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

Information Provided to Congressional Requesters

Accessible Version

January 18, 2023

(updated October 24, 2023)

For more information, contact Kris Nguyen, NguyenTT@gao.gov.

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.

Introduction, cont.

- This briefing follows our May 2021 report that examined EBSA and its enforcement strategies.
- Our current 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.

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

Background

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

GAO

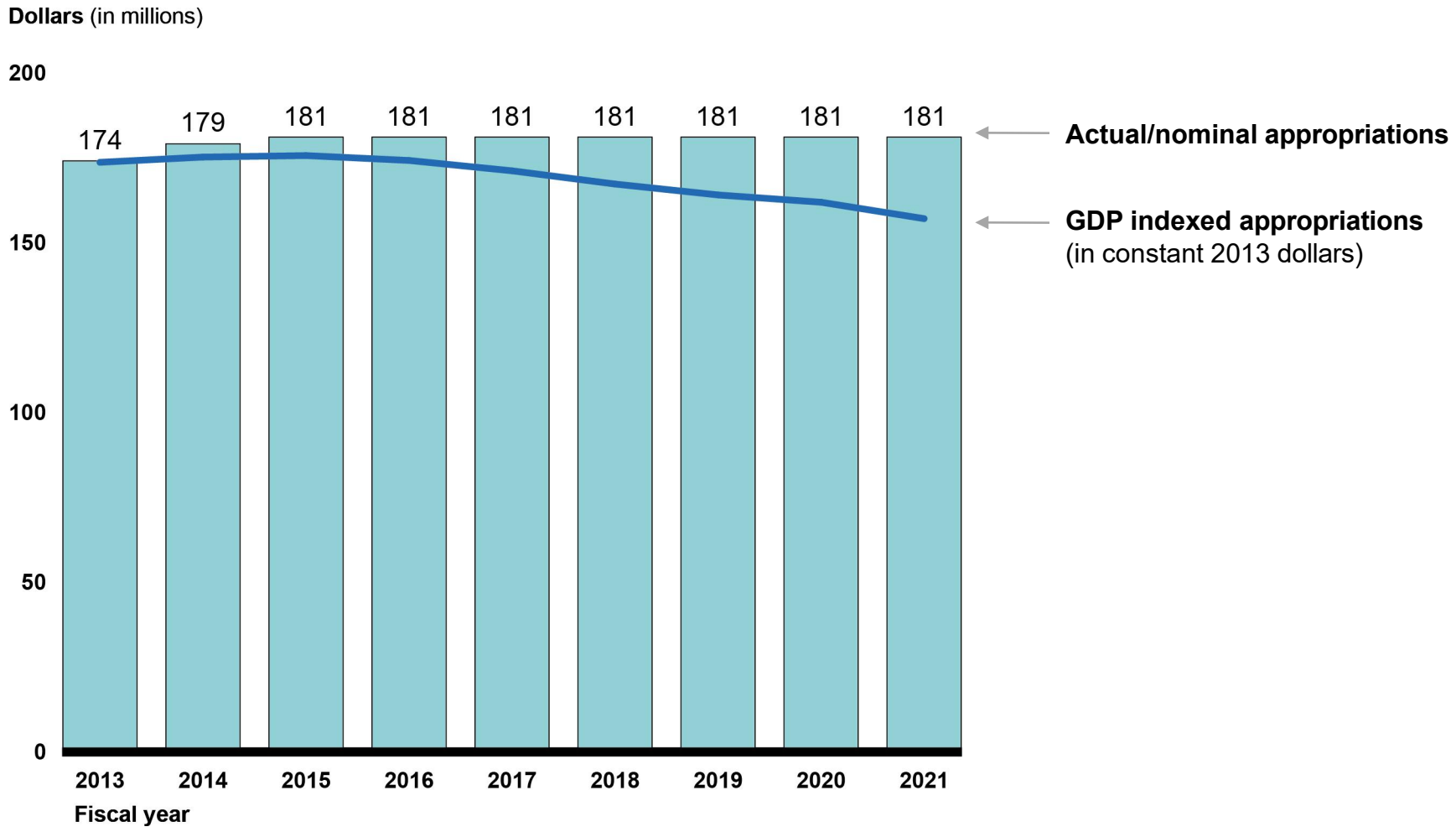
Objective 1: EBSA Resources Have Generally Remained Unchanged While Oversight Responsibilities Have Increased over the Last Decade

- 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.

