U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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October 24, 2023

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

The Honorable Frederica S. Wilson
House of Representatives

Employee Benefits Security Administration: Systematic Process Needed to Better Manage Priorities and Increased Responsibilities

The Employee Benefits Security Administration (EBSA) is the agency within the Department of Labor (DOL) primarily responsible for ensuring that employer-sponsored retirement plans and group health plans comply with requirements in Title I of the Employee Retirement Income Security Act of 1974 (ERISA).[1] As of September 2022, EBSA oversaw roughly 747,000 employer-sponsored retirement plans and about 2.5 million group health plans.[2] The retirement plans hold, according to EBSA, an estimated $12 trillion in assets as of fiscal year 2022 and are essential to American workers' physical well-being and financial well-being in retirement.

EBSA's effective oversight of plan management is critical to protect against mismanagement and fraud and to ensure that promised benefits will be available for the nearly 152 million workers, retirees, and their families covered by these plans. In our May 2021 report, we found that EBSA implemented a strategy in 2013 to use its limited investigative staff and prioritize more complex cases that result in large recoveries or affect a large number of participants. From fiscal years 2014 through 2020, the number of closed cases decreased, while monetary

[1]ERISA, as amended, sets certain requirements and minimum standards for employer-sponsored retirement, healthcare and other welfare plans. Certain compliance issues are the responsibility of other federal and state entities. Employer-sponsored retirement and health plans subject to ERISA generally must comply with requirements intended to protect the interests of plan participants. Specifically, among other things: plan administrators are required to provide participants with a summary plan description outlining their benefits, rights, and responsibilities under the plan, and notify participants of any material changes; plan administrators are generally required to file annual reports, the Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500); plan fiduciaries are required to discharge their duties solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration and with the care, skill, prudence, and diligence under the circumstances then prevailing of a prudent man acting in a like capacity and familiar with such matters; plan fiduciaries are generally prohibited from entering into certain transactions with the plan, such as by dealing with plan assets in the fiduciary's own interest; and plan fiduciaries are required to maintain reasonable procedures for filing benefit claims, providing notice of benefit determinations, and appealing adverse benefit determinations.

[2]EBSA is also responsible for 673,000 other welfare benefit plans. Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay, disability, etc.

recoveries increased.[3] We previously reported on EBSA's enforcement process, however the current state of EBSA's resource planning is unknown.

You asked us to study EBSA's resources and planning with respect to its responsibilities to conduct oversight of health and retirement benefits. This report examines (1) how EBSA's resources and its oversight responsibilities have changed over time, and (2) the extent to which EBSA has developed a plan to strategically manage resources. This report transmits the materials we used to brief your staff on January 18, 2023 (see enc. 1). We made limited updates to the materials after the briefing to reflect clarity. The report also updates information and agency discussions that occurred after our briefing, such as responsibilities related to the SECURE 2.0 Act of 2022 (SECURE 2.0).[4]

To address our first objective, we summarized trend data for EBSA's budget obligations and staffing levels using finalized data for fiscal year 2013 through fiscal year 2022 contained within EBSA's Congressional Budget Justifications.[5] We interviewed EBSA officials about how they have managed resources and prioritized enforcement as their oversight responsibilities evolved. We reviewed key changes to EBSA's oversight responsibilities including additions and reductions in responsibilities. Our review included relevant EBSA documents, prior GAO reports, federal studies, and federal laws and regulations regarding any new requirements for EBSA's oversight and enforcement of retirement and healthcare plans.

To address the second objective, we reviewed key planning documents to determine EBSA's efforts to manage its resources.[6] We then compared these efforts with our framework for strategically managing declining resources.[7] The framework identifies three themes by which agencies can strategically manage their resources. The three key themes state: 1) agencies should consider both short- and long-term cost-cutting and cost-avoidance strategies, 2) top management should lead efforts to manage declining resources, and 3) data analytics should guide decision-making. We identified examples of actions that EBSA took that fit within the three themes of the framework. We also identified any missing agency strategies for adjusting to an uncertain budget environment.

To address both questions, we identified and interviewed five stakeholder representatives from key groups selected to gather a range of retirement and health perspectives (legal/practitioner, industry associations, consumer research, and participant groups). We discussed stakeholders

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[3]See GAO, *Employee Benefits Security Administration: Enforcement Efforts to Protect Participants' Rights in Employer-Sponsored Retirement and Health Benefit Plans*, GAO-21-376 (Washington, D.C.: May 27, 2021).

[4]In addition, subsequent to our briefing, EBSA issued its fiscal year 2024 Congressional Budget Justification. We have updated footnotes referring to the respective slide with updated information on budget and responsibilities.

[5]We compared these data against information from the *Appendix, Budget of the US Government* for the respective fiscal years.

[6]We verified a list of agency documents relevant to Objective 2 with agency officials in September 2022. Specific review includes: (for fiscal years 2022–2019) EBSA's Annual Program Operating Plans, Enforcement Program Operating Plans, Program Operating Plan Regional Projects Summaries, and Regional Participant and Compliance Outreach, Education, and Assistance Program Operating Plans; fiscal year 2022 Regional Program Operating Plan; EBSA's Risk Based Targeting Tool; fiscal years 2010–2020 Annual Enforcement Results; Department of Labor's Strategic Plans (fiscal years 2018–2022 and 2022–2026 Strategic Plan); EBSA's Updated 2010–2022 National Projects.

[7]GAO*, Declining Resources: Selected Agencies Took Steps to Minimize Effects on Mission, but Opportunities Exist for Additional Action*, GAO-17-79 (Washington, D.C.: Dec. 20, 2016).

views on EBSA resources and priorities over the last 10 years, as well as EBSA's capacity to manage its resources.

We conducted this performance audit from April 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Enacted in 1974, ERISA established federal minimum standards and requirements governing most private sector employer-sponsored retirement and group health plans in the United States. Since then, ERISA has been amended to reflect changes in employee benefits, such as the increased use of defined contribution plans. In defined contribution plans, participants are generally responsible for making their own investment decisions and ensuring they have sufficiently saved for retirement.

EBSA is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of ERISA. EBSA's national and regional staff work together to ensure plan participants receive the health and retirement benefits to which they are entitled. The functions of the national office include interpreting ERISA and developing relevant regulations, as well as developing the enforcement guidance regional office staff use to address inquiries and conduct investigations. EBSA's Office of Enforcement, Deputy Assistant Secretary for National Operations, and the Office of Field Administration focus on ERISA compliance by establishing investigation processes and providing policy direction, technical investigative assistance, and oversight to enforcement personnel. The national office also identifies national priorities and approves regional office proposals for issues meriting further regional investigation. Regional offices may develop their own regional projects and areas of expertise based, in part, on local issues and the results of previous investigations.[8] In addition, the national office staff provides training to staff on compliance requirements in new legislation. Decisions about resources and programming are generally made by EBSA leadership at the national office level.[9]

In 2011, the Budget Control Act of 2011 (BCA), which amended the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), was enacted to impose, among other things, discretionary spending limits (or caps) on discretionary appropriations for fiscal years 2012 through 2021.[10] Congress and the President amended BBEDCA to allow for increased discretionary appropriations in certain years. In 2012—the year after BCA was enacted—non-defense discretionary spending was 3.8 percent of Gross Domestic Product (GDP) and, by

[8]As we reported in 2021, in fiscal year 2020, EBSA's regional office staff included 364 investigators, 108 benefits advisors, and 20 specialists, compared to 10-year highs of 441 investigators in fiscal year 2013, 113 benefits advisors in fiscal year 2014, and 22 specialists in fiscal year 2015.

[9]According to officials, the key EBSA officials making these decisions are the Assistant Secretary, Principal Deputy Assistant Secretary, the Deputy Assistant Secretary for Program Operations, and the Director of the Office of Program, Planning, Evaluation, and Management. The officials noted that resource priorities and decisions are vetted with regional offices and potentially adjusted as needed. Allocation of full-time equivalents (FTEs) is the primary resource allocation decision.

[10]The initial BCA caps were intended to reduce projected spending by about $1 trillion.

2022, such spending was 3.6 percent.[11] As we reported in December 2016, DOL was among the top five cabinet-level agencies experiencing the largest declines in discretionary budget authority over the 2010 to 2015 period.[12] In that report, in response to the environment of declining budgets, we examined selected agencies' efforts to manage declining resources against a relevant framework developed by GAO in 2012.

DOL's budget has both discretionary and mandatory components. EBSA has its own designated appropriation account that does not fund other DOL activities. The Secretary submits a budget request with estimated resource needs based on current operations, program objectives and future plans. Congress approves the final appropriation, which could be less than the requested amount.[13]

EBSA Resources Have Generally Remained Unchanged While Oversight Responsibilities Have Increased over the Last Decade

EBSA's Appropriations Generally Remained Unchanged Between 2013 and 2021

EBSA's Congressional Budget Justifications show that, over the 2013 to 2021 period, EBSA's annual appropriations have generally remained unchanged in nominal terms, but declined when accounting for inflation. For example, EBSA's discretionary appropriation was $181 million each year from fiscal years 2015 through 2021.[14] This is a slight increase from fiscal year 2013 in nominal terms—its discretionary appropriation was $174 million in that year. However, EBSA's appropriation in fiscal year 2021 represents about a 10 percent decline relative to fiscal year 2013 in Gross Domestic Product (GDP) indexed terms.[15] According to EBSA's Congressional Budget Justification, over the 2013 through 2021 period, EBSA only received supplemental

[11]Historical Tables (Table 8.4), Budget of the United States Government Fiscal Year 2024. Gross Domestic Product (GDP) is the value of all goods and services produced within the borders of a country in a given period. It is generally used as a proxy for the size of a country's economy. The decline in non-defense discretionary spending as a percent of GDP was uneven over the 2012 to 2022 period. For example, non-defense discretionary spending declined steadily from 2012 to 2019, reaching 3.1 percent of GDP in 2019. However, in 2020, non-defense discretionary spending rose to 4.3 percent of GDP.

[12]GAO*, Declining Resources: Selected Agencies Took Steps to Minimize Effects on Mission, but Opportunities Exist for Additional Action*, GAO-17-79 (Washington, D.C.: Dec. 20, 2016).

[13]After the Office of Management and Budget (OMB) issues spring budget guidance, DOL's Departmental Budget Center in the Office of Assistant Secretary for Administration and Management (OASAM), develops and presents instructions to the DOL agencies on budget year submission policy, parameters, and technical requirements for the Secretary's Budget request. DOL agencies prepare requests for review by the Deputy Secretary and the DOL senior budget review team (includes executives from Office of the Secretary; Office of the Chief Information Officer, part of OASAM; and the Solicitor's Office). After DOL agencies are told which proposals were approved, they prepare formal budgets for submission to OMB. To enhance collaborative efforts, DOL may hold planning meetings with agencies to further clarify and justify resource requests. OMB prepares decisions for agencies through a "Pass-Back" process and informs DOL of budget levels that will be presented in the President's budget. DOL negotiates with OMB to determine mandatory expenses and projected increases for compensation and benefits, Federal Employee's Compensation Act requirements, and the working capital fund. A working capital fund is a type of intragovernmental revolving fund that operates as a self-supporting entity that conducts a regular cycle of businesslike activities. These funds function entirely from the fees charged for the services they provide consistent with their statutory authority.

