

FY 2023

CONGRESSIONAL BUDGET JUSTIFICATION

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

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EMPLOYEE BENEFITS SECURITY ADMINISTRATION

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APPROPRIATION LANGUAGE

For necessary expenses for the Employee Benefits Security Administration, \$233,867,000, of which up to \$3,000,000 shall be made available until expended for the procurement of expert witnesses for enforcement litigation.

Note.—A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2022 (Division A of P.L. 117-43, as amended). The amounts included for 2022 reflect the annualized level provided by the continuing resolution.

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AMOUNTS AVAILABLE FOR OBLIGATION						
(Dollars in Thousands)						
	FY 2021 Revised Enacted		FY 2022 Full Year C.R.		FY 2023 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
A. Appropriation	805	\$181,000	771	\$181,000	978	\$233,867
CARES Act (P.L. 116-127)	4	\$552	0	\$0	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	26	\$10,000	15	\$1,113	0	\$0
No Surprises Act (P.L. 116-260)	60	\$8,615	117	\$23,779	0	\$0
<i>Subtotal Appropriation</i>	895	\$200,167	903	\$205,892	978	\$233,867
Offsetting Collections From:						
Reimbursements	0	\$6,681	0	\$8,000	0	\$8,000
<i>Subtotal</i>	895	\$206,848	903	\$213,892	978	\$241,867
B. Gross Budget Authority	895	\$206,848	903	\$213,892	978	\$241,867
CARES Act (P.L. 116-127)	-4	-\$552	0	\$0	0	\$0
American Rescue Plan Act Supplemental (P.L. 117-2)	-26	-\$10,000	-15	-\$1,113	0	\$0
No Surprises Act (P.L. 116-260)	-60	-\$8,615	-117	-\$23,779	0	\$0
Offsetting Collections To:						
Reimbursements	0	-\$6,681	0	-\$8,000	0	-\$8,000
<i>Subtotal</i>	805	\$181,000	771	\$181,000	978	\$233,867
C. Budget Authority Before the Committee	805	\$181,000	771	\$181,000	978	\$233,867
American Rescue Plan Act Supplemental (P.L. 117-2)	26	\$10,000	0	\$0	0	\$0
No Surprises Act (P.L. 116-260)	60	\$8,615	79	\$20,000	0	\$0
Offsetting Collections From:						
Reimbursements	0	\$6,681	0	\$8,000	0	\$8,000
Unobligated Balances From:						
Brought Forward, October 1 (Expert Witness)	0	\$1,559	0	\$9	0	\$0
Brought Forward, October 1 (CARES Act)	4	\$552	0	\$0	0	\$0
Brought Forward, October 1 (ARP Supplemental P.L. 117-2)	0	\$0	15	\$1,113	0	\$0
Brought Forward, October 1 (No Surprises Act P.L. 116-260)	0	\$0	38	\$3,779	0	\$0
<i>Subtotal</i>	895	\$208,407	903	\$213,901	978	\$241,867
D. Total Budgetary Resources	895	\$208,407	903	\$213,901	978	\$241,867
FTE Lapse and Unobligated Balance Expiring	-53	-\$7	0	\$0	0	\$0
FTE Lapse and Unobligated Balance Carryover (Expert Witness)	0	-\$9	0	\$0	0	\$0

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FTE Lapse and Unobligated Balance Carryover (CARES Act)	0	\$0	0	\$0	0	\$0
FTE Lapse and Unobligated Balance Carryover (ARP Act P.L. 117-2)	-15	-\$1,113	0	\$0	0	\$0
FTE Lapse and Unobligated Balance Carryover (NSA P.L. 116-260)	-38	-\$3,779	0	\$0	0	\$0
E. Total, Estimated Obligations	789	\$203,499	903	\$213,901	978	\$241,867

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SUMMARY OF CHANGES

(Dollars in Thousands)

	FY 2022 Full Year C.R.	FY 2023 Request	Net Change
Budget Authority			
General Funds	\$181,000	\$233,867	+\$52,867
Total	\$181,000	\$233,867	+\$52,867
Full Time Equivalents			
General Funds	771	978	207
Total	771	978	207

Explanation of Change	FY 2023 Change							
	FY 2022 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Increases:								
A. Built-Ins:								
To Provide For:								
Costs of pay adjustments	771	\$94,829	0	\$0	0	\$5,677	0	\$5,677
Personnel benefits	0	\$32,399	0	\$0	0	\$2,820	0	\$2,820
Employee health benefits	0	\$0	0	\$0	0	\$0	0	\$0
Federal Employees' Compensation Act (FECA)	0	\$250	0	\$0	0	\$117	0	\$117
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	\$1,036	0	\$1,036
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
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

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FY 2023 Change

Explanation of Change	FY 2022 Base		Trust Funds		General Funds		Total	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Built-Ins Subtotal	771	+\$181,000	0	\$0	0	+\$9,650	0	+\$9,650
B. Programs:								
Enforcement Program Restoration	771	\$190,650	0	\$0	150	\$27,083	150	\$27,083
Promoting Equity	771	\$190,650	0	\$0	35	\$6,522	35	\$6,522
Missing Participants Program	771	\$190,650	0	\$0	22	\$5,000	22	\$5,000
Employee Benefits Program								
Restoration	675	\$155,411	0	\$0	0	\$2,612	0	\$2,612
Cybersecurity Investigations	675	\$155,411	0	\$0	0	\$2,000	0	\$2,000
Programs Subtotal			0	\$0	207	+\$43,217	207	+\$43,217
Total Increase	771	+\$181,000	0	\$0	207	+\$52,867	207	+\$52,867
Decreases:								
A. Built-Ins:								
To Provide For:								
Built-Ins Subtotal	0	\$0	0	\$0	0	\$0	0	\$0
B. Programs:								
Total Decrease	0	\$0	0	\$0	0	\$0	0	\$0
Total Change	771	+\$181,000	0	\$0	207	+\$52,867	207	+\$52,867

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SUMMARY BUDGET AUTHORITY AND FTE BY ACTIVITY								
(Dollars in Thousands)								
	FY 2021 Revised Enacted		FY 2022 Full Year C.R.		FY 2023 Request		Diff. FY23 Request / FY22 Full Year C.R.	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Enforcement and Participant Assistance	677	147,400	675	147,400	845	191,607	170	44,207
General Funds	677	147,400	675	147,400	845	191,607	170	44,207
Policy and Compliance Assistance	48	26,901	61	26,901	88	33,264	27	6,363
General Funds	48	26,901	61	26,901	88	33,264	27	6,363
Executive Leadership, Program Oversight and Administration	27	6,699	35	6,699	45	8,996	10	2,297
General Funds	27	6,699	35	6,699	45	8,996	10	2,297
Employee Benefits Security Programs	0	0	0	0	0	0	0	0
Total	752	181,000	771	181,000	978	233,867	207	52,867
General Funds	752	181,000	771	181,000	978	233,867	207	52,867

NOTE: FY 2021 reflects actual FTE. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

