

**STATEMENT OF LISA M. GOMEZ
ASSISTANT SECRETARY
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
U.S. DEPARTMENT OF LABOR**

BEFORE THE

**SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
COMMITTEE ON EDUCATION & THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES**

June 27, 2024

Introduction

Chairman Good, Ranking Member DeSaulnier, and Members of the Subcommittee, thank you for the opportunity to testify today about the important work of the Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor. EBSA plays a vital role in the Department's mission to protect the rights of workers and their families, and I am proud to appear before you today as EBSA's Assistant Secretary to discuss that work.

EBSA protects the hard-earned retirement savings of America's workers and retirees by ensuring the integrity of the private employee benefit plan system in the United States through enforcement of the Employee Retirement Income Security Act (ERISA). The agency oversees approximately 765,000 private retirement plans holding an estimated \$13.6 trillion in assets and has regulatory and interpretive responsibilities related to individual retirement accounts (IRAs) covering roughly \$13.6 trillion in assets. EBSA also has audit authority over the Federal Thrift Savings Plan, which is the world's largest retirement savings plan with more than 7 million participants and \$872 billion in assets.

In addition, EBSA is charged with ensuring that America's workers and their families have access to quality healthcare under their job-based group health plans, including equal access to treatments for mental health conditions and substance use disorders. The agency oversees approximately 2.8 million health plans and 619,000 other welfare benefit plans through its authority under ERISA, the Affordable Care Act, the Health Insurance Portability and Accountability Act (HIPAA) portability and nondiscrimination provisions, the mental health parity provisions of the Mental Health Parity and Addiction Equity Act (MHPAEA), the group health plan provisions of the Genetic Information Nondiscrimination Act (GINA), the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, the COBRA continuation health coverage provisions included in ERISA, and changes made by the No Surprises Act. In other words, most Americans under age 65 have health coverage under a health plan that EBSA oversees.

The dedicated and hard-working EBSA employees also provide important compliance and benefit assistance to employers and other plan sponsors, retirees, workers, and their dependents. Our Benefits Advisors field questions on a daily basis and help workers and their families

navigate employee benefit issues and gain informal resolutions. In FY 2023, this work has led to the recovery of \$444.1 million in retirement and health benefits owed to workers and their families and, in some cases, helped accelerate coverage of life-saving treatments.

We can all agree that every worker deserves fair access to the benefits they are entitled to and a secure retirement. EBSA is a relatively small agency, and its staffing is miniscule compared to the obligations Congress has placed upon it. In total, ERISA-covered retirement, health, and welfare benefit plans cover more than 153 million workers, retirees, and their dependents. EBSA currently employs less than 850 people nationwide and has less than 1 investigator for every 13,900 plans. To accomplish its mission, EBSA must use its resources strategically. EBSA deploys a comprehensive, integrated approach that includes programs for enforcement, compliance assistance, interpretive guidance, regulations, and research. Although EBSA has been assigned important, challenging, and numerous additional responsibilities by Congress in recent years, its budget has not kept pace, steadily declining in real dollars as appropriations have largely stayed flat, and expenses have dramatically risen. Should this continue, EBSA will have to make hard choices about how it can best perform its duties and effectively achieve its mission going forward.

Enforcement and Outreach

Even with limited resources, in fiscal year (FY) 2023, EBSA recovered \$1.435 billion in direct payments to plans, participants, and beneficiaries. More than half of those recoveries were the result of enforcement actions (\$844.7 million), and more than 30 percent came from informal complaint resolutions (\$444.1 million). The other recoveries stem from EBSA's voluntary fiduciary correction program and its abandoned plan program. The abandoned plan program, which facilitates the winding down of abandoned individual account plans so that benefits can be paid to participants and beneficiaries, was recently expanded to include plans involved in Chapter 7 bankruptcies.

In FY 2023, EBSA's enforcement program closed 731 civil investigations and 196 criminal investigations. More than half of EBSA's FY 2023 recoveries were on behalf of terminated vested participants (i.e., individuals no longer working for an employer but entitled to benefits from an employer-sponsored or other job-based retirement plan). In total, in FY 2023, EBSA's enforcement program helped 5,690 terminated vested participants in defined benefit pension plans collect \$429.2 million in benefits owed to them. EBSA also obtained 352 non-monetary civil corrections related to retirement, health and other welfare plans, including removing 20 fiduciaries, barring 41 individuals from serving as fiduciaries, appointing 20 fiduciaries, improving missing participant procedures for 44 plans, and requiring 34 global corrections involving service providers for numerous ERISA-covered health plans.