[14]See enc. I: slides, p. 18, fig. 1. EBSA's annual appropriation for 2022 was $185.5 million.

[15]Specifically, EBSAs 2021 appropriation is equivalent to $157 million in 2013 GDP-adjusted dollars. EBSA's 2022 appropriation is equivalent to $150 million in 2013 GDP-adjusted dollars.

appropriations since 2020—$1 million in 2020 ($182 million total appropriations) and $19.2 million in 2021 ($200.2 million total appropriations).[16]

EBSA also experienced a decline in staffing—full-time equivalents (FTEs)—over the 2013 to 2021 period.[17] EBSA officials said that while their budget largely remained flat, operating expenses increased. For example, EBSA absorbed expenses and wage scale increases as well as rent, security, information technology, and other expenses. In addition, EBSA's working capital fund costs increased by more than $8.8 million between 2015 and 2017, which required a reduction in FTEs.[18] Specifically, EBSA officials noted it experienced a decline of over 180 FTEs in 2021 from its peak level of roughly 980 FTE in 2013.

EBSA Oversight Responsibilities Have Steadily Increased along with Supplemental Appropriations, Including those Related to COVID-19

Since 2020, EBSA's overall budget has increased due to supplemental appropriations. For example, in fiscal year 2021, just over $14 million dollars was obligated from supplemental appropriations for the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the No Surprises Act of 2021 (NSA), and the American Rescue Plan Act of 2021 (ARPA).[19] Officials said that the agency increasingly relies on such supplemental funds because the agency's expenses have continued to increase while the base budget has been flat.

EBSA officials said that the agency has received many new responsibilities through legislation such as the Patient Protection and Affordable Care Act, the Families First Coronavirus Response Act, the CARES Act, and the NSA.[20] Our analysis also shows the passage of

[16]Supplemental appropriations for 2022 were $23.8 million ($209.3 million total appropriations).

[17]See enc. I: slides, p. 19, fig. 2. EBSA's total FTEs for 2022 was 668 (595 for Enforcement and Participant Assistance; 47 for Policy and Compliance Assistance; and 26 for Executive Leadership, Program Oversight and Administration).

[18]According to EBSA officials, the DOL working capital fund (WCF) is its own entity within DOL and is a mechanism for shared expenses across the agency that includes certain shared information technology, human resources, and procurement functions. The WCF has a board and an advisory committee, but allocation and assessment of WCF expenses is not negotiated and is based off of formulas.

[19]Obligations included $0.5 million under the CARES Act, $4.8 million under the NSA, and $8.9 million under the American Rescue Plan Act of 2021. See enc. I: slides, p. 20, fig. 3. EBSA's base budget for 2022 was $185.5 million, its other obligations were $5.1 million, and its supplemental obligations were $23.6 million.

[20]Responsibilities under the Families First Coronavirus Response Act and the CARES Act expired upon the end of the national emergency on April 10, 2023. Officials also noted responsibilities under the ARPA, which assigned EBSA responsibility for carrying out provisions regarding premium assistance to individuals and families for health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) as well as audit responsibilities under the Special Financial Assistance program for certain troubled multiemployer pension plans. In addition, the Setting Every Community Up for Retirement Enhancement (SECURE) Act created responsibilities regarding lifetime income illustrations, special provisions regarding annuity safe harbors, as well as new regulatory obligations and a registration requirement for newly created pooled employer plans. In discussions after our briefing, officials noted that SECURE 2.0, enacted December 29, 2022 as part of the Consolidated Appropriations Act of 2023, created a number of new responsibilities that did not include additional appropriations. Officials noted the act includes a broad collection of amendments to existing law and new provisions focused on increasing retirement savings, improving rules governing the administration of retirement plans, and lowering the cost of setting up retirement plans. EBSA officials also indicated that the agency's additional responsibilities under the act include conducting studies, submitting reports to Congress, establishing a database, opening initiatives, issuing multiple regulations, providing other formal guidance, and consulting with the Treasury Department/IRS and PBGC on various regulatory projects assigned to those agencies. Officials highlighted that they had already begun efforts to create and maintain an online searchable database known as the Retirement Savings Lost and Found that allows retirement savers who have lost

numerous laws, particularly those related to healthcare after 2006.[21] Officials specifically noted that the NSA includes a specific focus on health transparency under mental health parity enforcement with close to two dozen provisions related to EBSA regarding new pricing obligations, fee disclosure requirements, and other transparency obligations.[22] They noted that additional provisions require new regulations, guidance, and additional training for benefits advisors and enforcement staff.

According to EBSA officials, the supplemental funding provided in the NSA resulted in overlap between congressionally mandated responsibilities and prior programs. For example, officials said that EBSA already had an enforcement project related to mental health parity stemming from the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).[23]

EBSA officials noted that one-quarter to one-third of its enforcement budget went towards the mental health parity responsibilities and those funded by the NSA by the end of fiscal year 2022. However, according to officials, EBSA receives a portion of $500 million available until 2024 under the NSA and the funds are managed and allocated by another federal agency (the Department of Health and Human Services).[24] Officials also said that the additional funding from such supplemental appropriations does not alleviate longer-term uncertainties or help balance agency resources and responsibilities.

Specifically, the officials noted that EBSA has identified areas it would like to address such as dedicating a full division to its missing participants program and modernizing its efforts to respond to hard-to-value assets such as alternative investments and private equity.[25] In addition to these priorities, officials also said they would like to increase and be more proactive in its

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track of their retirement plan to search for the contact information of their plan administrator to make a claim for benefits.

[21]See enc. I: slides, p. 21, fig. 4.

[22]The Mental Health Parity Act of 1996 required parity (of mental health benefits relative to medical/surgical benefits) in annual and aggregate lifetime dollar limits in employer-sponsored, large group health plans. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) both strengthened and broadened federal parity requirements, including extending parity to cover the treatment of substance use disorders.

[23]Specifically, officials noted that NSA gave the agency the tools and funding to investigate plan compliance with non-quantitative treatment limitations (NQTL). An NQTL is any limitation on plan benefits for the treatment of mental health or substance abuse disorders that is not readily countable.

[24]According to EBSA's fiscal year 2024 Congressional Budget Justification, $25.8 million was available for obligation amongst 117 FTEs in fiscal year 2023. NSA monies obligated in 2022 amounted to $23.8 million. In an interview with agency officials after our briefing, officials noted that the expiration of funding for the NSA at the end of fiscal year 2024 adds a considerable resource and planning constraint for fiscal year 2025 and beyond as the FTEs funded under the NSA represent a considerable portion of their overall FTEs.

[25]A missing participant is a former employee (or beneficiary), also known as terminated vested participants, that has left funds in a retirement plan but does not have current contact information or is possibly non-responsive or unable to be contacted. EBSA has a Protecting Benefits Distributions project focusing on ensuring that participants are paid retirement benefits that may otherwise be at risk due to plan sponsor actions, or failures, to act. Related investigations are intended to ensure that participant benefits remain protected and are expeditiously distributed, thus avoiding losses resulting from leaving assets to languish. According to EBSA's fiscal year 2024 Congressional Budget Justification, as part of establishing a dedicated "missing participants program," the agency would like to increase its focus on industries with high shares of foreign-born workers to determine if they have disproportionate incidents of missing participants.

enforcement of Multiple Employer Welfare Arrangements (MEWAs), which have been a chronic problem for the agency.[26]

Stakeholders we interviewed expressed a mix of opinions about EBSA's responsibilities and enforcement priorities. A representative with a consumer advocacy organization for pension and retirement security said the missing participants program is a valuable oversight program that has been very effective based on the amount of money recovered per investigator.[27] In contrast, representatives from a healthcare research organization said EBSA has missed opportunities to provide proactive consumer support to participants in the healthcare plans it oversees. Since EBSA enforcement inquiries are often based off participant complaints, the representatives suggested EBSA should provide more education and outreach to participants that may not understand their plan or how to seek assistance when they require plan-related support.[28]

EBSA Has Employed Strategies to Manage Resources, but Does Not Have a Systematic Process to Address Reallocations

EBSA's Strategies to Manage Its Resources Included Prioritizing Activities with High Monetary Recoveries

EBSA's strategic planning documents describe a number of strategies for managing resources that align with the three themes of our framework for managing declining resources.[29] First, agencies should consider both short- and long-term cost-cutting and cost-avoidance strategies. Second, top management should lead efforts to manage declining resources. Third, agencies should use data analytics to guide decision-making.

- **Short- and long-term strategies**. Agency documents, such as various program operating plans, gave several examples of EBSA's efforts to consider short- and long-term cost-cutting and cost-avoidance strategies. For example, EBSA prioritizes major cases to maximize limited resources. Major cases can result in greater monetary results per investigative staff day, but take longer and can be more resource-intensive, according to EBSA officials. Specifically, the agency recovered over $2.4 billion for plans, participants, and beneficiaries in 2021.[30] Agency documents and officials also

[26]According to EBSA guidance, promoters and others have established and operated multiple employer welfare arrangements (MEWAs), also described as "multiple employer trusts" or "METs," as vehicles for marketing health and welfare benefits to employers for their employees. In its fiscal year 2021 Congressional Budget Justification, EBSA requested additional funds for MEWA enforcement and explained: "[t]he problem of insolvent and fraudulent MEWAs has dramatically increased in recent years, and is expected to further intensify if health insurance markets become more unstable…When MEWAs close down due to insolvency or fraudulent activity, participants are often left with significant unpaid claims….EBSA has increasingly had to devote significant resources to fraudulent or mismanaged MEWAs, and expects the magnitude of the burden to continue to increase based on current trends."

[27]EBSA's fiscal year 2023 Congressional Budget Justification notes that in fiscal year 2021, EBSA's investigators helped missing participants recover more than $1.5 billion in benefits for over 16,000 participants.

[28]EBSA noted that it could improve consumer support, but also that it offers extensive public assistance through its website, its outreach program, and its Benefits Advisor program.

[29]GAO-17-79

[30]Agency officials noted that enforcement-recovery performance measures have evolved over time. Specifically, since 2013, when the major case initiative began, measures of dollar savings were updated to focus on measures that result in monies being returned or restored to participants' accounts. In discussions after our briefing, officials also noted that future case recoveries may decline as they pursue MHPAEA-related cases. According to officials,

described moving in-person trainings to a remote, online format to lower costs. However, the agency reported that it has not assessed the efficiencies or cost savings related to this strategy. In a June 2023 interview after our briefing, officials noted that, while they recognize that they achieved monetary savings associated with online training they are still assessing the overall efficacy of these trainings. For example, certain in-person trainings may have advantages in building engagement, collaboration, and certain job-specific skills that may not be as easily obtained online.