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BUDGET AUTHORITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
	Full-Time Equivalent				
	Full-time Permanent	801	767	974	207
	Other	4	4	4	0
	Total	805	771	978	207
	Average ES Salary	\$194,015	\$199,253	\$205,231	\$5,978
	Average GM/GS Grade	12/9	12/9	12/9	0
	Average GM/GS Salary	\$105,279	\$108,121	\$111,365	\$3,244
11.1	Full-time permanent	91,507	91,507	120,674	29,167
11.3	Other than full-time permanent	907	907	907	0
11.5	Other personnel compensation	2,415	2,415	2,572	157
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	94,829	94,829	124,153	29,324
12.1	Civilian personnel benefits	32,649	32,649	43,083	10,434
13.0	Benefits for former personnel	30	30	30	0
21.0	Travel and transportation of persons	612	612	2,061	1,449
22.0	Transportation of things	5	5	212	207
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	8,953	8,953	9,129	176
23.2	Rental payments to others	31	31	31	0
23.3	Communications, utilities, and miscellaneous charges	428	428	701	273
24.0	Printing and reproduction	570	570	570	0
25.1	Advisory and assistance services	180	180	792	612
25.2	Other services from non-Federal sources	3,785	3,785	10,500	6,715
25.3	Other goods and services from Federal sources 1/	28,657	28,657	29,693	1,036
25.4	Operation and maintenance of facilities	0	0	0	0
25.5	Research and development contracts	1,200	1,200	1,300	100
25.7	Operation and maintenance of equipment	7,500	7,500	8,755	1,255
26.0	Supplies and materials	1,096	1,096	1,347	251
31.0	Equipment	475	475	1,510	1,035
38.0	Depreciation Expense - Unfunded	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	Total	181,000	181,000	233,867	52,867
	1/Other goods and services from Federal sources				
	Working Capital Fund	27,267	27,267	28,303	1,036
	DHS Services	670	670	670	0
	GSA Services	597	597	597	0
	HHS Services	123	123	123	0

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AUTHORIZING STATUTES

Public Law / Act	Legislation	Statute No. / US Code	Volume No.	Page No.	Expiration Date
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

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APPROPRIATION HISTORY					
(Dollars in Thousands)					
	Budget Estimates to Congress	House Allowance	Senate Allowance	Appropriations	FTE
2013					
Base Appropriation...1/	\$183,153			\$173,573	993
2014					
Base Appropriation...2/	\$179,104			\$178,500	985
2015					
Base Appropriation...3/	\$188,447			\$181,000	963
2016					
Base Appropriation...4/	\$207,455	\$180,699	\$168,930	\$181,000	949
2017					
Base Appropriation...5/	\$205,761			\$181,000	925
2018					
Base Appropriation...6/	\$183,926	\$175,600		\$181,000	860
2019					
Base Appropriation...7/	\$189,500			\$181,000	840
2020					
Base Appropriation...8/	\$193,500	\$183,155		\$181,000	826
2021					
Base Appropriation...9/	\$192,738			\$181,000	805
2022					
Base Appropriation...10/ 11/	\$218,475	\$218,475			0
2023					
Base Appropriation	\$233,867				978

¹ 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.

² Reflects the full appropriation pursuant to P.L. 113-76 without enacted rescissions.

³ Reflects the full appropriation pursuant to P.L. 113-235 without enacted rescissions.

⁴ Reflects the full appropriation pursuant to P.L. 114-113 without enacted rescissions.

⁵ Reflects the full appropriation pursuant to P.L. 115-31 without enacted rescissions.

⁶ Reflects the full appropriation pursuant to P.L. 115-141 without enacted rescissions.

⁷ Reflects the full appropriation pursuant to P.L. 115-245 without enacted rescissions.

⁸ Reflects the full appropriation pursuant to P.L. 116-93 without enacted rescissions and impact of Shared Services Realignment.

⁹ Reflects the full appropriation pursuant to P.L. 116-260 without enacted rescissions.

¹⁰ This bill was passed by the House. It was not taken up by the Senate Appropriations Subcommittee or the full Senate Appropriations Committee.

¹¹ The full-year FY 2022 appropriation was not enacted at the time the budget was prepared.

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OVERVIEW

EBSA's mission is to ensure 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 158 million workers, retirees and their families who are covered by approximately 734,000 private retirement plans, 2.0 million health plans, and 662,000 other welfare benefit plans. Together, these plans hold estimated assets of \$12.9 trillion. At current staffing levels, EBSA has less than one investigator for every 12,500 plans. 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 6.5 million participants and \$780 billion in assets.

Employment-based benefit plans are vital to the financial security and physical wellbeing of millions of workers, retirees, and their families. In alignment with the Secretary's policy priorities including, *Invest and Value the Nation's Care Economy* and *Support a Lifetime of Worker Empowerment*, 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. To enhance benefits security and maintain public confidence in the private benefits system in support of the Secretary's vision to empower workers morning, noon, and night, EBSA administers an integrated program consisting of the following strategic activities:

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

Employee Benefits Security Programs

The employee benefits security program consists of functions for enforcement, compliance and customer assistance, regulations and research, and agency oversight and administrative services. EBSA's enforcement program uses a wide variety of activities such as the establishment of national and regional priorities, voluntary compliance programs, civil and criminal litigation, regulations and guidance, compliance assistance, and research-based analysis to accomplish its mission in support of the Secretary's strategic vision and policy priorities. The agency also 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 economic research program informs the agency's regulatory, enforcement, and legislative work, and provides important information to the public and policymakers on benefit plans. EBSA's integrated approach to promoting benefits security is developed and implemented in response to the Agency's experience with civil and criminal investigations, participant inquiries, research, the agency's

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assessment of trends and vulnerabilities with respect to ERISA-covered benefit plans, and public concerns.

Equity in Budgeting

In support of Executive Order 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, EBSA is committed to thoughtfully and intentionally focusing on equity as a routine part of how the agency prepares budget proposals and requests. Equity analyses will be a regular part of how EBSA does business. Achieving this objective will take time, effort, and care. For FY 2023, EBSA proposes program increases that restore employee benefits programs (that were significantly reduced in the past seven years) and establishes a formal missing participants program that will advance equity by specifically addressing how opportunities can be expanded for underserved communities and vulnerable populations. EBSA is also committed to prioritizing resources through employee engagement and a renewed focus for Diversity, Equity, and Inclusion (DEI) training and leadership development, mentorship program, and affinity group outreach. EBSA's activities advance the President's priorities as emphasized in Executive Order 14035 on *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* and the Secretary's strategic vision and policy priorities.

In alignment with the President's and Secretary's priorities, EBSA will continue to promote equity for underserved and disadvantaged populations by working to expand Americans' access to quality, affordable health care, and pursue national enforcement priorities and policies designed to have the greatest impact on plans and their participants. Several of EBSA's existing national enforcement initiatives focus on problems affecting underserved communities, including the agency's high priority project to enforce the Mental Health Parity and Addiction Equity Act (MHPAEA), as well as the Protecting Benefit Distribution project, which covers the Terminated Vested Participant Program (TVPP), abandoned plans, and financially distressed sponsors. By their nature, these programs focus on underserved individuals and communities, including vulnerable elderly populations, and individuals with mental health and substance use disorders.