Obj. 1: EBSA's Appropriations Generally Remained Unchanged before Increasing in 2021 due to Pandemic-Related Supplemental Funding

- Since 2013, the annual appropriation for the agency has hovered around $180 million and is about 10 percent lower in inflation adjusted terms in 2021 (see fig. 1).
- However, costs such as operating expenses and salaries have increased, resulting in a decline in full-time equivalents (FTE) (see fig. 2).
- Since 2021, the overall budget has increased due to supplemental appropriations (see fig. 3).
- Officials said that, because the agency's base budget is flat while expenses have continued to increase, the agency increasingly relies on supplemental funds.

Fig.1: EBSA Annual Appropriations, 2013–2021



Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

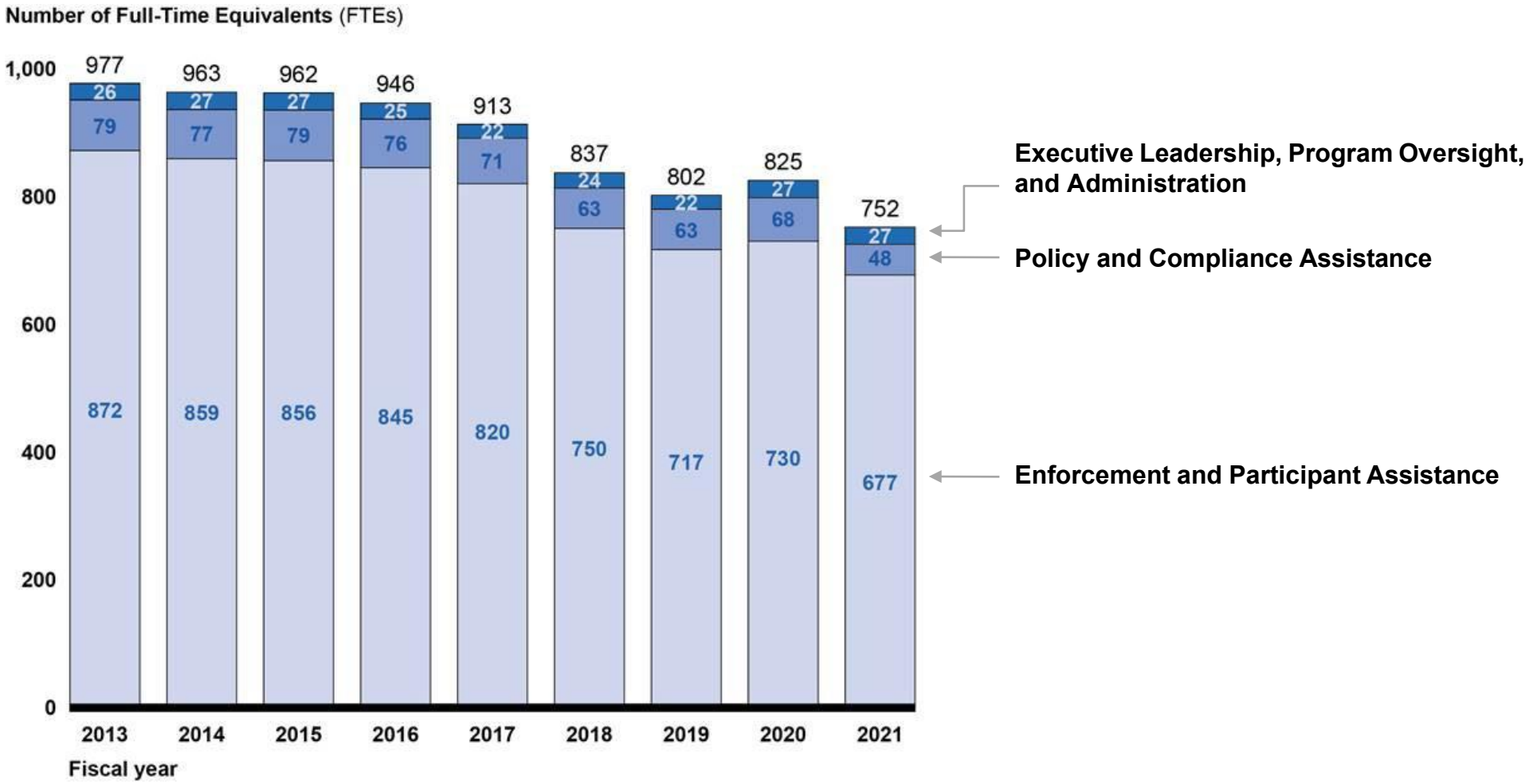
Accessible data For Fig.1: EBSA Annual Appropriations, 2013–2021(dollars in millions)