- **Top management efforts**. Strategic planning documents also identified examples of efforts by EBSA's leaders to manage declining resources. For example, to provide for adequate investigative staffing, EBSA's fiscal year 2021 Annual Operating Plan stated that it would need to dedicate the $1 million it received from the CARES Act to maintaining investigative staffing levels from the previous fiscal year. In addition, with the goal of better managing risks, the agency uses an internal management tool in their planning documents, which helps it identify projects or initiatives that are increasingly demanding more resources, such as MEWAs under provisions of FFCRA and the CARES Act. Also, the agency's budget-setting process often involves both internal and external stakeholders. For example, the agency continues to collaborate with other federal agencies, states, and regional offices to develop and issue guidance to enforce MHPAEA.

- **Data analytics**. The agency expects to maximize resource efficiency by establishing target goals and assessing the impact of its investigative efforts. Agency documents also described examples of using data analytics to guide decision-making. In its fiscal year 2022 internal planning documents, EBSA used data on case performance and recoveries to establish quantitative goals to increase its monetary recoveries from a rolling average of $1.54 billion per year to $1.57 billion per year. The agency also examined the effectiveness of its investigations through a qualitative closed case quality review process. Fiscal year 2022 Annual Operating Plans stated that the results of these reviews help the agency identify ways to adjust trainings and respond to emerging findings.

EBSA Does Not Have a Clear and Systematic Process for Reallocating Resources

Although EBSA officials said they use several strategies to manage declining resources, the agency does not have a clear or systematic decision-making process for doing so. One strategy officials cited was calculating and planning resource reallocations for MEWAs—which are categorized as major cases—and detailing the resource needs in a whitepaper. However, the agency's process for using whitepapers to calculate resource reallocations is not acknowledged in planning documentation, such as its fiscal year 2022 Annual Operating Plans.

EBSA has acknowledged the impact of declining resources, as EBSA's largest resource request line item in recent Congressional Budget Justifications has been to restore resources for projects from previous fiscal years, such as investigative resources and other employee benefits projects. Specifically, "Enforcement Program Restoration" and "Employee Benefits Program Restoration" were included in the fiscal year 2023 Congressional Budget Justification. For example, with Employee Benefits Program Restoration EBSA noted a need to restore programs for research, outreach and education, program evaluations, litigation support, advisory/contract

such cases are important to oversight and enforcement of health plans but do not always result in high-dollar-value recoveries.

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. EBSA officials said restarting these projects was not possible before additional funds were allocated in the NSA, which allowed them to address internal training and staff attrition. In addition, officials said they hope to strengthen their missing participants program by creating a full division for this purpose, and a large portion of their funding would be used for transitioning and preparing staff hired from supplemental funding.

Agency officials have said that reallocating resources can be difficult because some appropriations are intended for certain purposes, and the agency has to balance historical projects while responding to new responsibilities. EBSA officials also said they are trying to allocate resources among emerging health investigations while maintaining their mandated responsibilities under ERISA.

EBSA planning documents noted that if the agency received a lower funding amount than requested, some programs and priorities would have to be modified, but the documents do not include a detailed plan for reallocating resources to accommodate these modifications. For example, the goal for transitioning and preparing staff hired for the missing participants program was not included in the planning documents we reviewed. The documents also stated that additional enforcement responsibilities for MEWAs would require the agency to redirect resources from existing enforcement priorities. However, we found no description or indication of the existing priorities that resources (typically staff) would have to be diverted from.

Federal internal control standards state that agencies should use quality information and that significant changes to the agencies' oversight, programs, and other resources should be communicated across the agency through established reporting lines to appropriate personnel.[31] Without a systematic and well-documented decision-making process, EBSA officials may not have adequate information for making informed decisions about how to manage resource reallocations to meet its increased responsibilities. A systematic and well-documented decision-making process could help management efforts to implement effective short and long-term strategies that could help the agency maintain capacity to achieve its mission of ensuring plan participants receive the health and retirement benefits to which they are entitled.

Conclusions

EBSA's budget has been generally flat over the last 10 years and has declined in GDP-indexed terms. Against this backdrop of declining resources, EBSA has taken several steps to manage its limited resources, such as focusing on cases with high monetary recoveries, establishing timeliness and monetary benchmarks for their investigations, and moving trainings online to save costs. However, the agency does not have a systematic process for reallocating resources. EBSA's efforts to indicate resource needs or reallocations have not been systematic or well documented. Thus, it is not clear how EBSA would respond to increased responsibilities, unanticipated funding, or funding that is lower than requested. A clear, systematic, and thoroughly documented decision-making process could put EBSA in a better position to make informed decisions regarding resource reallocations due to changing circumstances.

[31]Specifically, these are information and communication principle 13 (Use Quality Information) and principle 14 (Communicate Internally). GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 2014).

Recommendation for Executive Action

The Secretary of Labor should direct EBSA to develop and document a systematic decision-making process for oversight responsibilities and allocating staff in a changing budget environment, which could be incorporated within current planning documents. (Recommendation 1)

Agency Comments

We provided a draft of this report to the Department of Labor (DOL) for review and comment. EBSA provided written comments, which are reproduced in enclosure 2. In its written response, EBSA said it agreed with our assessment of the agency's mission and its budgetary challenges, but disagreed with our conclusion that the agency had not adequately documented its decision-making process. However, EBSA also said it would take further steps to enhance its formal documentation of that process, in accordance with our recommendation. Specifically, EBSA believes that it has appropriately documented a systemic and effective decision-making process for exercising oversight responsibilities and allocating staff, but it will take further steps to enhance its formal documentation of that process. Our report highlighted areas where EBSA documentation showed effective resource management and provided specific examples where EBSA documentation was not systematic with regard to reallocations. EBSA provided information in its written response that it had previously furnished including its current documentation of planning activities; and agreed it could better document the resource planning process in ways to increase transparency—and that it will review its current documentation processes and implement appropriate changes. In addition, EBSA specifically noted that it plans to document the operation, maintenance, and decision-making process associated with employee training in a way that is consistent with our recommendation. EBSA agrees that a fully developed and documented systematic decision-making process is a key component of an appropriate planning process. Efforts to enhance its current, formal documentation are in line with our recommendation.
EBSA also provided technical comments in its written response, which we incorporated where appropriate.
As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 15 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Labor, and other interested parties. In addition, the report will be available at no charge on the GAO website at https://www.gao.gov.

If you or your staff members have any questions about this report, please contact me at (202) 512-7215 or nguyentt@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Michael Collins (Assistant Director), Charles Ford (Analyst in Charge), and Christina Lee. Other contributors to this report include Andrew Bellis, James Bennett, Andrew Emmons, Randi Hall, Thomas McCabe, Tom Moscovitch, Tracie S?nchez, Monica Savoy, Almeta Spencer, Kate van Gelder, Margaret Weber and Adam Wendel.

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Education, Workforce, and Income Security Issues

Enclosures – 2

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Enclosure 1: Briefing Slides

Figure 1 Briefing Slide

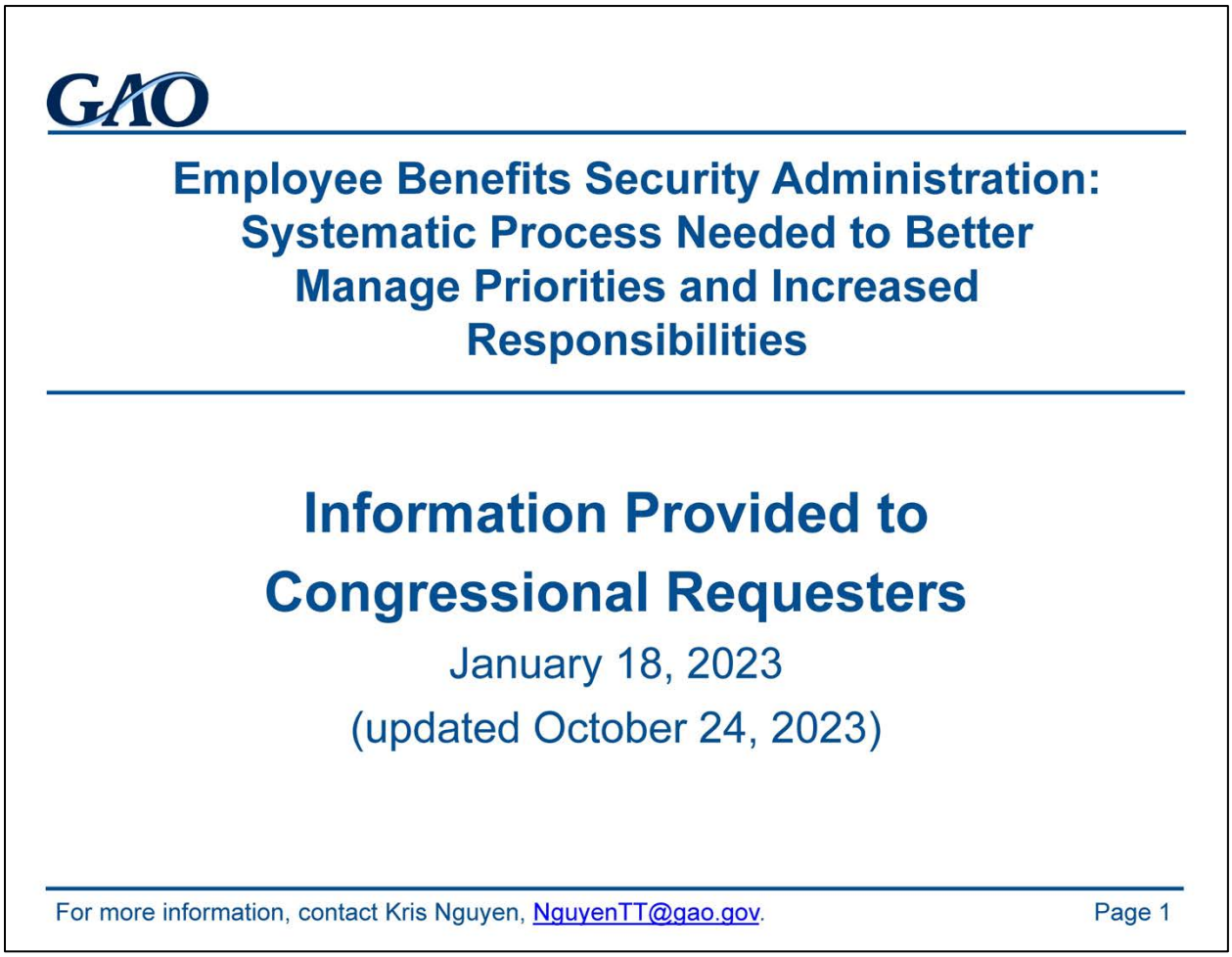

Figure 2 Briefing Slide

GAO

Introduction

- The Employee Benefits Security Administration (EBSA) is the agency within the Department of Labor (DOL) primarily responsible for ensuring compliance with requirements in Title I of the Employee Retirement Security Act of 1974 (ERISA).
- Effective oversight of plan management is critical to protect against mismanagement and fraud and to ensure that promised benefits will be available for the nearly 152 million workers, retirees, and their families covered by these health and retirement plans.