Specifically, EBSA will concentrate efforts in establishing a missing participants program, placing more emphasis on mental health and substance use disorder parity enforcement, and disability plan cases. With a focus on these programs, EBSA anticipates that the numbers of cases that reach workers in underserved populations and monetary and non-monetary recoveries for underserved communities will markedly increase. EBSA will continue to conduct outreach to underserved populations who generally save less for retirement, individuals for whom English is not a primary language, those nearing retirement, and new entrants into the workforce. EBSA will also update fact sheets/publications geared towards women and other underrepresented groups, as well as expand the languages for publications such as Top Ten Ways to Save for Retirement. Agency workload metrics will be more focused on equity to include, but not limited to additional rapid response sessions for individuals facing job loss; additional Webcasts conducted for plan sponsors/participants; and additional compliance seminars for participants/plan sponsors who are historically underserved, marginalized, or adversely affected by economic, racial, or gender inequities.

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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. The agency will continue to leverage its investigative resources by stressing its Major Case initiative, which dedicates more investigative resources to the conduct of investigations that have the greatest potential to impact large numbers of plans and participants. EBSA's metrics support the agency's shift to investigations that maximize the impact of EBSA's scarce resources and promote the Secretary's vision through themes, activities, and outcomes. Metrics include efficiency measures:

- 1) 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 that same fiscal 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 same 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.

Multi-Year Supplemental Appropriations

In the last year, EBSA received three (3) supplemental appropriations in support of important initiatives:

- 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 Consolidated Appropriations Act of 2021 (CAA) included many amendments to ERISA that give health plan participants important new rights and imposed large 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 increase 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

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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 Department of Labor, Department of Health and Human Services (HHS), and Department of the Treasury (Treasury), the Act appropriates \$500,000,000 through FY 2024 for implementation. After the four-year period has expired, however, EBSA, along with the other Departments, will continue to have substantial ongoing enforcement, regulatory, outreach, and reporting responsibilities with respect to the new laws. EBSA received \$8,615,000 in FY 2021 and \$23,779,000 in FY 2022 to implement the Act.

- 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. ARPA gave EBSA 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 help plan participants to receive the benefits to which they are entitled. The law granted EBSA \$10,000,000 in appropriations for implementation, which is available until expended.

Access to Mental Health and Substance Use Disorder Coverage

The CAA amended MHPAEA to strengthen DOL's mental health parity enforcement authority and placed new requirements for the Department to conduct audits of group market health plans and issuers that impose Non-Quantitative Treatment Limitations (NQTLs) for mental health and substance use disorder (MH/SUD). Specifically, to comply with MHPAEA's implementing regulations, plans and issuers must ensure that the processes, strategies, evidentiary standards, and other factors used when applying an NQTL to MH/SUD benefits are, both in writing and in operation, comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the same benefits classifications. The CAA provides a mechanism by which the Department requests NQTL comparative analyses to examine whether the plans or issuers are compliant with MHPAEA's NQTL requirements. Plans and issuers determined not to be compliant must specify the corrective actions they will take to come into compliance and provide additional comparative analyses that demonstrate compliance not later than 45 days after the initial non-compliance determination.

Mandatory Funding to Perform Audits Related to Mental Health and Substance Abuse

The FY 2023 Budget proposes to provide the Department with \$275,000,000 in mandatory funding over 10 years including \$240,000,000 for EBSA and \$35,000,000 for the Office of the Solicitor, to increase capacity for the agencies to perform audits related to MH/SUD (including investigating reimbursement rates as Non-Quantitative Treatment Limitations) and act against non-compliant actors. These enhanced oversight and compliance efforts would increase the number of large group market health plans and issuers that are complying with the mental health parity requirements under MHPAEA. The Department has primary authority for enforcing

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MHPAEA with respect to private sector employment-based group health plans. The overwhelming majority of American workers under age 65 receive their benefits from these plans. In total, approximately two million ERISA-covered group health plans provide health benefits to an estimated 136.5 million Americans. EBSA's MHPAEA jurisdiction and responsibilities extend to all these plans and plan participants.

EBSA estimates that approximately 404,000 ERISA-covered group health plans are subject to MHPAEA (both fully insured and self-insured). Currently, EBSA is employing approximately 90 FTE under CAA funding to audit an estimated 160 plans and issuers for their NQTL comparative analyses. Given the high level of non-compliance identified by EBSA during its initial enforcement effort in FY 2021, EBSA expects the proposed mandatory MHPAEA funding to enable the Department to double enforcement efforts to audit plans and issuers for MHPAEA violations. Although the ratio of FTE to health plans (includes additional MHPAEA resources) will only improve slightly given the large number of health plans, EBSA will continue to utilize a proven strategic approach by identifying potential MHPAEA violations at plan-level investigations and then pursuing corrective action through service providers that affect many plans and participants that significantly leverage resources.

Legislative Recommendations

In FY 2022, DOL, along with HHS and Treasury, proposed five (5) recommendations through the 2022 MHPAEA Report to Congress (the Report) that span three critical areas essential to achieving meaningful MH/SUD parity: (1) enhanced enforcement; (2) ensuring and protecting coverage of promised benefits; and (3) requiring group health plans and health insurance issuers to further evidence compliance. Specific recommendations include:

- A recommendation that the Congress consider amending MHPAEA to ensure that MH/SUD benefits are defined in an objective and uniform manner pursuant to external benchmarks that are based in nationally recognized standards.
- A recommendation that the Congress grant authority (through legislative action) for DOL to assess civil monetary penalties for parity violations that have the potential to greatly strengthen the protections of MHPAEA. In the absence of the authority to impose civil monetary penalties, DOL is limited in its ability to ensure appropriate corrective action in response to findings of non-compliance with MHPAEA. The Department estimates that the civil monetary penalties would provide \$35,000,000 in savings over 10 years.
- A recommendation that the Congress amend ERISA to expressly provide DOL with the authority to directly pursue parity violations by entities that provide administrative services to ERISA group health plans (including, health insurance issuers that provide administrative services to ERISA plans and third-party administrators).
- A recommendation that the Congress amend ERISA to expressly provide those participants and beneficiaries, as well as DOL on their behalf, may recover amounts lost for those who wrongly had their claims denied in violation of MHPAEA, ensuring that participants and beneficiaries are made whole.

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- A recommendation that the Congress consider ways to permanently expand access to telehealth and remote care services.

As the primary federal regulator of MHPAEA responsible for overseeing two million group health plans covering 136.5 million individuals, the Department is uniquely positioned to evaluate and identify areas where there are impediments to full enforcement of the law. Accordingly, the Report offers recommendations to strengthen MHPAEA's consumer protections and better position the Department to enforce the law.

The FY 2023 Budget further strengthens consumer protections by closing various loopholes that have resulted in disparate coverage practices, and, most importantly, by requiring all plans to cover mental health and substance use disorder services. The Department of Labor, HHS, and Treasury jointly recommend the following proposals:

Improve Access to Behavioral Healthcare in the Private Insurance Market

The Budget strengthens and improves consumer protections by requiring all plans and issuers, including group health plans, to provide mental health and substance use disorder benefits. In addition, it seeks to improve compliance with behavioral health parity standards by requiring plans and issuers to use medical necessity criteria for behavioral health services that are consistent with the criteria developed by nonprofit medical specialty associations, as well as placing limits on the consideration of profit in determinations of medical necessity. It also authorizes the Secretaries of HHS, Labor, and Treasury to regulate behavioral health network adequacy, and to issue regulations on a standard for parity in reimbursement rates based on the results of comparative analyses submitted by plans and issuers.

