

**DEPARTMENT OF LABOR****Employee Benefits Security  
Administration****29 CFR Part 2520**

RIN 1210-AA64

**Reporting by Multiple Employer  
Welfare Arrangements and Certain  
Other Entities that Offer or Provide  
Coverage for Medical Care to the  
Employees of Two or More Employers****AGENCY:** Employee Benefits Security  
Administration, Department of Labor.**ACTION:** Final rule.

**SUMMARY:** This document contains a final rule governing certain reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide coverage for medical care to the employees of two or more employers. The final rule generally requires the administrator of a MEWA, and certain other entities, to file a form with the Secretary of Labor for the purpose of determining whether the requirements of certain recent health care laws are being met.

**DATES:** *Effective Date:* This final rule is effective January 1, 2004.

*Compliance Dates:* If a filing is required for an entity, it is due on or before each March 1 following the period to be reported. A 90-day origination report is also required to be filed as described in paragraph (e)(2)(ii) of §2520.101-2. (Therefore, the first filing required under this final rule is the 2003 Form M-1, which is generally required to be filed by March 1, 2004. Prior to that date, filings are due in accordance with §2520.101-2 contained in the 29 CFR revised as of July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Amy J. Turner or Deborah S. Hobbs, Employee Benefits Security Administration, U.S. Department of Labor, Room C-5331, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 693-8335).

**SUPPLEMENTARY INFORMATION:**

*Customer Service Information:* The Department of Labor's Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. The Form M-1, as well as the publication MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and

State Regulation, are available by calling EBSA toll free at 1-866-444-3272 and on the Internet at: <http://www.dol.gov/ebsa>. In addition, the EBSA Help Desk (telephone (202) 693-8360) is available to answer questions (such as whether an entity is required to file a report) and to provide assistance in completing a report. If you have other questions about this reporting requirement, or about the requirements of the recent health care laws in Part 7 of ERISA, you may call the Office of Health Plan Standards and Compliance Assistance at 202-693-8335. If you have questions about the definition of a MEWA (including the exception for collectively bargained plans under 29 CFR 2510.3-40), or coverage questions concerning whether a plan is or is not subject to the provisions of Title I of ERISA, you may call the Office of Regulations and Interpretations, Division of Coverage, Reporting and Disclosure at 202-693-8500. Copies of Form M-1 filings are available over the Internet at: [askebsa.dol.gov/epds](http://askebsa.dol.gov/epds).

**A. Background**

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. The Mental Health Parity Act of 1996 (Pub. L. 104-204, as amended by Pub. L. 107-116 and Pub. L. 107-147) (MHPA) amended ERISA to provide parity in the application of annual and lifetime dollar limits for certain mental health benefits with such dollar limits on medical and surgical benefits. The Newborns' and Mothers' Health Protection Act of 1996 (Pub. L. 104-204) (Newborns' Act) amended ERISA to provide new protections for mothers and their newborn children with regard to the length of hospital stays in connection with childbirth. The Women's Health and Cancer Rights Act of 1998 (WHCRA) (Pub. L. 105-277) amended ERISA to provide individuals new rights for reconstructive surgery in connection with a mastectomy. All of the foregoing provisions are set forth in part 7 of subtitle B of title I of ERISA (Part 7).

HIPAA also added a new section 101(g) to ERISA providing the Secretary with the authority to require, by regulation, annual MEWA reporting. Specifically, this section provides that the Secretary of Labor may, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2)) which are not group health plans to report, not more frequently than annually, in such

form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of Part 7 are being carried out in connection with such benefits.

The term "multiple employer welfare arrangement" is defined in section 3(40) of ERISA to mean, in pertinent part an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association.

For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group, the term "control group" means a group of trades or businesses under common control, and the determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.<sup>1</sup>

An interim final rule implementing the MEWA reporting requirement was published in the **Federal Register** on February 11, 2000 at 65 FR 7152. The interim final rule generally required the administrator of a MEWA (or certain other entity that offers or provides coverage for medical care to the employees of two or more employers) to file the Form M-1 Annual Reporting Requirement for Multiple Employer

<sup>1</sup> This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97-473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of ERISA provides that state laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of state regulation depending on whether the MEWA is fully insured. Sec. 302(b), Pub. L. 97-473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).