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Figure 3 Briefing Slide

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Scope and Methodology

- Analyzed agency's Congressional Budget Justification data from fiscal years 2013 to 2021 and compared against the President's Budgets
- Reviewed relevant federal laws and regulations for key changes to agency's oversight responsibilities
- Interviewed agency officials and industry stakeholder groups
- Compared relevant agency documents against a GAO framework for managing declining resources

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Figure 4 Briefing Slide

GAO

Background

- Employee Retirement Security Act of 1974 (ERISA)
- EBSA background
  - Mission
  - Organizational structure
- Sequestration and declining budget
- Timing of EBSA budget setting process

Page 5

Figure 5 Briefing Slide

GAO

Objective 1: EBSA Resources Have Generally Remained Unchanged While Oversight Responsibilities Have Increased over the Last Decade

- EBSA's annual appropriations have generally remained flat, but declined in inflation-adjusted terms.
- Agency officials said that their responsibilities have increased particularly with recent legislation.
- EBSA officials have expressed concerns about funding long-term responsibilities when supplemental appropriations are exhausted.
  - Emerging issues such as alternative investments and cryptocurrency will still warrant attention.

Page 6

Figure 6 Briefing Slide

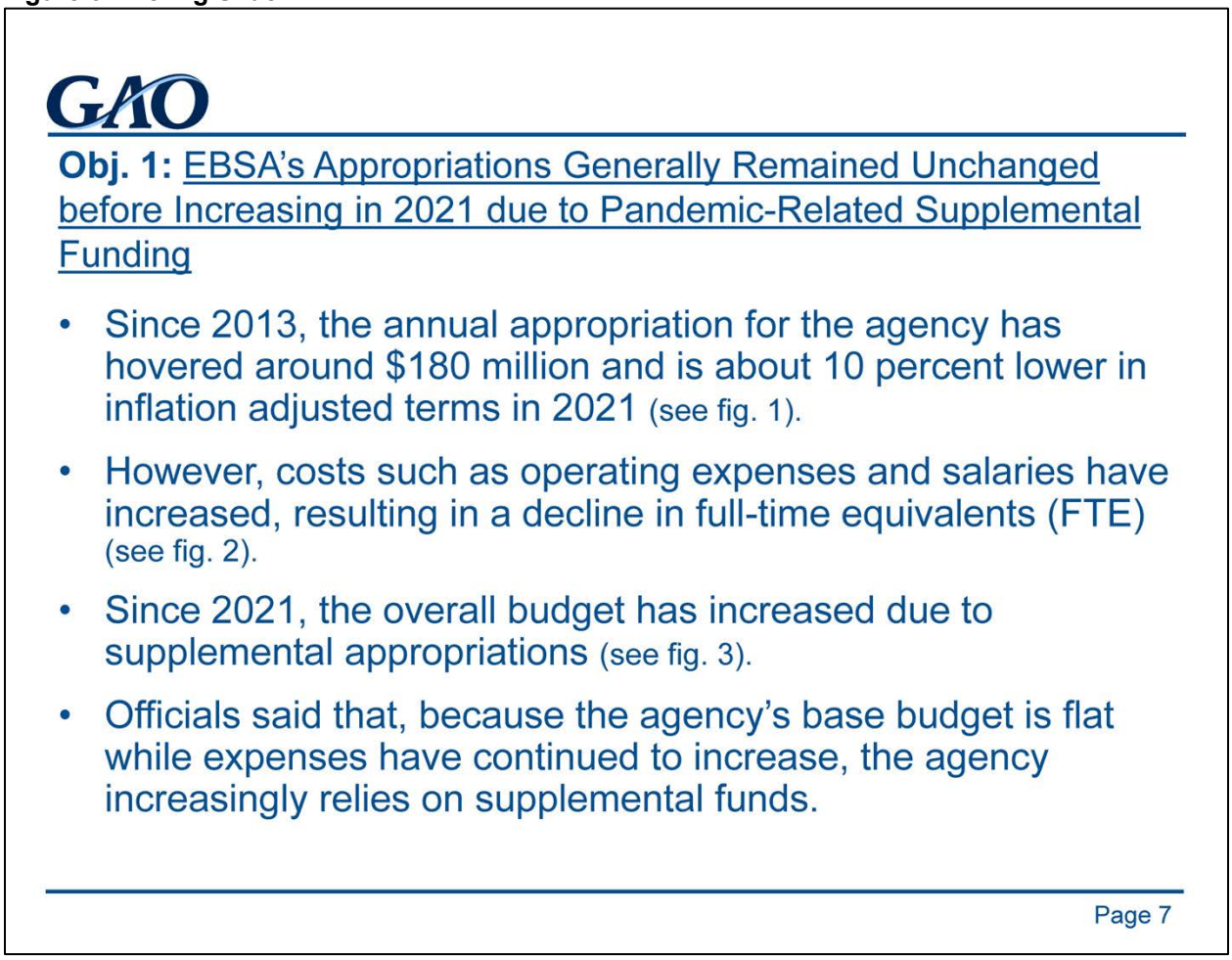
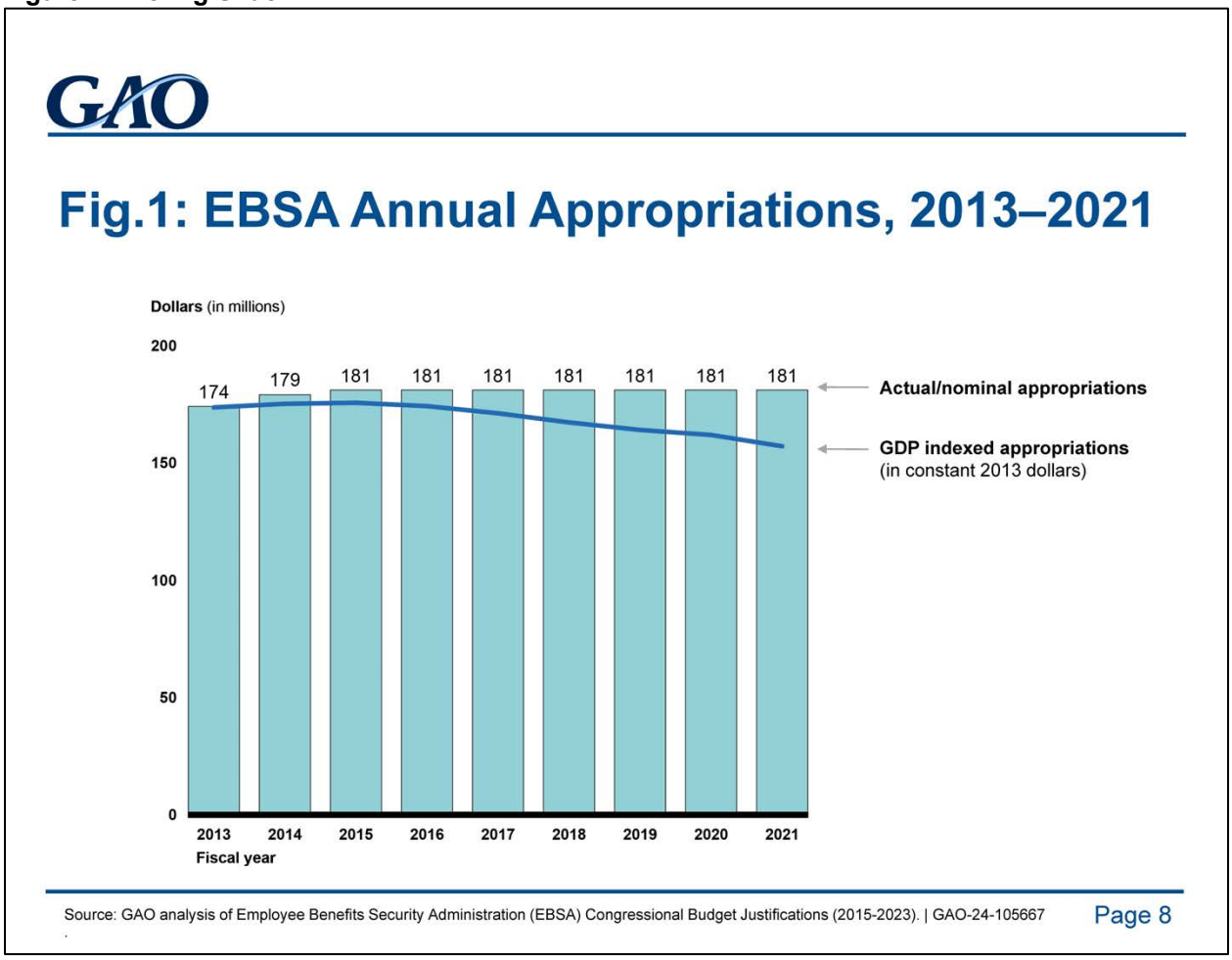


Figure 7 Briefing Slide



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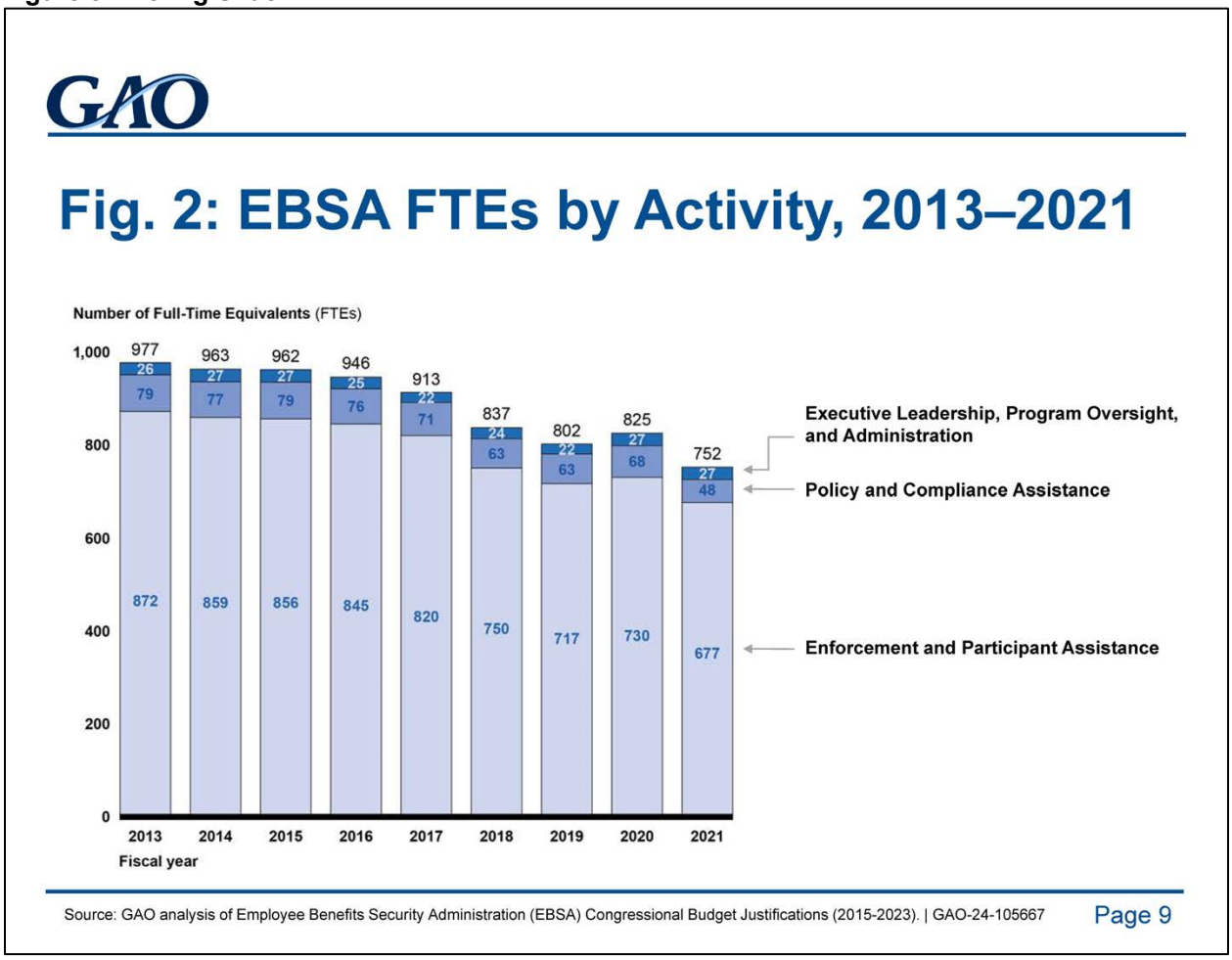