Require Coverage of Three Behavioral Health Visits and Three Primary Care Visits without Cost-Sharing

Access to primary care and behavioral health services improves long-term health outcomes by promoting prevention and early detection of potentially serious conditions. However, even small out-of-pocket costs may deter consumers from seeking medical care, including behavioral health services. About half of U.S. adults say they or a family member put off care because of the cost. Members of racial and ethnic minority groups are especially likely to forego necessary care, and in addition experience more difficulty accessing behavioral health services than white Americans. This proposal seeks to improve health outcomes by requiring all plans and issuers to cover three primary care visits and three behavioral health visits each year without charging a copayment, coinsurance or deductible-related fee.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

FY 2023 Request

Aligned with immediate Administration priorities and vision to empower workers morning, noon, and night, EBSA seeks \$233,867,000 and 978 FTEs. This resource request includes program increases of \$43,217,000 and 207 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; establishment of a dedicated “Missing Participants” program that will promote the financial security of America’s workers; restoration of employee benefits programs that were reduced for seven consecutive years because of funding limitations; and reducing vulnerability of the TSP to cybersecurity risks and attacks. Also included are mandatory built-in increases of \$9,641,000 for estimated enacted pay adjustments and Working Capital Fund expenses as well as a \$9,000 net increase for FECA charges.

EBSA continues to seek a statutory language change to make appropriations for the procurement of expert witnesses for enforcement support 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 exclusively available to fund 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) ERISA enforcement cases 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 and limitations of the procurement and budget calendars, which often are not well-aligned with court deadlines.

EBSA’s 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. 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. From the end of FY 2015 to the end of FY 2020, EBSA lost 89 investigators (nearly 22 percent of current investigative staff), 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. 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

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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.

- **\$6,522,000 and 35 FTEs for Advancement of Racial and Economic Equity.** To advance racial and economic equity throughout the agency and the population we serve, EBSA will prioritize resources through employee engagement and create a renewed focus for Diversity, Equity and Inclusion (DEI) training, leadership development, mentorship, and affinity group outreach. With additional resources, EBSA will have the capacity to conduct outreach to underserved populations who generally save less for retirement, individuals for whom English is not a primary language, those nearing retirement, and new entrants into the workforce. EBSA will also update fact sheets/publications geared towards women and other underrepresented groups, as well as expand the languages for publications. The agency will conduct additional rapid response sessions for individuals facing job loss; additional webinars conducted for plan sponsors/participants; and additional compliance seminars for participants/plan sponsors who are historically underserved, marginalized, or adversely affected by economic, racial, or gender inequities.
- **\$5,000,000 and 22 FTEs to establish “Missing Participants Program”.** EBSA seeks \$5,000,000 and 22 FTEs to establish a dedicated program for ensuring that “missing participants” receive the benefits to which they are entitled. EBSA’s enforcement and compliance assistance programs have recovered billions of dollars for retired elderly workers and their beneficiaries after the plans had lost track of them or been unable to contact them. Many of the program’s beneficiaries were living on very limited incomes (e.g., minimal social security benefits), without even knowing they had substantial retirement benefits available to them. The program enhanced the quality of life for many elderly people who were living at the financial margins. In addition, EBSA intends to increase its focus on industries with high shares of foreign-born workers to determine if they have disproportionate incidents of missing participants. As part of this effort, EBSA expects to assess any possible special impediments to these workers’ receipt of benefits. If resources are approved, this program will play a significant role in improving economic equity because of the vulnerable population it assists. The Department’s enforcement program has demonstrated that the problem of missing participants is large and ongoing. However, the agency’s recent focus on the missing participant program has come at the expense of other critical enforcement projects and priorities, including projects relating to imprudent investments, insolvent or poorly managed health plans, and numerous other enforcement categories. Without additional funding, EBSA will need to reduce and limit the missing participants program efforts. Consequently, the significant, positive return on investment that the program generates for the American taxpayer will be diminished. In FY 2021, the agency recovered an extraordinary \$220,614 per

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

investigator per day in the missing participant program (in total, EBSA investigators recovered more than \$1.5 billion for 16,024 missing participants)

- **\$2,612,000 for Employee Benefits Program Restoration.** EBSA has had to significantly reduce employee benefits programs for research, outreach and education, program evaluations, litigation support, advisory/contract services, and steady-state maintenance funding for the major internal systems and agencies electronic filing system (EFAST) used by benefit plans to prepare and submit Form 5500 Annual Returns/Reports. The increase of \$2,612,000 will support basic agency participant and compliance assistance activities which have been foregone or underfunded in recent years. For example, EFAST requires additional resources of nearly \$500,000 to implement proposed forms revisions to amend the Form 5500 Annual Return/Report as delineated in a jointly published notice (DOL, Internal Revenue Service – IRS, Pension Benefit Guarantee Corporation – PBGC) of proposed forms (NPR) on required annual reporting changes related to legislative provisions in the SECURE Act. The provisions are focused on multiple-employer pension plans (MEPs) and defined contribution reporting groups (DCGs). This effort seeks to modernize the financial and other annual reporting requirements on the Form 5500 and continue an ongoing effort to make the Form 5500 more data mineable and to also consider potential changes to group health plan annual reporting requirements, among other improvements that would enhance the Agencies’ ability to collect employee benefit plan data that best meets the needs of changing compliance projects, programs, and activities. In its administration of the funds, EBSA will give special attention to opportunities to advance equity and promote access to EBSA’s services and ERISA-covered benefits for people who are historically underserved, marginalized, or adversely affected by economic, racial, or gender inequities.
- **\$2,000,000 for Cybersecurity Response, Recovery, and Resiliency.** Included in cybersecurity improvement efforts is enhanced oversight and administration of the Federal Thrift Savings Plan (TSP), whose critical infrastructure poses outsized cybersecurity risks, as EBSA has repeatedly documented -- and as both DOL’s Inspector General and Congress have repeatedly noted. The TSP is a highly visible system that holds the retirement savings of federal civilian workers, members of the armed services, and members of Congress and their staff. EBSA has faced significant resource constraints for the conduct of TSP audits. Resources for TSP audits have been reduced from an initial base of \$3,500,000 to a level now significantly below \$500,000.

FY 2023 Activities, Strategies, and Program Workload

EBSA will continue to focus its efforts on Major Case investigations that hold the promise of having 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). In FY 2023, EBSA also anticipates increasing targeted inspections, investigations, evaluations, and compliance assistance with respect to underserved communities. In addition to the continued focus on Major Cases, EBSA will prioritize enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA)

