefits security programs budget activity will not be duplicated since it has been addressed within the current budget activity structure narratives.

### Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2017	\$0	0
2018	\$0	0
2019	\$0	0
2020	\$0	0
2021	\$0	0

### Workload and Performance Summary

The workload and performance summary for the employee benefits security programs budget activity will not be duplicated since it has been addressed within the current budget activity structure narratives.

## EMPLOYEE BENEFITS SECURITY PROGRAMS

<b>BUDGET ACTIVITY BY OBJECT CLASS</b>					
(Dollars in Thousands)					
		FY 2020 Revised Enacted	FY 2021 Enacted	FY 2022 Request	Diff. FY22 Request / FY21 Enacted
11.1	Full-time permanent	0	0	105,331	105,331
11.3	Other than full-time permanent	0	0	1,059	1,059
11.5	Other personnel compensation	0	0	2,337	2,337
11.9	<b>Total personnel compensation</b>	<b>0</b>	<b>0</b>	<b>108,727</b>	<b>108,727</b>
12.1	Civilian personnel benefits	0	0	43,587	43,587
13.0	Benefits for former personnel	0	0	30	30
21.0	Travel and transportation of persons	0	0	1,337	1,337
22.0	Transportation of things	0	0	58	58
23.1	Rental payments to GSA	0	0	11,188	11,188
23.2	Rental payments to others	0	0	31	31
23.3	Communications, utilities, and miscellaneous charges	0	0	454	454
24.0	Printing and reproduction	0	0	600	600
25.1	Advisory and assistance services	0	0	1,050	1,050
25.2	Other services from non-Federal sources	0	0	8,546	8,546
25.3	Other goods and services from Federal sources 1/	0	0	28,657	28,657
25.5	Research and development contracts	0	0	1,477	1,477
25.7	Operation and maintenance of equipment	0	0	10,964	10,964
26.0	Supplies and materials	0	0	1,107	1,107
31.0	Equipment	0	0	662	662
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>218,475</b>	<b>218,475</b>
	1/Other goods and services from Federal sources				
	Working Capital Fund	0	0	27,267	27,267
	DHS Services	0	0	670	670
	HHS Services	0	0	720	720

# EMPLOYEE BENEFITS SECURITY PROGRAMS

## CHANGES IN FY 2022

(Dollars in Thousands)

### Activity Changes

#### Built-In

To Provide For:

Costs of pay adjustments	\$0
Personnel benefits	0
Employee health benefits	0
Federal Employees' Compensation Act (FECA)	0
Benefits for former personnel	0
Travel and transportation of persons	0
Transportation of things	0
Rental payments to GSA	0
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	0
Other Federal sources (DHS Charges)	0
Other goods and services from Federal sources	0
Research & Development Contracts	0
Operation and maintenance of equipment	0
Supplies and materials	0
Equipment	0
<b>Built-Ins Subtotal</b>	<b>\$0</b>

<b>Net Program</b>	<b>\$0</b>
<b>Direct FTE</b>	<b>0</b>

	Estimate	FTE
<b>Base</b>	<b>\$0</b>	<b>0</b>
<b>Program Increase</b>	<b>\$0</b>	<b>0</b>
<b>Program Decrease</b>	<b>\$0</b>	<b>0</b>