Enforcement actions make a real difference in the lives of plan participants and beneficiaries. In one case, EBSA recovered over \$230,000 in contributions due to a plan that covered participants who only spoke Spanish. Our agency worked tirelessly to locate the plan participants, making phone calls and sending emails and letters in Spanish. One participant's wife was at an emergency clinic seeking care for her husband when she answered EBSA's call. When EBSA told her we had recovered \$31,000 that her husband was owed from his retirement plan and that

would be paid to him, she said they had been struggling to pay his health expenses and the recovered funds were a “miracle.”

In another example of EBSA’s work, the agency helped participants in a Multiple Employer Welfare Arrangement (MEWA) case involving several self-funded, single-employer health plans that were not paying claims as required by ERISA. EBSA’s efforts resulted in more than \$1 million in health claims being paid, and another \$3 million in claims were reduced through EBSA’s negotiations with doctors and facilities that neither the MEWA nor the sponsoring employer was paying. One MEWA participant told EBSA that she had recently given birth and received \$197,940 in medical bills related to her pregnancy and delivery that the MEWA had not paid. Due to EBSA’s enforcement efforts, her employer paid these high dollar claims.

In addition to formal enforcement actions, EBSA invites individuals to contact an EBSA Benefits Advisor for assistance with questions and informal resolution of problems with their employee benefit plan. In FY 2023, EBSA’s Benefits Advisors closed more than 197,000 inquiries and recovered \$444.1 million in benefits on behalf of workers and their families. One person who called EBSA was told he only had six months to live without a heart transplant, but his employer-sponsored health plan denied pre-certification for the transplant as not medically necessary and experimental. His doctors tried to help him appeal, but the transplant was still denied. Without the approval, he could not be placed on the organ donor waiting list. The EBSA Benefits Advisor who handled this call reviewed his plan documents and determined he was seeking benefits for a covered service to treat a condition that met the plan’s definition of life-threatening. EBSA reached out to the employer to help determine the reason the third-party claims administrator denied the transplant, despite it being a covered service. As a result of EBSA’s intervention and the Benefits Advisor’s swift and dedicated actions, within one week of the initial call, the employer reviewed the inquiry and consulted with the health plan. The health plan agreed to approve the heart transplant, and the participant received the transplant and is recovering. He has stated that EBSA’s work was “nothing short of a miracle” for which he is “forever grateful.”

EBSA also assisted another participant who was seeking help in a mental health treatment facility obtain COBRA coverage. Her employment terminated, and she was losing her employer’s group health coverage. She knew she was entitled to COBRA continuation coverage but needed help setting it up so she would not have a coverage lapse while she was receiving in-patient treatment. In short, she needed COBRA to stay in the treatment facility. EBSA’s Benefits Advisor contacted the employer and asked that the individual’s COBRA notice be sent to her as soon as possible. The plan provided the notice right away, and the participant set up and paid for her coverage, allowing her to continue her treatment without interruption.

In addition to the agency’s enforcement program, EBSA also conducts education and outreach events for workers, retirees, employers, plan officials, and members of Congress. These nationwide activities include helping dislocated workers who are facing job loss, educating employers and plan sponsors about their ERISA obligations, informing congressional staff of EBSA programs for their use in constituent services, and providing workers, retirees, and their families with information on their rights under the law. In FY 2023, EBSA held 2,159 outreach events, including 904 outreach events for underserved communities, 12 of which were national

office webcasts. EBSA conducted 240 of these events in Spanish and further held events in Chinese, Haitian Creole, Polish, Tagalog, and Vietnamese. Additionally, EBSA delivered four media (newspaper, radio, and television) interviews in Spanish and Vietnamese that reached an audience of 360,500 people. These efforts have continued and increased in FY 2024.

EBSA also reaches workers, retirees, employers, plan service providers, and the public through its printed materials and website. Publications in English, Spanish, Arabic, Simplified and Traditional Chinese, French, Haitian Creole, Korean, Polish, Portuguese, Russian, Tagalog, and Vietnamese are available through EBSA's toll-free number and online. EBSA website visitors can view consumer information, relevant laws and regulations, technical guidance, seminar and webcast schedules, and other valuable resources. In FY 2023, EBSA distributed over 230,000 publications and had nearly six million visitors to its website.