Figure 9 Briefing Slide

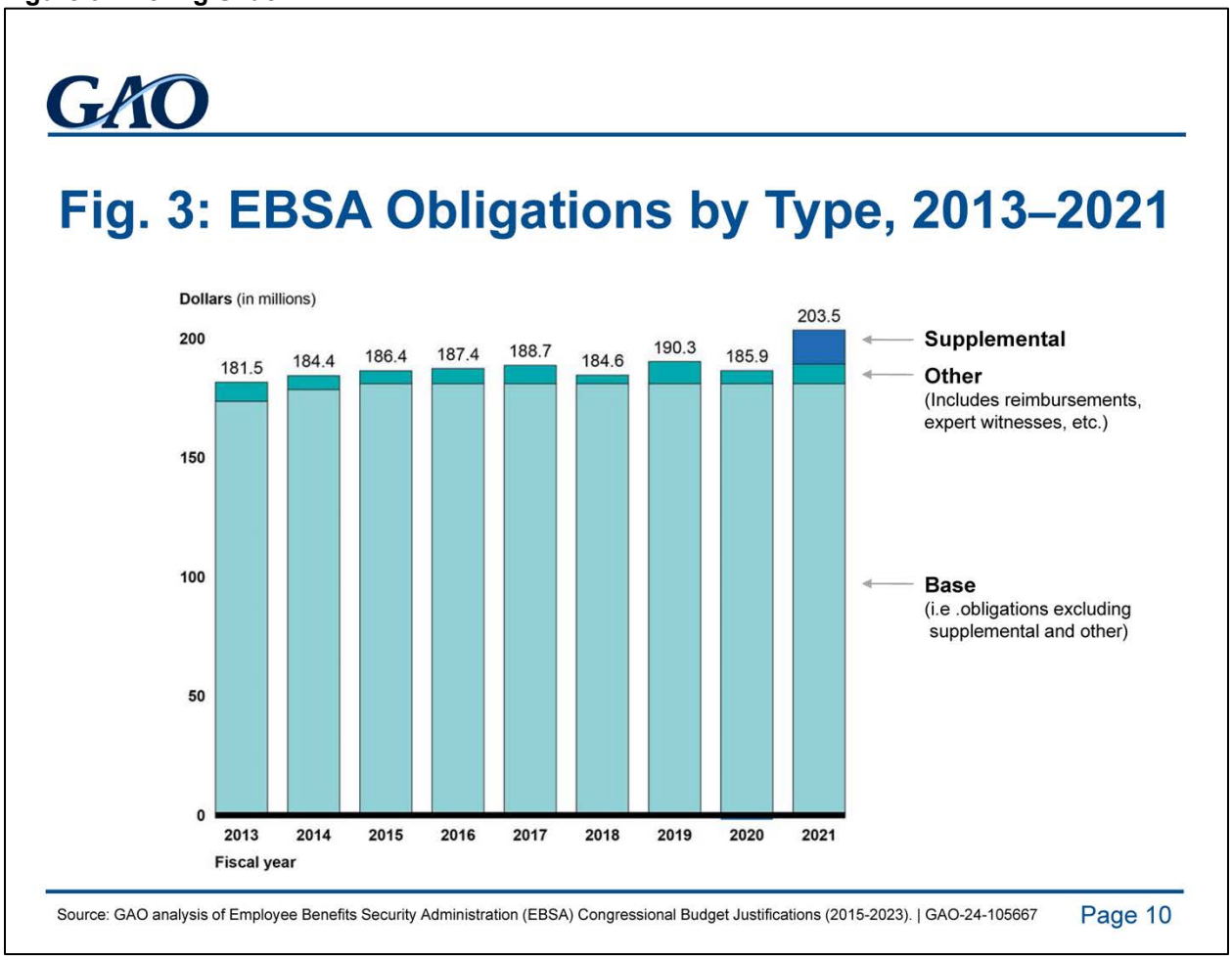

Figure 10 Briefing Slide

GAO

Fig. 4: Timeline of Key Laws Affecting EBSA

1975
1974: Employee Retirement Income Security Act of 1974 (ERISA)

1980

1985
1985: Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

1990

1995
1996: Health Insurance Portability and Accountability Act (HIPAA); Newborns' and Mothers' Health Protection Act of 1986 (NMHPA)
1998: Women's Health and Cancer Rights Act of 1998 (WHCRA)

2000

2005
2006: Pension Protection Act of 2006 (PPA)
2008: Genetic Information Nondiscrimination Act of 2008 (GINA); Paul Wellstone & Pete Domenici Mental Health Parity & Addition Equity Act of 2008 (MHPAEA)
2009: Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)
2010: Patient Protection and Affordable Care Act (ACA)

2010

2015

2020
2019: Setting Every Community Up for Retirement Enhancement Act (SECURE Act)
2020: No Surprises Act (NSA)
2021: American Rescue Plan Act of 2021 (ARPA)

Source: GAO review of federal laws on Employee Benefits Security Administration (EBSA) website (https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws). | GAO-24-105667
Note: In discussions after our briefing, officials noted that SECURE 2.0 Act of 2022, enacted in December 2022, created a number of new responsibilities.

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Figure 11 Briefing Slide

GAO

Obj. 1 (cont'd.)

Some EBSA projects and priorities include:

- institutionalizing its missing participants program
- multiple employer welfare arrangement (MEWA)

Examples of stakeholder perspectives on EBSA projects and priorities:

- A pension and retirement security consumer advocacy organization representative noted the cost effectiveness of the missing participants program and the benefits of institutionalizing within EBSA.
- According to a healthcare research organization representative, EBSA could increase effectiveness by more proactively providing consumer support to participants in the healthcare plans it oversees.

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Figure 12 Briefing Slide

GAO

Obj. 2: EBSA Has Employed Strategies to Manage Resources, but Does Not Have a Systematic Process to Address Reallocations

- EBSA has used several strategies to manage resources, such as targeting major cases that are likely to result in high monetary recoveries.
- EBSA officials noted it has increasingly relied on supplemental funding to address projects from previous years.
- Agency planning documents do not include a systematic process for reallocating resources.

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Figure 13 Briefing Slide

GAO

Obj. 2: EBSA's Strategies to Manage Its Resources Included Prioritizing Activities with High Monetary Recoveries

We identified resource management strategies in EBSA's key planning documents and compared them against the three elements of GAO's framework for agency resource management:

1) Agencies should consider both short-term and long-term cost-cutting and cost avoidance strategies

2) Top management should lead efforts to manage declining resources

3) Data analytics should guide decision-making

Source: GAO (icons). | GAO-24-105667

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Figure 14 Briefing Slide

GAO

1) Agencies should consider both short- and long-term cost-cutting and cost-avoidance strategies

- ✓ EBSA prioritized major cases to maximize the efficacy of limited resources
  - As we previously reported, EBSA began their major case priority in FY 2013 to increase the efficiency and effectiveness of its investigative resources. Major cases can take longer and be more resource intensive, but such cases can result in greater monetary results per investigative staff day.
- ✓ EBSA moved in-person trainings to an online format.

Source: GAO (icons). | GAO-24-105667

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Figure 15 Briefing Slide

GAO

2) Top management should lead efforts to manage declining resources

- ✓ EBSA identified new workload responsibilities from legislation such as the CARES Act and SECURE Act.
- ✓ EBSA collaborated with many internal offices for their strategic planning process and their risk register process, such as their Office of Program Planning Evaluation and Management and their Departmental Budget Center
- ✓ EBSA partnered with external offices and field offices to develop and issue guidance to enforce the Mental Health Parity and Addiction Equity Act.

Source: GAO (icons). | GAO-24-105667

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Figure 16 Briefing Slide

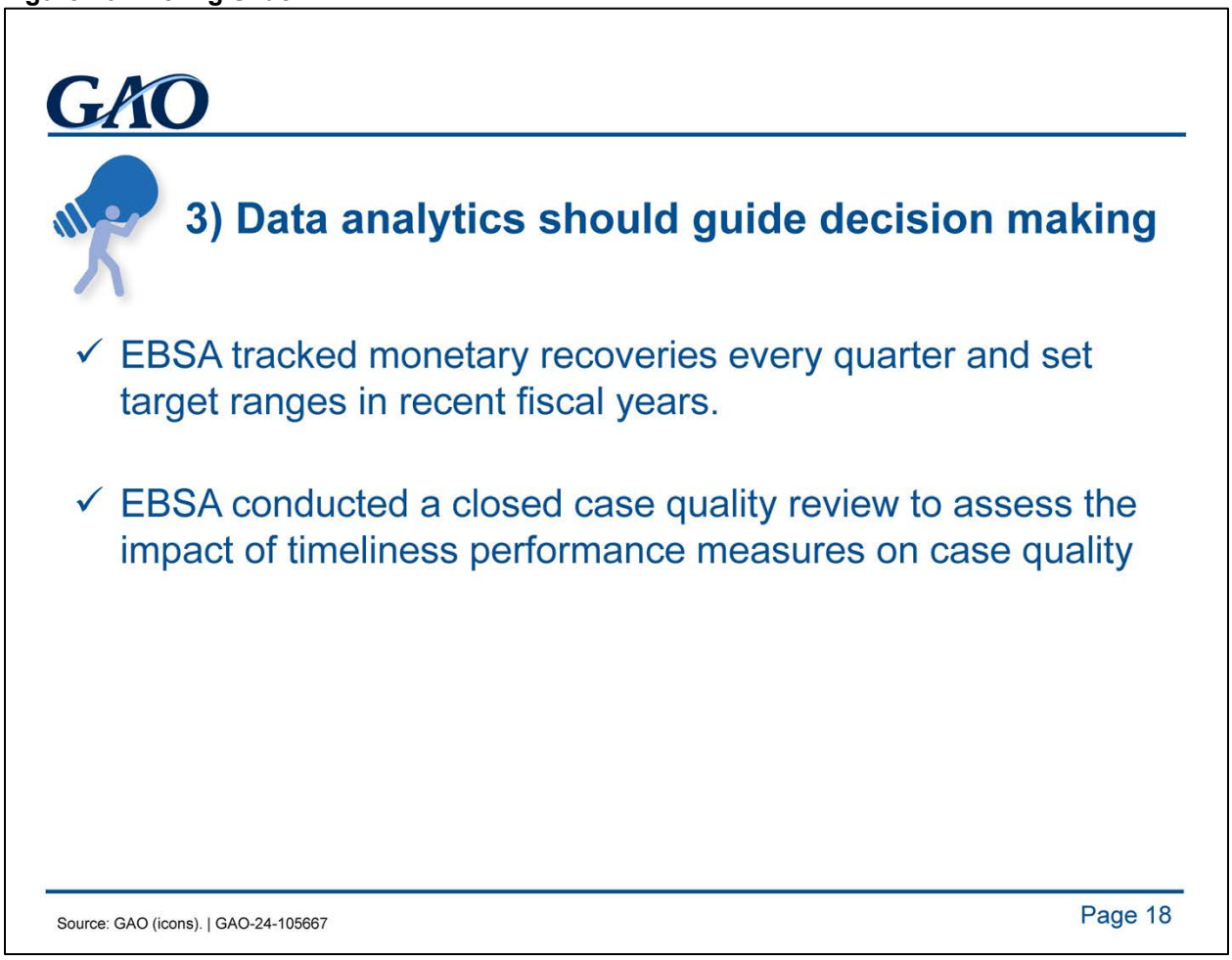

Figure 17 Briefing Slide

GAO

Obj. 2: EBSA Does Not Have a Clear and Systematic Process for Reallocating Resources

