

Small Business Regulatory Enforcement Fairness Act

The final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of \$100 million or more.

Federalism Statement Under Executive Order 13132

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe in the preamble to the regulation the extent of their consultation and the nature of the concerns of state and local officials, as well as the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met.

In the Department's view, these final regulations do not have federalism implications because they do not have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and

responsibilities among various levels of government. Not only do these regulations not reduce state discretion, the reports they require will facilitate state enforcement of their own laws as they apply to MEWAs since the reports will be available to the states and will identify MEWAs operating in each state.

Although the Department concludes that these final regulations do not have federalism implications, in keeping with the spirit of the Executive Order that agencies shall closely examine any policies that may have federalism implications or limit the policy making discretion of the states, the Department of Labor engages in extensive efforts to consult with and work cooperatively with affected state and local officials.

For example, the Department attends quarterly meetings of the National Association of Insurance Commissioners (NAIC) to listen to the concerns of state insurance departments. The NAIC is a non-profit corporation established by the insurance commissioners in the 50 states, the District of Columbia, and the four U.S. territories that, among other things, provides a forum for the development of uniform policy when uniformity is appropriate. Its members meet, discuss, and offer solutions to mutual problems. The NAIC sponsors quarterly meetings to provide a forum for the exchange of ideas, and in-depth consideration of insurance issues by regulators, industry representatives, and consumers. In addition to the general discussions, committee meetings, and task force meetings, the NAIC sponsors standing HIPAA meetings for members during the quarterly conferences, including a Centers for Medicare and Medicaid Services (CMS)/Department of Labor (DOL) meeting on HIPAA issues. (This meeting provides CMS and DOL the opportunity to provide updates on regulations, bulletins, enforcement actions, and outreach efforts regarding HIPAA.) In these quarterly meetings, issues relating to MEWAs and the implementation of the Form M-1 filing requirement are frequently discussed and, periodically, entire sessions are scheduled that are dedicated exclusively to MEWA/Form M-1 issues.

The Department also cooperates with the states in several ongoing outreach initiatives, through which information is shared among federal regulators, state regulators, and the regulated community. For example, the Department has established a Health Benefits Education Campaign with more than 70 partners, including CMS, the NAIC, and many business and consumer groups. In addition, the Department website offers links to important state websites and other resources,

facilitating coordination between the state and federal regulators and the regulated community.

The Department also coordinates with state insurance departments to freeze assets when a MEWA operator is committing fraud or operating in a financially unsound manner. In these situations, typically, a state will obtain a cease and desist order to stave off further action by the MEWA in that state. In certain situations, the Department will then obtain a temporary restraining order (TRO) to freeze assets of the MEWA nationwide. In one case this year, the Department obtained a TRO to freeze assets of a MEWA whose operators were committing fraud and not paying benefits. This case affects more than 23,000 participants and beneficiaries in 50 states and the amount of unpaid claims could exceed \$6 million. In a similar case last year, the Department obtained a TRO to freeze assets of a MEWA that was diverting plan assets for personal use of the MEWA's operators. That case affected at least 1,500 participants and \$2.8 million in unpaid claims. A court order was also issued in that case appointing an independent fiduciary to manage the MEWA.

In conclusion, the Department has stayed in contact with state regulators and considered their concerns in developing these regulations. These regulations should help the states enforce their own laws as they apply to MEWAs since the reports they require will be available to them and will identify MEWAs operating in each state.

Statutory Authority

29 U.S.C. 1021, 1027, 1059, 1132, 1135, 1181-1183, 1181 note, 1185, 1185a-b, 1191, 1191a-c; Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

■ 1. The authority for part 2520 continues to read:

Authority: 29 U.S.C. 1021-1025, 1027, 1029-31, 1059, 1134 and 1135; Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101-2 also issued under 29 U.S.C. 1132, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.102-