EBSA will continue to use the enforcement and Benefits Advisor programs to further its mission to protect the security of retirement, health, and other employee benefits for America's workers, retirees, and their families.

Rulemaking and Research

Congress tasked EBSA with significant statutory rulemaking requirements in recent years, including implementing the No Surprises Act, the Setting Every Community Up for Retirement Enhancement (SECURE) Act, and the SECURE 2.0 Act. EBSA has been assiduously implementing the new provisions, as well as issuing other priority regulations.

EBSA has been working hard to implement provisions under the Consolidated Appropriations Act, 2021 (CAA), together with the Departments of Health and Human Services and the Treasury (the Departments). EBSA's top priority is the Mental Health Parity and Addiction Equity Act (MHPAEA) proposed rule, which is a key part of the Biden-Harris Administration's commitment to addressing the mental health and substance use disorder epidemic in the United States. Enacted in 2008, MHPAEA generally prohibits private employee health benefit plans and insurance companies from imposing financial requirements, such as copayments and coinsurance, or treatment limitations, such as visit limits or prior authorization, on mental health or substance use disorder benefits that are more restrictive than those imposed on medical and surgical benefits. Despite the law's existence, people seeking coverage for mental health and substance use disorder care continue to face greater barriers when seeking benefits than when seeking medical or surgical benefits.

On July 25, 2023, the Departments released a notice of proposed rulemaking implementing, among other things, the comparative analysis requirement for nonquantitative treatment limitations under the CAA and strengthening the protections of the 2013 MHPAEA final regulations. The Departments also proposed a technical release and a potential enforcement safe harbor. The proposed rule is an important step for the Departments and stakeholders to work together to make mental health parity a reality. With the proposed rule and technical release, the Departments aimed to promote changes in network composition and plans and issuers' medical management techniques to make mental health and substance use disorder provider networks more accessible and create parity in treatment limitations, such as network composition

standards and prior authorizations, for people seeking mental health and substance use disorder treatment. The Departments are reviewing approximately 9,500 comments on the proposed rule and 100 comments on the technical release.

In support of this rulemaking and its enforcement of related existing rules, EBSA has supported focused research on MHPAEA-related areas, including funding a literature review on metrics other state and Federal agencies have used to evaluate network adequacy; funding a study to analyze variations in actuarial values of health plans when one accounts for out-of-network usage, particularly in the mental health and substance use disorder space; funding “secret shopper” studies to evaluate the accuracy of provider networks and whether accuracy improves following an EBSA intervention; and procuring claims data and contractor support to assist EBSA investigators in comparing reimbursement rates for mental health and substance use disorder claims to rates for medical or surgical claims, as well as in conducting their review of claims (such as denials and cost-sharing) in support of MHPAEA investigations.

EBSA is also working on other rulemaking under the CAA. The CAA included the No Surprises Act (NSA), which protects consumers from surprise medical bills for certain out of network service providers and establishes a Federal Independent Dispute Resolutions (IDR) process for providers and payers to determine the appropriate payment amount for certain out of network services. The Departments have been working together to address the problem of surprise billing through NSA implementation, are eliminating as many as 1 million surprise bills a month that would otherwise directly affect individuals who might not be aware that the care they are receiving is provided by a doctor or facility not covered by their health plan’s network. The Departments have issued joint regulations to implement the Federal IDR process. Most recently, on November 3, 2023, the Departments published the Federal Independent Dispute Resolution Operations proposed rule, which proposes several regulatory changes to the IDR process to ensure that the process is an efficient one that works as intended.

In addition to MHPAEA and CAA implementation, EBSA has devoted time and resources to implement the SECURE 2.0 Act. In January and February 2024, EBSA issued guidance on pension-linked emergency savings accounts (PLESAs) and a proposed rule on auto-portability. The PLESA guidance, which was developed after communication with stakeholders and in coordination with the Department of the Treasury, consists of 20 frequently asked questions and responses. Employers may automatically enroll their employees into PLESAs, make employee contributions to the PLESAs through post-tax payroll deductions, and make matching employer contributions to the linked retirement plans. Participating employees can easily withdraw funds saved in their PLESA without the penalties of drawing from retirement savings or requirements to demonstrate hardship. Employers may set a limit of up to \$2,500 for contributions. The PLESA feature is available for plan years beginning after December 31, 2023.