Fiscal year	**Actual/nominal appropriations**	**GDP indexed appropriations** (in constant 2013 dollars)
2013	174	173.573
2014	179	175.112
2015	181	175.558
2016	181	174.117
2017	181	171.069
2018	181	167.173
2019	181	163.965
2020	181	161.817
2021	181	156.988

Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

.

Fig. 2: EBSA FTEs by Activity, 2013–2021



Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

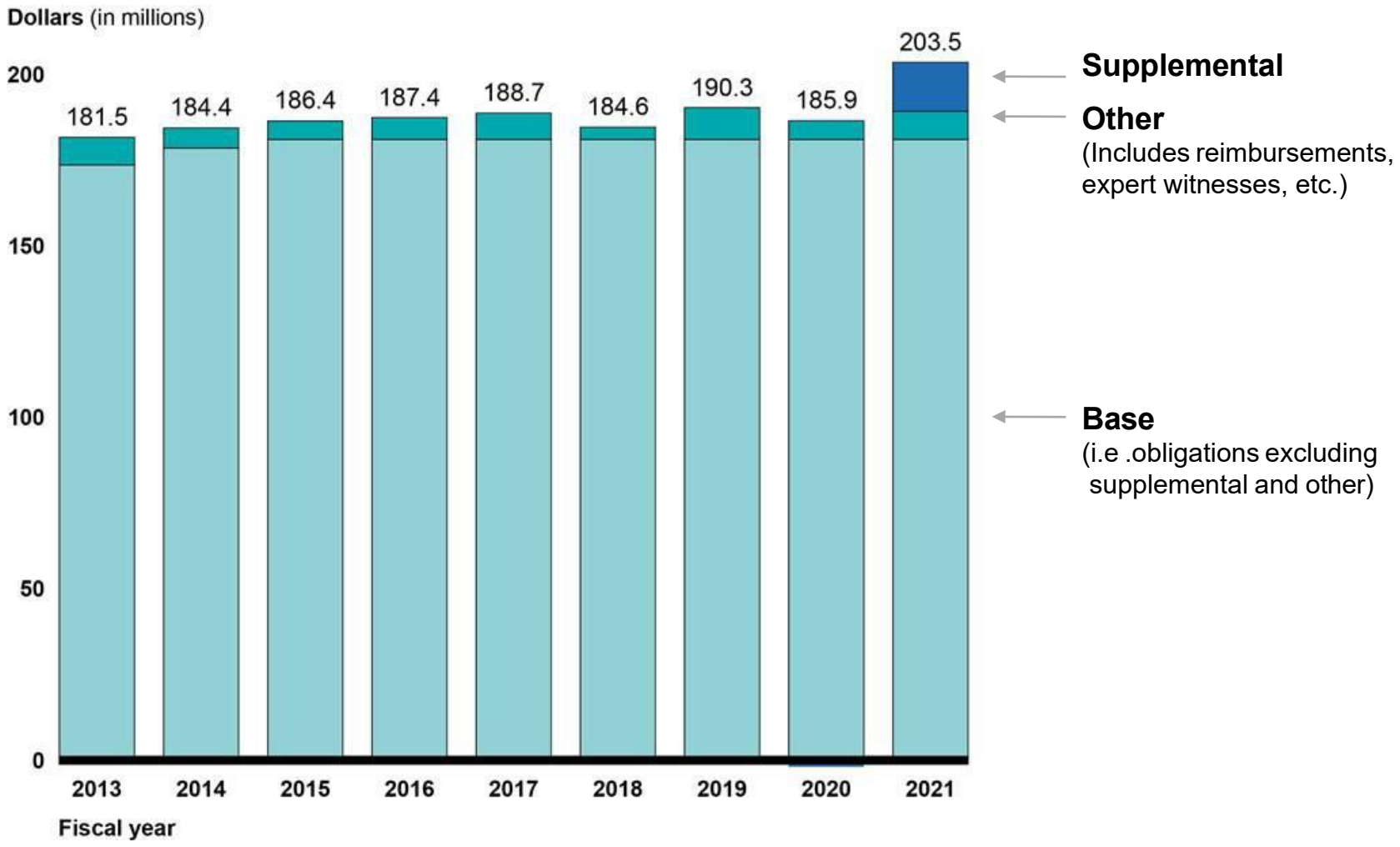
Accessible data for Fig. 2: EBSA FTEs by Activity, 2013–2021 (Number of Full Time Equivalents (FTE))