- Agency officials have said that since some appropriations are specifically designed for certain purposes, the agency has to balance historical projects while responding to additional responsibilities.
  - Restoring projects from previous fiscal years has been EBSA's largest line item in recent Congressional Budget Justifications.
  - Officials have told us that they are unable to pursue projects in emerging areas they would otherwise aspire towards, for example, creating a full division dedicated to the missing participants program.

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Figure 18 Briefing Slide

GAO

Obj. 2: EBSA Does Not Have a Clear and Systematic Process for Reallocating Resources

- We found that the agency's current process to allocate staff lacks clarity across different priority areas.
- For example, officials said they had calculated their planning resource reallocations for major case multiple employer welfare arrangement investigations in a whitepaper. However, the agency's process for using whitepapers to calculate resource reallocations is not acknowledged in its FY 2022 Annual Operating Plans.
- Federal internal control standards state that agencies should use quality information and communicate significant resource changes.
- EBSA will be better-positioned to make decisions regarding resource reallocations with a clear and systematic process.

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Enclosure 2: Agency Comments

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, DC 20210

September 22, 2023

Tranchau (Kris) Nguyen
Director, Education, Workforce, and Income Security
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Nguyen:

The Employee Benefits Security Administration (EBSA) appreciates the opportunity to comment on the Government Accountability Office's (GAO) draft report on the Agency's resource planning process. We agree with your assessment of the Agency's vast mission and budgetary challenges but disagree with the conclusion that the Agency has not adequately documented its systematic decision-making process. EBSA employs a careful process to assess and allocate resources, determine budgetary requirements, and establish measures and performance markers. These efforts ensure that the Agency accomplishes its mission critical objectives within the limits of its budget. However, there are always opportunities for improvement, and the Agency will explore additional ways to formally document its internal processes, as it continues to address resource constraints in an ever-changing budget environment.

As noted in the report, EBSA is a small agency responsible for overseeing an enormous plan universe, including more than 747,000 employer-sponsored or other job-based retirement plans, about 2.5 million group health plans, and approximately 673,000 other welfare benefit plans. As of FY 2022, ERISA-covered employee benefit plans held approximately $12.5 trillion in assets. In total, ERISA-covered plans provide benefits to over 152 million workers and their families, and ERISA-covered health plans are the overwhelming source of health coverage in the United States for people under age 65. EBSA also has important regulatory and audit responsibilities for both the federal Thrift Savings Plan, the largest defined contribution plan in the world, and IRAs, which currently hold even more assets than ERISA-covered retirement plans.

While the plan universe is large, EBSA is small, employing less than 900 people nationwide. At current staffing levels, EBSA has only about 1 investigator for every 12,000 ERISA-covered plans. Over the past decade, the Agency's responsibilities have only grown with the enactment of new and complex health and retirement laws. However, even as its responsibilities have increased, the Agency's budget has declined in real dollars. As a result, it has repeatedly had to reduce the size of its staff. EBSA lost over 180 FTEs from 2013 to 2021 because of persistent reductions in resources. EBSA is now planning for the loss of 70 additional FTEs to just 815 by the end of FY 2024 as it manages the expiration of temporary funding that it received under the Consolidated Appropriations Act for implementation and enforcement of the No Suprises Act and the Mental Health Parity and Addiction Equity Act (MHPAEA). In FY 2025, the Agency expects to have to eliminate another 85 FTEs, to a total of approximately 724, if there is no increase in funding. The contrast between the small size of the agency and the large universe it is possible for regulating could not be starker.

1

Although the supplemental funding supporting additional resources are set to expire at the end of FY 2024, EBSA's obligations under these laws remain. Additionally, the Agency must implement significant new responsibilities under the SECURE 2.0 Act, including the drafting of new regulations and guidance documents, the staffing and management of a new Division of Employee Ownership, and the creation of an electronic Lost and Found database to connect "missing participants" with promised retirement benefits. Establishing the new database is also consistent with a key GAO priority. *See 401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*. GAO-15-73; Published, November 21, 2014; Publicly Released, December 22, 2014. *Priority Open Recommendations Department of Labor*. GAO-21-429PR. Published: Jun 29, 2021. Publicly Released: Jul 06, 2021.

With limited resources and increasing obligations, EBSA and its leadership are constantly focused on finding ways to maximize the Agency's impact on its large regulatory population. At current and foreseeable funding levels, EBSA cannot pursue every category of claim that falls within its purview or give guidance and issue regulations on every issue of importance. Instead, it must operate with full knowledge that every action the Agency takes comes at the cost of another.

Accordingly, EBSA agrees with GAO's observation that a fully developed and documented systematic decision-making process is a key component of an appropriate planning process for managing dwindling resources. While the Agency believes that it has appropriately documented a systemic and effective decision-making process for exercising oversight responsibilities and allocating staff, it will take further steps to enhance its formal documentation of that process in accordance with Recommendation 1 ("develop and document a systemic decision-making process for oversight responsibilities and allocating staff in a changing budget environment, which could be incorporated within current planning documents").

The Agency does not read the GAO's draft report as criticism of the Agency's specific resource allocation decisions, which reflect careful deliberations, but rather as expressing the view that EBSA needs to improve its documentation of the process leading to those decisions. EBSA currently documents its planning decisions and activities in a variety of ways, including its:

- Agency Management Plan (AMP),
- Program Operating Plan,
- Strategic Plan,
- Learning Agenda,
- Enterprise-wide Risk Profiles and Risk Registers,
- Future of Work Plan,
- Barrier Analyses,
- budget papers (agency issue papers, OMB Budget Submission, and Congressional Budget Justification), and
- strategic review analysis,
- as well as numerous other documents.

2

Nevertheless, EBSA agrees that it could better document the resource planning process in ways to increase transparency. With GAO's report and recommendations in mind, EBSA will review its current documentation process and implement appropriate changes.

The Department also appreciates the GAO's examples of Agency efforts to manage its resources in accordance with the three main themes of GAO's framework for managing declining resources:

1) considering both short- and long-term cost-cutting and cost-avoidance strategies,
2) top management efforts to manage declining resources, and
3) the use of data analytics.

As GAO noted, one example of EBSA's efforts to consider short- and long-term cost-cutting and cost-avoidance strategies is the development of the Major Case program, which focuses limited Agency resources on cases that reflect systemic violations affecting large numbers of plans and participants. That program has been an enormous success, as reflected in the Agency's recovery numbers. As a result of such efforts, EBSA recovered more than $1.4 billion for plans, participants and beneficiaries in FY 2022 through its enforcement, voluntary compliance programs and informal complaint resolutions. The Agency's efforts to maximize the benefits from its limited budget are reflected in the average recoveries obtained by EBSA investigators for each investigative day. For example, in FY 2022, EBSA investigators recovered, on average, $ $51,205 *per investigator per day* under the Major Case program. Investigators recovered, on average, *$16,776per investigator per day* for all cases. This is an extraordinary return on taxpayer investment that reflects deliberate decisions by Agency leadership and extraordinary efforts by EBSA staff to ensure that the Agency's limited resources are focused on activities most likely to have the greatest possible impact. It is powerful and tangible evidence of the care with which the Agency manages its resources for the benefit of plans, participants, and beneficiaries. The Agency expects these numbers to decline as it shifts its priorities to MHPAEA and health cases that yield important – but less readily quantifiable – results. However, the Agency is confident that its efforts will continue to result in far greater benefits to workers and their dependents than the dollar amounts expended by the Agency. The Agency's focus on maximizing the positive impact of its efforts will remain constant, as will its insistence on using meaningful and reliable metrics of success.

In a similar effort to maximize the efficiency and effectiveness of its employee training program, EBSA is restructuring its training program and will ensure that process is well-documented. The Agency is working on establishing a new curriculum, a cadre of expert trainers, and a process for measurably assessing the effectiveness of the training. As the report notes, the Agency was forced by its limited budget (and the pandemic) to reduce in-person training, but remains concerned that online training has thus far proven to be less effective. Given the limitations on EBSA's budget, the Agency cannot deliver all its employee training in person but is actively working to enhance the efficacy of its training, irrespective of its mode of delivery. Consistent with GAO's recommendation, the Department will formally document the operation, maintenance, and decision-making process associated with employee training.

3

As reflected in the GAO report, EBSA has effectively adapted to the budget challenges and the loss of staffing resources needed to fulfill its critical mission. But while the report captured some of the challenges the Agency faces because of its severe resource constraints, it did not capture the systematic budget and strategic management processes the Agency deploys to maximize beneficial outcomes. The Agency intends to enhance its formal documentation of these efforts, but we have included brief descriptions of the relevant processes in this response. Attachment A outlines the budget planning process, which includes an engaged and careful effort to develop a plan to address projected funding levels and possible variations that could have an impact on the allocation of resources and oversight obligations. Attachment A shows how this is a systematic budget formulation and execution process that begins at least 2 years in advance and continues through the actual appropriation and expenditure of funds. It includes a decision-making process for oversight and allocation of staff and, as GAO noted, involves both internal and external stakeholders.

Attachment B outlines the strategic management process. Although the GAO acknowledged the operating plan (i.e., the AMP) in the report, it did not set out the extent to which it is used as a comprehensive tool to document Agency processes. The AMP maps out priorities, strategies, activities, and resources that EBSA will employ to achieve its mission critical work. It also establishes key milestones and measures that will be used to assess progress throughout the year. This tool provides a systematic approach to decision-making and oversight across the agency.

EBSA would also like to note a few small areas of disagreement or misunderstanding.