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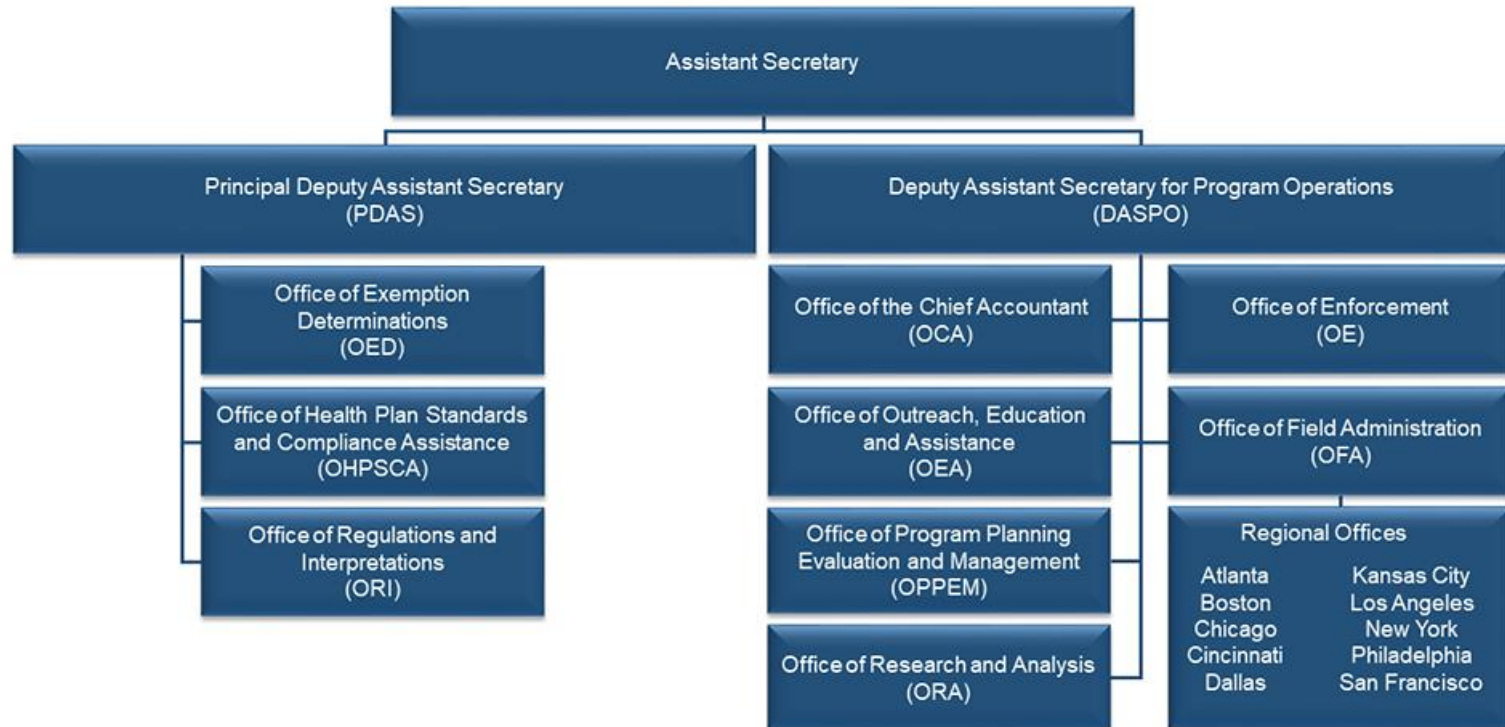
and the Protecting Benefit Distribution project, which covers the Terminated Vested Participant Program (TVPP), abandoned plans, and financially distressed sponsors. These programs have a built-in emphasis on underserved individuals and communities, including vulnerable elderly populations, and individuals with mental health and substance use disorders. Other important areas of focus will 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.

EBSA intends to increase investigation of a wide variety of critical health enforcement issues, including issues 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). Important workload and demand measures continuing into FY 2023 include, but are not limited to: responding to an estimated 175,000 participant inquiries; obtaining major case monetary recoveries per major case staff day of \$69,871 and monetary recoveries on major cases closed per staff day of \$61,288; obtaining 128 indictments through the criminal investigation program; completing 3,750 reporting compliance reviews; conducting 745 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 15 webcasts and 15 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 4,045 interpretive and other associated technical assistance projects/plan inquiries and instances of targeted technical assistance. EBSA will also pursue a proactive regulatory agenda that includes completing 387 regulatory projects 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. In FY 2023, EBSA will allocate sufficient resources to close, propose or grant an estimated 42 individual exemption actions (includes Expedited Processing – EXPRO), complete project work on five (5) class exemptions (including projects closed, proposed, or granted) and attain an exemption processing time of less than 350 days.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

ORGANIZATION CHART



ENFORCEMENT AND PARTICIPANT ASSISTANCE

BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
Activity Appropriation	147,400	147,400	191,607	44,207
FTE	677	675	845	170

NOTE: FY 2021 reflects actual FTE. Authorized FTE for FY 2021 was 710. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

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. EBSA also has audit responsibilities with respect to the federal Thrift Savings Plan (TSP), which is the world’s largest employee contributory plan with more than 6.5 million participants and \$780 billion in assets. 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 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 can 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.

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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 potential violations to the attention of EBSA, when they know their rights. Accordingly, EBSA's enforcement and participant assistance activities 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 other work involving pension or health care issues performed on their behalf.

FY 2023 Request: The FY 2023 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.

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Five-Year Budget Activity History

<u>Fiscal Year</u>	<u>Funding</u> (Dollars in Thousands)	<u>FTE</u>
2018	\$147,400	762
2019	\$147,400	744
2020	\$147,400	730
2021	\$147,400	710
2022	\$0	0

NOTE: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared.

FY 2023

EBSA seeks \$191,607,000 and 845 FTEs for the enforcement and participant assistance budget activity. This resource request includes program increases of \$36,196,000 and 170 FTEs for: restoration of employee benefits programs that were reduced for seven consecutive years because of funding limitations; the advancement of racial and economic equity with strong health enforcement, regulation, outreach, and education; establishment of a dedicated “Missing Participants” program that will promote the financial security of America’s workers; 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; and reducing vulnerability of the TSP to cybersecurity risks and attacks. Also included are mandatory built-in increases of \$8,119,000 for estimated enacted pay adjustments and Working Capital Fund expenses as well as a \$9,000 net increase for FECA charges.

The FY 2023 request level will enhance basic Agency enforcement and compliance assistance activities which have been foregone or underfunded in recent years. In its administration of the funds, EBSA will give special attention to opportunities to advance equity and promote access to Agency services and ERISA-covered benefits for people who are historically underserved, marginalized, or adversely affected by economic, racial, or gender inequities. EBSA will also expand targeting efforts that focus on unregulated third-party administrators to identify weaknesses in security systems; hire and develop cybersecurity experts; include effective cybersecurity reviews as an integral part of routine investigations; and expand its data systems to capture cybersecurity complaints. In FY 2023, EBSA will also establish a dedicated program for ensuring that “missing participants” receive the benefits to which they are entitled. EBSA enforcement and compliance assistance efforts have recovered billions of dollars for retired elderly workers and their beneficiaries after the plans had lost track of them or been unable to contact them. Many of the beneficiaries entitled to recovered benefits were living on very limited incomes (e.g., minimal social security benefits), without even knowing they had substantial retirement benefits available to them.

Through the enforcement and participant assistance budget activity, EBSA will continue to focus its employee benefits security activities 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). Under the Major Case initiative in FY 2021, EBSA recovered \$112,103 per staff day (or \$1.8 billion in monetary recoveries)

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utilizing 16,642 staff days. Additional FTE allocated to Major Cases can potentially generate similar or additional results, especially if allocated toward the “missing participants” program described above. EBSA will also continue the work of the MHPAEA Enforcement Working Group to establish case procedural strategies and to identify focus areas under the project. Because DOL shares interpretive and enforcement jurisdiction of 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. To the extent resources are available, 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. 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 use 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 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.