Separately, the proposed auto-portability guidance aims to help workers keep track of their retirement savings accounts and improve retirement security by reducing cash-outs when they change jobs. When workers leave jobs with a retirement benefit valued at \$7,000 or less, their savings plan can automatically roll over their benefits to a Safe Harbor IRA if the plan document allows it and the employee does not take action after receiving required notices. Auto-portability transactions involve automatically transferring workers’ retirement savings from their Safe

Harbor IRA to their active account in a retirement plan sponsored by their new employer. The proposed guidance would implement a statutory exemption that allows an automatic portability provider to receive a fee in connection with executing an automatic portability transaction for certain distributions into Safe Harbor IRAs. EBSA is in the process of reviewing the public comments on the proposed guidance.

EBSA is also working on other SECURE 2.0 projects, including reviewing comments received on two requests for information on SECURE 2.0's multiple reporting and disclosure provisions and conducting a review of and report to Congress on Interpretive Bulletin 95-1 (relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan). We are also developing the Retirement Savings Lost and Found database, an online search tool to help America's workers locate lost retirement savings they have earned.

Finally, in April 2024 and as part of our mission to protect America's workers and their families at all stages of their work life, including into and through retirement, EBSA published the final Retirement Security Rule. The final rule stands for a basic proposition – retirement investors who seek advice about how to invest and manage their hard-earned retirement savings deserve to get advice that is in their best interest. The rule amends the Department's 1975 rule defining ERISA fiduciary status for those who provide investment advice for a fee to employee benefit plans, plan participants and beneficiaries, and IRA owners. The prior definition was written when individual retirement accounts were less common and before 401(k) plans existed. Today, individual plan participants and IRA owners — not professional money managers — are expected to make important, complex financial decisions, and they seek help from trusted investment professionals, which made updating this rule necessary. The Retirement Security Rule was finalized following a robust comment period in which EBSA received over 400 individual comments and just under 20,000 petition submissions, and held a virtual public hearing at which over 40 witnesses testified over two days.

The updated definition of an investment advice fiduciary, which takes effect on September 23, 2024, applies when trusted investment professionals give compensated investment advice to retirement plan participants, individual retirement account owners, and plan officials responsible for administering plans and managing their assets. The rule also ensures investment professionals can compete for business on a level playing field, instead of being hindered by a skewed system in which different standards exist for advice providers based on the products they recommend. The Retirement Security Rule aligns with the Biden-Harris Administration's effort to protect retirement investors and put more money into the pockets of workers and their families and reflects updated research on conflicted advice and investment behavior in the retirement security space, as well as the intersection of EBSA's authority with other state and federal oversight.

Employee Ownership Initiative

As part of the Worker Ownership, Readiness, and Knowledge (WORK) Act in SECURE 2.0, EBSA implemented a new program to empower workers through ownership arrangements and educate those workers on possible pathways to greater rewards in return for their labor. EBSA's new initiative includes creation of the Division of Employee Ownership in EBSA's Office of Outreach, Education, and Assistance. The Division will support the creation and expansion of worker-owned businesses by:

- Supporting existing programs designed to promote worker ownership and facilitating the formation of new programs;
- Developing a clearinghouse of techniques applied by new and existing state programs and sharing information about these techniques with states;
- Providing education, outreach, and training to inform workers and employers about the possibilities and benefits of worker ownership and business ownership succession planning; and
- Providing technical assistance for workers' efforts to become business owners and helping employers and workers explore the feasibility of transferring full or partial ownership to workers.

By launching this initiative, we are working to help balance the distribution of power in America's workplaces and empower the workers who fuel their employers' ability to be successful day in and day out, while educating employers about how worker ownership can be good for business.

EBSA continues to hold stakeholder meetings to gain important feedback on how to best achieve the initiative's goals and carry out the Division's activities, and EBSA leadership has conducted direct outreach to the worker ownership community in developing our work in this area. In addition, EBSA intends to provide, through notice and comment rulemaking, formal guidance on valuation of employer stock in employee stock ownership plans in accordance with the WORK Act and is hard at work on a proposed rule.

Conclusion

EBSA is dedicated to its mission to ensure the security of the retirement, health, and other job-based benefits of America's workers and their families and will continue to use all the tools at our disposal to carry out that mission. I am proud of the accomplishments we've achieved supporting these important goals and appreciate your continued interest and assistance.

Thank you again for the opportunity to appear before you today, and I look forward to your questions.