First, the draft report cites budget planning documents and white papers that EBSA prepared on topics such as MEWAs and the Missing Participant program. The report suggests that these documents should have included more detail about how resources would be allocated if the Agency did not receive the funding. The suggestion misperceives the purpose and importance of these documents. The sole purpose of the papers was to outline the potential expansion of enforcement efforts with respect to MEWAs and missing participants, as compared to the Agency's preexisting commitment of resources to these efforts, which already reflected a well-developed approach to the staffing and pursuit of these categories of cases consistent with current resource levels and operating plans. Had the proposed projects been funded, the Agency had ready mechanisms for hiring and allocating staff that it would have drawn upon, just as it has for a variety of past programs that have received funding. In the absence of funding, the Agency necessarily would have to live within its existing appropriations in accordance with its established processes and priorities. The AMP and budget processes described in the outline are the chief mechanisms by which the Agency makes the budget, resource allocation, priority setting, and performance management decisions within existing budget realities,

Second, the draft erroneously references a position, the Deputy Assistant Secretary for Regional Office Administration, that no longer exists. Instead, we'd suggest that the report simply refer to the Office of Field Administration.

Finally, the draft report notes a statement from a health care research organization that said EBSA had missed opportunities to provide proactive consumer support to participants in health plans. EBSA is certain that it could improve consumer support but believes that the statement is

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incomplete without reference to EBSA's extensive public assistance through its website, the Agency's outreach program, and its Benefits Advisor program.

The Benefits Advisor program is a unique program in which the Agency takes live calls from participants, beneficiaries, plan sponsors, and fiduciaries to answer questions about ERISA and to assist with informal dispute resolution. In FY 2023, EBSA's Benefits Advisors fielded over 183,800 inquiries, recovered more than $413.7 million, and referred more than 300 cases to EBSA's enforcement program.

The Agency is also currently engaged in a data-driven effort to increase public awareness of mental health parity and the assistance the Agency can provide in improving access to mental health and substance use disorder benefits.

EBSA thanks the GAO for its review of the Agency's resource management process. We will move forward with our work with the GAO's report and recommendations in mind.

Sincerely,

LISA GOMEZ Digitally signed by LISA GOMEZ Date: 2023.09.22 10:12:22 -04'00'

Lisa M. Gomez
Assistant Secretary

5

Attachment A: EBSA Budgetary Process

- EBSA planning and the budget formulation cycle starts two years in advance. It follows the Departmental budget guidance that outlines the Secretary's priorities. EBSA begins the process by assessing its current activities and evaluates performance of programs and levels of achievements of previously established goals.

- EBSA's office of Budget provides guidance to program offices and provides assumptions to executive leadership, directors, and managers across the agency to develop initial estimates of needed resources and ideas for new proposals.

- Program Offices identify their needs based on workloads, new proposals, Full Time Equivalency (FTEs), and funding needed to meet the agency mission. EBSA's executive leadership decides allocation of resources based on priorities and decides which initiatives can move forward.

- EBSA uses statistical data points to develop estimates for staffing patterns, cost estimates, and increases in operating expenses including pay and compensation, working capital fund, IT and rent.

- EBSA submits its Budget request to the Department's Budget Center (DBC) that in conjunction with the Office of the Secretary, which reviews and provides a "passback" to EBSA. The passback outlines level of funding, FTE, and approved new proposals that can move on to the OMB Budget stage.

- EBSA reviews its submission and adjusts it to comply with the passback. It analyzes its submission and if necessary, reallocates resources to maximize outcomes. This can mean taking resources from one program and reallocating to a different program that better supports current priorities.

- Prior to receiving a budget, EBSA prepares to fund its programs for the following fiscal year. The agency works on spending plan requirements with National and Regional Program Offices for the applicable fiscal year. Plans support both full year appropriations and possible Continuing Resolutions (CR).

- At the beginning of each fiscal year, EBSA's Office of Program Planning, Evaluation, and Management (OPPEM), national and regional office Directors, and the Agency's top leadership collaborate to develop spend plans based on National and Regional program operating plan requirements. Once spend plans are consolidated, leadership rigorously reviews to allocate its limited resources based on agency priorities.

6

- OPPEM tracks and monitors spending throughout the year. Program Offices are provided with a monthly Status of Funds (SOF) report to confirm the ongoing need of unspent/unallocated funds. All offices must ensure that they spend within the allocated amount for their office and not go over the available resources. If funds are not needed, offices are required to return unused funds so they can be used for other purposes. Based on funding needs, funding availability, or emergency requirements, there could be spending adjustments through-out the year.

- OPPEM and OE manage and reports regional spend plans against actual obligations. This reporting provides leadership with the opportunity to monitor how regional program funds are managed and obligated, project potential surplus and deficits, and reprogram funds as needed in a constantly changing program environment. This is a proactive means of identifying and preventing potential funding problems and provide corrective action prior to the agency's annual funding review.

- All financial transactions including contracts, purchase card, travel, etc. go through audit review and obligation analysis throughout the year by OPPEM, the Department, and the auditors to ensure all transactions are valid. Additionally, there are internal controls at all levels to ensure "checks and balances" and appropriate approval for all financial transactions.
    - In FY 2024, OPPEM will finalize the centralization of procurement. This means each office works with OPPEM to execute contract needs.

- OPPEM prepares for year-end closing and new fiscal year opening starting in April of each year. Near year-end closing, in July, August, and September, OPPEM performs rigorous funding review to facilitate budget execution before closing.

- OPPEM reviews funding status closely throughout the year, especially near year-end closing, and advises leadership of funding availability. At year-end closing, if any surplus of funds are realized, as part of the normal prepayment process, EBSA transfers funds into the Working Capital Fund (WCF) prepayments for both Operating Plan and Enterprise-Wide Shared Services (ESS) expenses to enable the Agency to carry-on into the new fiscal year when there are likely to be significant financial uncertainties.

Appendix B: EBSA Agency Management Plan (AMP) Process

Before April of the preceding fiscal year

- Months before the fiscal year begins, EBSA begins work with personnel from every program office within the agency (usually at both the Office Director and subordinate levels) to collaborate on development of the AMP.

- EBSA's Office of Program Planning, Evaluation, and Management makes requests for forecasting of critical projects and deliverables and begins collaborative work on determining which work will have to be restructured or reduced given budgetary resources in collaboration with Agency leadership.

- As part of the initial effort, reference materials are compiled, including previous fiscal year AMP, Future of Work Plan, Learning Agendas, Risk Profiles, Strategic Plan, etc., and collaborative work begins with the Office of the Assistant Secretary for Administration and Management's (OASAM's) Performance Management Center (PMC) for the formulation of the AMP.

April-August

- EBSA staff and leadership begin the draft formulation of the AMP and staff ensures that the document links to EBSA's budget, program activities, themes, strategies, measures, and milestones to track the execution and communication between DOL and leadership at all levels.

- The AMP is a key tool used to assess how the agency is meeting the Department's Strategic goals, as set out in the 5-year DOL Strategic Plan and reflects agency capabilities and operating environment; quarterly reviews of performance under the AMP provide evidence-based evaluations to inform next steps.

- Senior leadership works with each program to discuss upcoming activities (whether determined by new legislation, Administration priorities, changes in regulatory policy, or changes in agency priorities) to determine the most efficient allocation of resources, set goals, and determine priorities.

- An enterprise-wide risk management evaluation is conducted to provide additional insight on potential issues that could impact proposed plans for the upcoming fiscal year. Based on the results of that review, and agency deliberations on how best to deploy its staff and resources, the agency adjusts or creates new metrics, measures, or staffing decisions, as reflected in the AMP.

8

- The first draft AMP is submitted to PMC for initial review. The Performance, Budget, Risk Management and Equity groups review and provide feedback to EBSA that is addressed by the Agency. The review process is extensive and includes multiple iterations and reviews from leadership and managers at the agency and Department levels.

September

- The Agency submits its final 508-compliant fiscal year AMP. By this time, the document fully reflects the views of top agency leadership and the collaborative efforts and input of all EBSA's offices at both the regional and national level.

- The final AMP is a comprehensive and detailed document which addresses the following topics based on a deliberative process involving input from all EBSA's program and field offices, active engagement with and decisions by EBSA's top leadership, and collaborative discussions with numerous internal and external stakeholders:

    - Anticipated Budget and Staffing Resources
    - Agency Themes, Strategies, Priorities, Activities, and Goals Encompassing --
        - Enforcement
        - Compliance Assistance
        - Regulation
        - Research
        - Outreach and Education
        - Consumer Outreach and Public Education
        - Participant Assistance and Customer Service Activities
        - Diversity, Equity, Inclusion, and Accessibility
        - Hiring
        - Data Sources, Quality, and Presentation
        - Comprehensive Performance Measures and Milestones

9

Accessible Text for Enclosure 2: Agency Comments

September 22, 2023

Tranchau (Kris) Nguyen
Director, Education, Workforce, and Income Security
United States Government Accountability Office
Washington, DC 20548

Dear Ms. Nguyen:

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Although the supplemental funding supporting additional resources are set to expire at the end of FY 2024, EBSA's obligations under these laws remain. Additionally, the Agency must implement significant new responsibilities under the SECURE 2.0 Act, including the drafting of new regulations and guidance documents, the staffing and management of a new Division of Employee Ownership, and the creation of an electronic Lost and Found database to connect "missing participants" with promised retirement benefits. Establishing the new database is also

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Accordingly, EBSA agrees with GAO's observation that a fully developed and documented systematic decision-making process is a key component of an appropriate planning process for managing dwindling resources. While the Agency believes that it has appropriately documented a systemic and effective decision-making process for exercising oversight responsibilities and allocating staff, it will take further steps to enhance its formal documentation of that process in accordance with Recommendation 1 ("develop and document a systemic decision-making process for oversight responsibilities and allocating staff in a changing budget environment, which could be incorporated within current planning documents").

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- as well as numerous other documents.

Nevertheless, EBSA agrees that it could better document the resource planning process in ways to increase transparency. With GAO's report and recommendations in mind, EBSA will review its current documentation process and implement appropriate changes.

The Department also appreciates the GAO's examples of Agency efforts to manage its resources in accordance with the three main themes of GAO's framework for managing declining resources:

1) considering both short- and long-term cost-cutting and cost-avoidance strategies,

2) top management efforts to manage declining resources, and

3) the use of data analytics.

As GAO noted, one example of EBSA's efforts to consider short- and long-term cost-cutting and cost-avoidance strategies is the development of the Major Case program, which focuses limited Agency resources on cases that reflect systemic violations affecting large numbers of plans and participants. That program has been an enormous success, as reflected in the Agency's recovery numbers. As a result of such efforts, EBSA recovered more than $1.4 billion for plans, participants and beneficiaries in FY 2022 through its enforcement, voluntary compliance programs and informal complaint resolutions. The Agency's efforts to maximize the benefits from its limited budget are reflected in the average recoveries obtained by EBSA investigators for each investigative day. For example, in FY 2022, EBSA investigators recovered, on average, $ $51,205 per investigator per day under the Major Case program. Investigators recovered, on average, $16,776per investigator per day for all cases. This is an extraordinary return on taxpayer investment that reflects deliberate decisions by Agency leadership and extraordinary efforts by EBSA staff to ensure that the Agency's limited resources are focused on activities most likely to have the greatest possible impact. It is powerful and tangible evidence of the care with which the Agency manages its resources for the benefit of plans, participants, and beneficiaries. The Agency expects these numbers to decline as it shifts its priorities to MHPAEA and health cases that yield important – but less readily quantifiable – results. However, the Agency is confident that its efforts will continue to result in far greater benefits to workers and their dependents than the dollar amounts expended by the Agency. The Agency's focus on maximizing the positive impact of its efforts will remain constant, as will its insistence on using meaningful and reliable metrics of success.