ENFORCEMENT AND PARTICIPANT ASSISTANCE

FY 2021

EBSA Restores Over \$2.4 Billion to Employee Benefit Plans, Participants and Beneficiaries

Through its enforcement of the Employee Retirement Income Security Act (ERISA), the Employee Benefits Security Administration (EBSA) is responsible for ensuring the integrity of the private employee benefit plan system in the United States. EBSA's oversight authority extends to nearly 734,000 retirement plans, 2 million health plans, and 662,000 other welfare benefit plans, such as plans providing life or disability insurance. These ERISA covered plans cover about 158 million workers and their dependents with over \$12.9 trillion in plan assets. In FY 2021, EBSA recovered over \$2.4 billion for plans, participants, and beneficiaries.

Close to \$2 Billion Recovered in Investigations

In FY 2021, EBSA closed 1,072 civil investigations with 741 of those cases (69%) 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 16,024 terminated vested participants in defined benefit plans collect benefits of \$1.548 billion owed to them. Terminated vested results represent a combination of the present values of lifetime annuity payments made to participants and beneficiaries, or lump sum balance payments, plus interest distributions paid as either retroactive lump sums or included in actuarially adjusted future annuity amounts.

EBSA's enforcement program also obtains non-monetary corrections and injunctive relief in civil cases that result in increased protections for plans and their participants. In FY 2021, EBSA obtained 449 non-monetary corrections. Examples of these results included removal of 6 fiduciaries, orders barring 34 individuals from acting as fiduciaries, court appointments of 16 independent fiduciaries, and 124 cases involving reforms of plan procedures, such as improved search procedures for missing participants. Examples of non-monetary results specific to health plans included 54 non-monetary corrections, 27 of which were global corrections that protected multiple plans relying on the same service provider. By focusing its resources on global correction of violations at the plan service provider level, EBSA can correct violations involving multiple plans affected by common plan terms or administrative practices. In this way, the agency works to have the greatest possible beneficial impact on plan participants and beneficiaries. In FY 2021, non-monetary global corrections obtained in health investigations frequently involved changes to plan documents and required new disclosures to participants and beneficiaries. For example, in one investigation, in response to violations identified by EBSA, the service provider prepared and circulated corrective benefit booklets for 76 health plans that disclosed to participants and beneficiaries the correct payment methodologies governing the plan's payment of emergency services claims.

EBSA often pursues voluntary compliance 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 2021, EBSA referred 70 cases for litigation. Together, EBSA and the Solicitor of Labor determine which cases are appropriate for litigation, after considering the ability to obtain

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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 claims for monetary relief without filing suit.

EBSA Investigations resulted in 72 Criminal Indictments related to Employee Benefit Plans

EBSA also has responsibility for investigating potential criminal conduct with a nexus to an employee benefit plan. This includes potential violations of the criminal provisions of ERISA, as well as those provisions of the United States Criminal Code that concern employee benefit plans, and financial crimes in general. EBSA both independently conducts criminal investigations and works in cooperation with other law enforcement agencies. EBSA refers criminal cases to the United States Attorney's Office, or state and local authorities for prosecution.

During FY 2021, EBSA opened 188 criminal investigations and closed 208 criminal investigations. 118 of the 188 criminal cases opened during FY2021 involved health benefit plans. EBSA's criminal investigations, including criminal investigations conducted in coordination with other law enforcement agencies, led to the indictment of 72 individuals during FY2021. 39 of these indictments related to health benefit plans and 16 stemmed from EBSA's Contributory Plans Criminal Project (CPCP). The CPCP reflects EBSA's special commitment to protecting plans, and participants in plans, that are funded (in whole or in part) through employee contributions that are withheld from wages. The individuals charged include plan officials, corporate officers, and plan service providers. EBSA also obtained a total of 38 guilty pleas or convictions, and nearly \$4 million dollars in monetary recoveries for the benefit of plans and participants. EBSA also served 41 notice letters on persons convicted of crimes that bar them from serving as plan fiduciaries or service providers in accordance with the provisions of section 411 of ERISA.

Abandoned Plan Program

The Abandoned Plan Program facilitates the termination of, and distribution of benefits from individual account pension plans abandoned by their sponsoring employers. During FY 2021, EBSA received 1,770 applications from Qualified Termination Administrators and closed 923 applications with terminations approved. In total, the Program resulted in direct distributions of \$50.8 million to plan participants.

Compliance Assistance Programs Yielded Tremendous Results

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 breaches and voluntarily report the violations to EBSA, without becoming the subject of an enforcement action. In FY 2021, EBSA received 1,201 applications for the VFCP reporting restored payments to plans that total \$34 million.

ENFORCEMENT AND PARTICIPANT ASSISTANCE

The DFVCP encourages plan administrators to bring their plans into compliance with ERISA's filing requirements. EBSA received 22,553 annual reports through this program in FY 2021. Additionally, the EFAST2 Help Desk handled over 21,000 filer inquiries to help filers meet their reporting obligations.

\$499.5 Million Restored to Workers through Informal Complaint Resolution

When workers experience a problem with an employee benefit plan, they can directly contact EBSA Benefit Advisors for assistance. In FY 2021, EBSA's Benefits Advisors closed more than 175,000 inquiries and recovered \$499.5 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.

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 2021, EBSA opened 251 new investigations from Benefits Advisors referrals.

Over 2,340 Education and Outreach Events held in FY 2021

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.

Extensive Publication and Web Site Usage Furthers Outreach Efforts

EBSA also reaches workers, retirees, employers, plan service providers, and the public through its printed materials and website at 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

WORKLOAD AND PERFORMANCE SUMMARY					
		FY 2021 Revised Enacted		FY 2022 Full Year C.R.	FY 2023 Request
		Target	Result	Target	Target
Enforcement and Participant Assistance					
Strategic Goal 2 - Ensure Safe Jobs, Essential Protections, and Fair Workplaces					
Strategic Objective 2.3 - Improve the security of retirement, health, and other workplace-related benefits for America's workers and their families.					
EBSA-OE-01	Major Case Monetary Recoveries per Major Case Staff Day	\$69,871	\$112,103	\$87,394	\$67,424
EBSA-OE-01a	Monetary Recoveries on Major Cases Closed per Staff Day	\$61,288	\$100,940	\$67,066	\$58,864
EBSA-OE-02a	Percent of Less Complex Issue Cases Closed or Referred for Litigation in the fiscal year within 18 Months of Case Opening	76%	81%	76%	76%

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

ENFORCEMENT AND PARTICIPANT ASSISTANCE

Workload and Performance

FY 2023

EBSA will continue to focus its efforts on Major Case investigations that hold the promise of having 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). In FY 2023, EBSA also anticipates increasing targeted inspections, investigations, evaluations, and compliance assistance with respect to underserved communities. In addition to the continued focus on Major Cases, EBSA will prioritize enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA) and the Protecting Benefit Distribution project, which covers the Terminated Vested Participant Program (TVPP), abandoned plans, and financially distressed sponsors. These programs have a built-in emphasis on underserved individuals and communities, including vulnerable elderly populations, and individuals with mental health and substance use disorders. Other important areas of focus will include promoting cybersecurity and enforcing the new rights and obligations created by the Consolidated Appropriations Act of 2021. EBSA 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.

