

that may apply to MEWAs under ERISA, the Internal Revenue Code, the Public Health Service Act, and State insurance laws. The data collected as a result of the filing requirement will ultimately serve as the only source of complete and uniform information identifying these arrangements, helping Federal and State regulators to evaluate their compliance with all applicable requirements. Evaluation of compliance based on the information reported is significantly more cost effective for both governmental entities and MEWAs than the alternative of active intervention by compliance examiners.

Ensuring compliance by these arrangements is beneficial to participants and beneficiaries who are able to fully realize their rights under these statutes. The greater assurance of compliance is also beneficial because compliance by these arrangements with various provisions that apply to them has been shown to be inconsistent. Although the provisions of Title I of ERISA generally supercede State laws that relate to employee benefit plans, the regulation of MEWAs is a joint Federal and State responsibility pursuant to ERISA.

Because State insurance statutes are not uniform, an arrangement doing business in more than one State may be required to comply with a range of States' varying requirements. Identification of these entities through this reporting requirement helps to ensure that administrators of these arrangements are aware of the requirements that apply, and that the protections intended to be provided are actually implemented for the benefit of employers and of participants who obtain their group health coverage through these arrangements.

Ancillary benefits arise from the public disclosure of this data. Participants with greater access to information about the arrangements through which they obtain their group health coverage may better exercise their rights in the event of a dispute with the arrangement. The data collected also enhance capability to conduct analysis of the market segment represented by MEWAs, which is useful to policy makers in evaluating the role of these entities in providing access to employment-based health care benefits.

When the Department developed its initial estimates of the number of filers and the costs potentially associated with these filings, it acknowledged a significant degree of uncertainty with respect to the number of entities that would be required to file. Although reasonable estimates were available from the Form 5500 Annual Return/

Report of Employee Benefit Plan data for the potential number of Entities Claiming Exemption and multiple-employer group health plans that file the Form 5500, no information was available that specifically identified the universe of MEWAs that are not group health plans under ERISA.

To develop the estimates used in the analysis of the potential impact of the interim final rule, the Department considered information from several sources. The first of these was the GAO study from 1992,⁵ which indicated there were about 1,000 MEWAs doing business in the states in 1991. These figures are not current, and the MEWA universe is known to be variable over time relative to health insurance market cost fluctuations. Surveys of association members⁶ with respect to group health plan sponsorship were also reviewed. This information, adjusted conservatively for low response rates, suggested the existence of about 1,200 health plans sponsored by associations. The overlap between plan and non-plan MEWAs within this number is unclear, however.

A third source of information was a RAND Corporation analysis of the 1997 Robert Wood Johnson Foundation Employer Health Insurance Survey as it pertains to pooled purchasing arrangements.⁷ This analysis suggested the existence of 4,000 to 4,800 multiple employer arrangements, including collectively bargained group health plans, association plans, and MEWAs. The data reviewed was establishment-based, and the imputation of the number of arrangements reported by establishments to employer sponsored group health plans was thought to introduce additional uncertainty into the estimate of the possible universe of filers.

As a result of data limitations and uncertainty within available data, the Department conservatively estimated that about 2,700 entities would file Form M-1. A substantial degree of uncertainty remained about this estimate, and we reported a possible range of 1,000 to 4,000. Actual filer counts have been significantly lower, totaling approximately 600 in each of the three years (*i.e.*, 1999–2001) for which complete data are available at this time. In the Department's view,

actual experience to date may differ from the estimate for several reasons, the first of these being the limited level of confidence in the original estimate. Based on past history of non-compliance of MEWAs with a variety of regulatory requirements, the Department assumes that the actual number of filers continues to reflect incomplete compliance with this still relatively new filing requirement. Further, the Department is still in the process of implementing its civil penalty enforcement program to correct compliance failures, which faces the same significant challenges in identifying non-filers as are faced in developing reliable estimates of the number of MEWAs doing business at any given time. Finalization of this rule and the clarifications incorporated in the final rule may also help to ensure that potentially affected parties are aware of the filing requirement.

The Department still has no data to support a more accurate estimate of the filer universe than that represented by actual filers. However, it reviewed available information on its active enforcement cases involving MEWAs to determine the degree to which those MEWAs had complied with the M-1 filing requirement. This information showed that about 42% of the MEWAs undergoing investigation that were required to file the M-1 had complied with the requirement. If this rate of non-compliance applies to all MEWAs, about 1,400 MEWAs would be required to file the M-1 annually.

Because the rate of non-compliance may differ from that found in the sample of enforcement cases, and because the Department continues to believe that full compliance has not yet been achieved, it has selected 2,000 as a conservative estimate of the number of potential filers of the M-1. This is approximately the mid-point between the number projected at the time of publication of the interim final rule, and the 1,400 developed from the number of actual filers adjusted for what is known about non-compliance in the available sample of MEWAs.

To develop the current cost estimate of the cost of the filing requirement, the Department looked at the characteristics of the actual filers and applied the relevant factors to the projected number of filers. In its original estimates, the Department differentiated filing preparation time by whether a filer did business in more than one state, and whether or not the filer was fully insured. The existing filer data offers more information about the actual characteristics of filers. For purposes of these estimates, it is assumed that

⁵ "EMPLOYEE BENEFITS—States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," GAO/HRD-92-40.

⁶ "Survey of Association Member Health Plans," W.G. Morneau & Associates/American Society of Association Executives, 1993 and 1997.

⁷ "Pooled Purchasing: Who Are the Players?" Stephen H. Long and M. Susan Marquis, "Health Affairs," July–August 1999.