In a similar effort to maximize the efficiency and effectiveness of its employee training program, EBSA is restructuring its training program and will ensure that process is well-documented. The Agency is working on establishing a new curriculum, a cadre of expert trainers, and a process for measurably assessing the effectiveness of the training. As the report notes, the Agency was forced by its limited budget (and the pandemic) to reduce in-person training, but remains concerned that online training has thus far proven to be less effective. Given the limitations on EBSA's budget, the Agency cannot deliver all its employee training in person but is actively working to enhance the efficacy of its training, irrespective of its mode of delivery. Consistent with GAO's recommendation, the Department will formally document the operation, maintenance, and decision-making process associated with employee training.

As reflected in the GAO report, EBSA has effectively adapted to the budget challenges and the loss of staffing resources needed to fulfill its critical mission. But while the report captured some of the challenges the Agency faces because of its severe resource constraints, it did not capture the systematic budget and strategic management processes the Agency deploys to maximize beneficial outcomes. The Agency intends to enhance its formal documentation of these efforts, but we have included brief descriptions of the relevant processes in this response. Attachment A outlines the budget planning process, which includes an engaged and careful effort to develop a plan to address projected funding levels and possible variations that could have an impact on the allocation of resources and oversight obligations. Attachment A shows how this is a

systematic budget formulation and execution process that begins at least 2 years in advance and continues through the actual appropriation and expenditure of funds. It includes a decision-making process for oversight and allocation of staff and, as GAO noted, involves both internal and external stakeholders.

Attachment B outlines the strategic management process. Although the GAO acknowledged the operating plan (i.e., the AMP) in the report, it did not set out the extent to which it is used as a comprehensive tool to document Agency processes. The AMP maps out priorities, strategies, activities, and resources that EBSA will employ to achieve its mission critical work. It also establishes key milestones and measures that will be used to assess progress throughout the year. This tool provides a systematic approach to decision-making and oversight across the agency.

EBSA would also like to note a few small areas of disagreement or misunderstanding.

First, the draft report cites budget planning documents and white papers that EBSA prepared on topics such as MEWAs and the Missing Participant program. The report suggests that these documents should have included more detail about how resources would be allocated if the Agency did not receive the funding. The suggestion misperceives the purpose and importance of these documents. The sole purpose of the papers was to outline the potential expansion of enforcement efforts with respect to MEWAs and missing participants, as compared to the Agency's preexisting commitment of resources to these efforts, which already reflected a well-developed approach to the staffing and pursuit of these categories of cases consistent with current resource levels and operating plans. Had the proposed projects been funded, the Agency had ready mechanisms for hiring and allocating staff that it would have drawn upon, just as it has for a variety of past programs that have received funding. In the absence of funding, the Agency necessarily would have to live within its existing appropriations in accordance with its established processes and priorities. The AMP and budget processes described in the outline are the chief mechanisms by which the Agency makes the budget, resource allocation, priority setting, and performance management decisions within existing budget realities,

Second, the draft erroneously references a position, the Deputy Assistant Secretary for Regional Office Administration, that no longer exists. Instead, we'd suggest that the report simply refer to the Office of Field Administration.

Finally, the draft report notes a statement from a health care research organization that said EBSA had missed opportunities to provide proactive consumer support to participants in health plans. EBSA is certain that it could improve consumer support but believes that the statement is incomplete without reference to EBSA's extensive public assistance through its website, the Agency's outreach program, and its Benefits Advisor program.

The Benefits Advisor program is a unique program in which the Agency takes live calls from participants, beneficiaries, plan sponsors, and fiduciaries to answer questions about ERISA and to assist with informal dispute resolution. In FY 2023, EBSA's Benefits Advisors fielded over 183,800 inquiries, recovered more than $413.7 million, and referred more than 300 cases to EBSA's enforcement program.

The Agency is also currently engaged in a data-driven effort to increase public awareness of mental health parity and the assistance the Agency can provide in improving access to mental health and substance use disorder benefits.

EBSA thanks the GAO for its review of the Agency's resource management process. We will move forward with our work with the GAO's report and recommendations in mind.

Sincerely,

Digitally signed by LISA GOMEZ
Date: 2023.09.22 10:12:22
-04'00'

Lisa M. Gomez
Assistant Secretary

Attachment A: EBSA Budgetary Process

- EBSA planning and the budget formulation cycle starts two years in advance. It follows the Departmental budget guidance that outlines the Secretary's priorities. EBSA begins the process by assessing its current activities and evaluates performance of programs and levels of achievements of previously established goals.

- EBSA's office of Budget provides guidance to program offices and provides assumptions to executive leadership, directors, and managers across the agency to develop initial estimates of needed resources and ideas for new proposals.

- Program Offices identify their needs based on workloads, new proposals, Full Time Equivalency (FTEs), and funding needed to meet the agency mission. EBSA's executive leadership decides allocation of resources based on priorities and decides which initiatives can move forward.

- EBSA uses statistical data points to develop estimates for staffing patterns, cost estimates, and increases in operating expenses including pay and compensation, working capital fund, IT and rent.

- EBSA submits its Budget request to the Department's Budget Center (DBC) that in conjunction with the Office of the Secretary, which reviews and provides a "passback" to EBSA. The passback outlines level of funding, FTE, and approved new proposals that can move on to the OMB Budget stage.

- EBSA reviews its submission and adjusts it to comply with the passback. It analyzes its submission and if necessary, reallocates resources to maximize outcomes. This can mean taking resources from one program and reallocating to a different program that better supports current priorities.

- Prior to receiving a budget, EBSA prepares to fund its programs for the following fiscal year. The agency works on spending plan requirements with National and Regional Program Offices for the applicable fiscal year. Plans support both full year appropriations and possible Continuing Resolutions (CR).

- At the beginning of each fiscal year, EBSA's Office of Program Planning, Evaluation, and Management (OPPEM), national and regional office Directors, and the Agency's top leadership collaborate to develop spend plans based on National and Regional program operating plan requirements. Once spend plans are consolidated, leadership rigorously reviews to allocate its limited resources based on agency priorities.

- OPPEM tracks and monitors spending throughout the year. Program Offices are provided with a monthly Status of Funds (SOF) report to confirm the ongoing need of unspent/unallocated funds. All offices must ensure that they spend within the allocated amount for their office and not go over the available resources. If funds are not needed, offices are required to return unused funds so they can be used for other purposes. Based on funding needs, funding availability, or emergency requirements, there could be spending adjustments through-out the year.

- OPPEM and OE manage and reports regional spend plans against actual obligations. This reporting provides leadership with the opportunity to monitor how regional program funds are managed and obligated, project potential surplus and deficits, and reprogram funds as needed in a constantly changing program environment. This is a proactive means of identifying and preventing potential funding problems and provide corrective action prior to the agency's annual funding review.

- All financial transactions including contracts, purchase card, travel, etc. go through audit review and obligation analysis throughout the year by OPPEM, the Department, and the auditors to ensure all transactions are valid. Additionally, there are internal controls at all levels to ensure "checks and balances" and appropriate approval for all financial transactions.

    - In FY 2024, OPPEM will finalize the centralization of procurement. This means each office works with OPPEM to execute contract needs.

- OPPEM prepares for year-end closing and new fiscal year opening starting in April of each year. Near year-end closing, in July, August, and September, OPPEM performs rigorous funding review to facilitate budget execution before closing.

- OPPEM reviews funding status closely throughout the year, especially near year-end closing, and advises leadership of funding availability. At year-end closing, if any surplus of funds are realized, as part of the normal prepayment process, EBSA transfers funds into the Working Capital Fund (WCF) prepayments for both Operating Plan and Enterprise-Wide Shared Services (ESS) expenses to enable the Agency to carry-on into the new fiscal year when there are likely to be significant financial uncertainties.

Appendix B: EBSA Agency Management Plan (AMP) Process

Before April of the preceding fiscal year

- Months before the fiscal year begins, EBSA begins work with personnel from every program office within the agency (usually at both the Office Director and subordinate levels) to collaborate on development of the AMP.

- EBSA's Office of Program Planning, Evaluation, and Management makes requests for forecasting of critical projects and deliverables and begins collaborative work on determining which work will have to be restructured or reduced given budgetary resources in collaboration with Agency leadership.

- As part of the initial effort, reference materials are compiled, including previous fiscal year AMP, Future of Work Plan, Learning Agendas, Risk Profiles, Strategic Plan, etc., and collaborative work begins with the Office of the Assistant Secretary for

Administration and Management's (OASAM's) Performance Management Center (PMC) for the formulation of the AMP.

April-August

- EBSA staff and leadership begin the draft formulation of the AMP and staff ensures that the document links to EBSA's budget, program activities, themes, strategies, measures, and milestones to track the execution and communication between DOL and leadership at all levels.

- The AMP is a key tool used to assess how the agency is meeting the Department's Strategic goals, as set out in the 5-year DOL Strategic Plan and reflects agency capabilities and operating environment; quarterly reviews of performance under the AMP provide evidence-based evaluations to inform next steps.

- Senior leadership works with each program to discuss upcoming activities (whether determined by new legislation, Administration priorities, changes in regulatory policy, or changes in agency priorities) to determine the most efficient allocation of resources, set goals, and determine priorities.

- An enterprise-wide risk management evaluation is conducted to provide additional insight on potential issues that could impact proposed plans for the upcoming fiscal year. Based on the results of that review, and agency deliberations on how best to deploy its staff and resources, the agency adjusts or creates new metrics, measures, or staffing decisions, as reflected in the AMP.

- The first draft AMP is submitted to PMC for initial review. The Performance, Budget, Risk Management and Equity groups review and provide feedback to EBSA that is addressed by the Agency. The review process is extensive and includes multiple iterations and reviews from leadership and managers at the agency and Department levels.

September

- The Agency submits its final 508-compliant fiscal year AMP. By this time, the document fully reflects the views of top agency leadership and the collaborative efforts and input of all EBSA's offices at both the regional and national level.

- The final AMP is a comprehensive and detailed document which addresses the following topics based on a deliberative process involving input from all EBSA's program and field offices, active engagement with and decisions by EBSA's top leadership, and collaborative discussions with numerous internal and external stakeholders:

    - Anticipated Budget and Staffing Resources

    - Agency Themes, Strategies, Priorities, Activities, and Goals Encompassing --

        - Enforcement

        - Compliance Assistance

        - Regulation

- Research
- Outreach and Education
- Consumer Outreach and Public Education
- Participant Assistance and Customer Service Activities
- Diversity, Equity, Inclusion, and Accessibility
- Hiring
- Data Sources, Quality, and Presentation
- Comprehensive Performance Measures and Milestones