EBSA intends to increase investigation of a wide variety of critical health enforcement issues, including issues 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). Important workload and demand measures continuing into FY 2023 include, but are not limited to: responding to an estimated 175,000 participant inquiries; obtaining major case monetary recoveries per major case staff day of \$69,871 and monetary recoveries on major cases closed per staff day of \$61,288; obtaining 128 indictments through the criminal investigation program; completing 3,750 reporting compliance reviews; conducting 745 rapid response sessions for individuals facing job loss; conducting 250 Congressional office briefings; and completing 15 webcasts and 15 compliance seminars for plan sponsors and participants.

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

ENFORCEMENT AND PARTICIPANT ASSISTANCE

briefings; and completing 12 webcasts and 12 compliance seminars for plan sponsors and participants.

ENFORCEMENT AND PARTICIPANT ASSISTANCE

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
11.1	Full-time permanent	78,531	78,531	102,535	24,004
11.3	Other than full-time permanent	697	697	697	0
11.5	Other personnel compensation	2,012	2,012	2,142	130
11.8	Special personal services payments	0	0	0	0
11.9	Total personnel compensation	81,240	81,240	105,374	24,134
12.1	Civilian personnel benefits	26,354	26,354	34,948	8,594
13.0	Benefits for former personnel	30	30	30	0
21.0	Travel and transportation of persons	469	469	1,659	1,190
22.0	Transportation of things	5	5	175	170
23.0	Rent, Communications, and Utilities	0	0	0	0
23.1	Rental payments to GSA	7,358	7,358	7,494	136
23.2	Rental payments to others	31	31	31	0
23.3	Communications, utilities, and miscellaneous charges	183	183	404	221
24.0	Printing and reproduction	367	367	367	0
25.1	Advisory and assistance services	180	180	792	612
25.2	Other services from non-Federal sources	3,435	3,435	9,651	6,216
25.3	Other goods and services from Federal sources 1/	20,918	20,918	21,778	860
25.4	Operation and maintenance of facilities	0	0	0	0
25.7	Operation and maintenance of equipment	6,095	6,095	7,115	1,020
26.0	Supplies and materials	485	485	689	204
31.0	Equipment	250	250	1,100	850
38.0	Depreciation Expense - Unfunded	0	0	0	0
42.0	Insurance claims and indemnities	0	0	0	0
	Total	147,400	147,400	191,607	44,207
	1/Other goods and services from Federal sources				
	Working Capital Fund	19,774	19,774	20,634	860
	DHS Services	547	547	547	0
	GSA Services	597	597	597	0

ENFORCEMENT AND PARTICIPANT ASSISTANCE

CHANGES IN FY 2023

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$4,712
Personnel benefits	2,322
Federal Employees' Compensation Act (FECA)	117
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	860
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 **\$8,011**

Net Program **\$36,196**

Direct FTE **170**

	Estimate	FTE
Base	\$155,411	675
Program Increase	\$36,196	170
Program Decrease	\$0	0

POLICY AND COMPLIANCE ASSISTANCE

BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
Activity Appropriation	26,901	26,901	33,264	6,363
FTE	48	61	88	27

NOTE: FY 2021 reflects actual FTE. Authorized FTE for FY 2021 was 68. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

Introduction

EBSA continuously 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 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 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>
2018	\$26,901	73
2019	\$26,901	71
2020	\$26,901	71
2021	\$26,901	68
2022	\$0	0

NOTE: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared.

FY 2023

EBSA seeks \$33,264,000 and 88 FTEs for the policy and compliance assistance budget activity. This resource request includes program increases of \$5,109,000 and 27 FTEs for: restoration of employee benefits programs that were reduced for seven consecutive years because of funding limitations; the advancement of racial and economic equity with strong health enforcement, regulation, outreach, and education; and establishment of a dedicated “Missing Participants” program that will promote the financial security of America’s workers. Also included are mandatory built-in increases of \$1,254,000 for estimated enacted pay adjustments and Working Capital Fund expenses.

EBSA will also continue to address required rulemaking and regulatory efforts within multi-year supplemental appropriations for the Consolidated Appropriations Act, 2021 (P.L. 116-260); and the American Rescue Plan Act (P.L. 117-2). This budget provides resources that enables EBSA to sustain and substantially support priorities established in the unified regulatory agenda. Fiduciary education, regulations, exemptions, compliance assistance, policy and research, and interpretive guidance have and will continue to substantially contribute to the protection of employee pension and health benefits.

In FY 2023, EBSA will continue 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 pursue a regulatory agenda that includes completing regulatory projects for the advancement of health care reform and retirement security. These projects include providing guidance, developing regulatory standards, conducting statistical research, policy, regulatory analysis, and issuing ERISA exemptions. Through comprehensive compliance assistance and regulatory programs, EBSA provides guidance and engages the regulated community in achieving compliance while protecting the benefits of workers, retirees, and their families.

FY 2022

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 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

POLICY AND COMPLIANCE ASSISTANCE

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, 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 MEWAs, MHPAEA, and the Consolidated Appropriations Act, 2021. These program activities will increase the Agency's workload substantially in FY 2022. EBSA estimates that it will respond to approximately 3,864 interpretive, targeted, and other associated technical assistance inquiries (including 229 related 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 analyses projects; MHPAEA implementation; and MEWA registration and other requirements.

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 allocated sufficient resources to close, propose or grant an estimated 40 individual exemption actions (includes EXPRO), complete project work on 4 class exemptions (includes closed, proposed, or granted) and attain an exemption processing time of less than 350 days.

FY 2021

In FY 2021, EBSA pursued a proactive regulatory agenda that included completing 469 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 regulations included requirements related to surprise medical billing; requirements related to air ambulance services, agent broker disclosures and provider enforcement. Additionally, EBSA addressed 3,528 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: 2,228 technical and compliance assistance projects for health plan standards involving benefits security; 547 interpretive and technical assistance inquiries or projects; 471 inquiries or projects involving the MHPAEA implementation; 262 projects involving MEWA administration and registration and 20 miscellaneous guidance and compliance assistance regulatory exemption projects in FY 2021.

POLICY AND COMPLIANCE ASSISTANCE

In FY 2021, EBSA transmitted the Self-Insured Report to Congress. The 2021 Report provided a useful data source to better understand the type and range of health benefits that employers provide to American workers. EBSA also processed 17 individual exemption actions (including EXPRO), and exemption applications were closed within an average of 313 days.

Workload and Performance

FY 2023

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 4,045 interpretive and other associated technical assistance projects/plan inquiries and instances of targeted technical assistance. EBSA will also pursue a proactive regulatory agenda that includes completing 387 regulatory projects 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. In FY 2023, EBSA will allocate sufficient resources to close, propose or grant an estimated 42 individual exemption actions (includes Expedited Processing – EXPRO), complete project work on five (5) class exemptions (including projects closed, proposed, or granted) and attain an exemption processing time of less than 350 days.

FY 2022

In FY 2022, EBSA will engage in demanding program activities related to MHPAEA, MEWAs, and the Consolidated Appropriations Act, 2021. These program activities will increase the Agency's workload substantially. EBSA estimates that it will respond to approximately 3,864 interpretive, targeted, and other associated technical assistance inquiries (including 229 related 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 issuing ERISA exemptions.