Fiscal year	Enforcement and Participant Assistance	Policy and Compliance Assistance	Executive Leadership, Program Oversight, and Administration	Total
2013	872	79	26	977
2014	859	77	27	963
2015	856	79	27	962
2016	845	76	25	946
2017	820	71	22	913
2018	750	63	24	837
2019	717	63	22	802
2020	730	68	27	825
2021	677	48	27	752

Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

Fig. 3: EBSA Obligations by Type, 2013–2021



Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

Accessible data for Fig. 3: EBSA Obligations by Type, 2013–2021(dollars (in millions)

Fiscal year	Base (i.e .obligations excluding supplemental and other)	Other (Includes reimbursements, expert witnesses, etc.)	Supplemental	Total
2013	173.6	8	0	181.5
2014	178.5	5.9	0	184.4
2015	181	5.4	0	186.4
2016	181	6.4	0	187.4
2017	181	7.7	0	188.7
2018	181	3.6	0	184.6
2019	181	9.3	0	190.3
2020	181	5.5	0.6	185.9
2021	181	8.2	14.3	203.5

Source: GAO analysis of Employee Benefits Security Administration (EBSA) Congressional Budget Justifications (2015-2023). | GAO-24-105667

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

2010: Patient Protection and Affordable Care Act (ACA)

2015

2019: Setting Every Community Up for Retirement Enhancement Act (SECURE Act)

2020

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.

Accessible data for Fig. 4: Timeline of Key Laws Affecting EBSA

- **1974: Employee Retirement Income Security Act of 1974 (ERISA)**
- **1985: Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)**
- **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)**
- **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)**
- **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

GAO

Obj. 1: EBSA Oversight Responsibilities Have Steadily Increased along with Supplemental Appropriations, Including those Related to COVID-19

- The No Surprises Act (under the Consolidated Appropriations Act, 2021) included supplemental appropriations for health transparency activities under mental health parity enforcement.
  - According to EBSA, their enforcement project related to mental health parity overlapped with activities under the NSA.
    - While one-quarter to one-third of enforcement budget monies for fiscal year 2022 will go to mental health parity, some projects will be unaddressed—specifically noted was a modernizing effort to respond to hard-to-value assets.

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.

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.

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

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

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

3) Data analytics should guide decision making

- ✓ EBSA tracked monetary recoveries every quarter and set target ranges in recent fiscal years.
- ✓ EBSA conducted a closed case quality review to assess the impact of timeliness performance measures on case quality

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

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.

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.