FY 2021

In FY 2021, EBSA addressed 3,528 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: 2,228 technical and compliance assistance projects for health plan standards involving benefits security; 547 interpretive and technical assistance inquiries or projects; 471 inquiries or projects involving the MHPAEA implementation; 262 projects involving MEWA administration and registration and 20 miscellaneous guidance and compliance assistance regulatory exemption projects.

POLICY AND COMPLIANCE ASSISTANCE

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
11.1	Full-time permanent	9,643	9,643	13,441	3,798
11.3	Other than full-time permanent	193	193	193	0
11.5	Other personnel compensation	289	289	310	21
11.9	Total personnel compensation	10,125	10,125	13,944	3,819
12.1	Civilian personnel benefits	4,763	4,763	6,123	1,360
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	83	83	272	189
22.0	Transportation of things	0	0	27	27
23.1	Rental payments to GSA	1,333	1,333	1,357	24
23.3	Communications, utilities, and miscellaneous charges	220	220	256	36
24.0	Printing and reproduction	195	195	195	0
25.1	Advisory and assistance services	0	0	0	0
25.2	Other services from non-Federal sources	300	300	640	340
25.3	Other goods and services from Federal sources 1/	6,581	6,581	6,716	135
25.5	Research and development contracts	1,200	1,200	1,300	100
25.7	Operation and maintenance of equipment	1,395	1,395	1,560	165
26.0	Supplies and materials	596	596	629	33
31.0	Equipment	110	110	245	135
	Total	26,901	26,901	33,264	6,363
	1/Other goods and services from Federal sources				
	Working Capital Fund	6,374	6,374	6,509	135
	DHS Services	90	90	90	0
	HHS Services	117	117	117	0

POLICY AND COMPLIANCE ASSISTANCE

CHANGES IN FY 2023

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$738
Personnel benefits	381
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	135
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 **\$1,254**

Net Program **\$5,109**

Direct FTE 27

	Estimate	FTE
Base	\$28,155	61
Program Increase	\$5,109	27
Program Decrease	\$0	0

EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION

BUDGET AUTHORITY BEFORE THE COMMITTEE				
(Dollars in Thousands)				
	FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
Activity Appropriation	6,699	6,699	8,996	2,297
FTE	27	35	45	10

NOTE: FY 2021 reflects actual FTE. Authorized FTE for FY 2021 was 27. FY 2022 reflects estimated FTE usage at the annualized level of the CR.

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 program offices responsible for 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’s 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; (g) planning and coordinating IT with the OCIO; and, (h) planning and coordinating the overall facilities management plan including space, telecommunications, mail, and printing management.

Through this activity, 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>
2018	\$6,699	25
2019	\$6,699	25
2020	\$6,699	25
2021	\$6,699	27
2022	\$0	0

NOTE: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared.

FY 2023

EBSA seeks \$8,996,000 and 45 FTEs for the Executive Leadership, Program Oversight and Administration budget activity. This resource request includes program increases of \$1,912,000 and 10 FTEs for: restoration of employee benefits programs that were reduced for seven consecutive years because of funding limitations; the advancement of racial and economic equity with strong health enforcement, regulation, outreach, and education; and establishment of a dedicated “Missing Participants” program that will promote the financial security of America’s workers. Also included are mandatory built-in increases of \$385,000 for estimated enacted pay adjustments and Working Capital Fund expenses.

This budget enables EBSA to continue to provide the leadership and administrative support for all the Agency’s programs including enforcement, participant assistance, policy, compliance assistance, and regulatory initiatives. EBSA will use real-time data, such as human capital, financial, participant assistance, outreach, and enforcement, to provide decision-makers with the timely analyses 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 the security of American’s employee benefits.

In FY 2023, 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 2022

In FY 2022, EBSA will continue to provide the leadership and administrative support for all of the Agency’s programs including: (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) training goals and delivery mechanisms that meet both programmatic and individual needs; (c) long-term and annual performance plans and reports; (d) 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) the analysis, justification, execution and evaluation of the Agency’s budget, and integrating the Agency’s strategic performance goals with budget formulation and execution; (f) the prudent management and use of resources and compliance with governing laws and regulations; (g) IT in coordination with

EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION

OCIO; and, (h) overall facilities management plan including space, telecommunications, mail, and printing management.

FY 2021

To enhance employee development and succession planning, EBSA utilized intra-agency development assignments, OPM-sponsored management development training, online “SkillSoft” courses, and other management development assignments (e.g., developmental details, EBSA management courses and seminars, annual employee needs assessments). Approximately 190 EBSA employees completed such developmental assignments, and 135 supervisors and managers completed the DOL leadership development curriculum in FY 2021. In addition, EBSA has started quarterly first-line supervisors management training sessions in which over 80 managers participate.

EBSA continued to enhance its 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 2021, EBSA trained approximately 180 employees in technical and professional areas, resulting in over 9,500 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 \$28,047,238 and net collections of approximately \$26,537,238 in FY 2021.

Workload and Performance

EBSA will continue to provide the leadership and administrative support for all of the Agency’s programs including enforcement, participant assistance, policy, compliance assistance, and regulatory initiatives. EBSA will use real-time data, such as human capital, financial, participant assistance, outreach, and enforcement, to provide decision-makers with the timely analyses required to monitor and update strategic plans and to measure the results of program and management initiatives. In FY 2023, 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.

**EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND
ADMINISTRATION**

BUDGET ACTIVITY BY OBJECT CLASS					
(Dollars in Thousands)					
		FY 2021 Revised Enacted	FY 2022 Full Year C.R.	FY 2023 Request	Diff. FY23 Request / FY22 Full Year C.R.
11.1	Full-time permanent	3,333	3,333	4,698	1,365
11.3	Other than full-time permanent	17	17	17	0
11.5	Other personnel compensation	114	114	120	6
11.9	Total personnel compensation	3,464	3,464	4,835	1,371
12.1	Civilian personnel benefits	1,532	1,532	2,012	480
13.0	Benefits for former personnel	0	0	0	0
21.0	Travel and transportation of persons	60	60	130	70
22.0	Transportation of things	0	0	10	10
23.1	Rental payments to GSA	262	262	278	16
23.2	Rental payments to others	0	0	0	0
23.3	Communications, utilities, and miscellaneous charges	25	25	41	16
24.0	Printing and reproduction	8	8	8	0
25.1	Advisory and assistance services	0	0	0	0
25.2	Other services from non-Federal sources	50	50	209	159
25.3	Other goods and services from Federal sources 1/	1,158	1,158	1,199	41
25.7	Operation and maintenance of equipment	10	10	80	70
26.0	Supplies and materials	15	15	29	14
31.0	Equipment	115	115	165	50
	Total	6,699	6,699	8,996	2,297
	1/Other goods and services from Federal sources				
	Working Capital Fund	1,119	1,119	1,160	41
	DHS Services	33	33	33	0
	HHS Services	6	6	6	0

EXECUTIVE LEADERSHIP, PROGRAM OVERSIGHT AND ADMINISTRATION

CHANGES IN FY 2023

(Dollars in Thousands)

Activity Changes

Built-In

To Provide For:

Costs of pay adjustments	\$227
Personnel benefits	117
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	41
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 **\$385**

Net Program **\$1,912**

Direct FTE **10**

	Estimate	FTE
Base	\$7,084	35
Program Increase	\$1,912	10
Program Decrease	\$0	0