

3, 2520.104b-1 and 2520.104b-3 also issued under 29 U.S.C. 1003, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.104b-1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101-3 is also issued under 29 U.S.C. 1021(i).

■ 2. Section 2520.101-2 is revised to read:

§ 2520.101-2 Annual Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities Offering or Providing Coverage for Medical Care to the Employees of Two or More Employers.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA) permits the Secretary of Labor to require, by regulation, multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (within the meaning of section 733(a)(2) of ERISA), and that are not group health plans, to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for annual reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). These requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

Administrator means—

(1) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(2) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(3) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised

directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

Entity Claiming Exception (ECE) means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and 29 CFR 2510.3-40.

Excepted benefits means *excepted benefits* within the meaning of section 733(c) of ERISA and 29 CFR 2590.732(b).

Group health plan means a *group health plan* within the meaning of section 733(a) of ERISA and 29 CFR 2590.701-2.

Health insurance issuer means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and 29 CFR 2590.701-2.

Medical care means *medical care* within the meaning of section 733(a)(2) of ERISA and 29 CFR 2590.701-2.

Multiple employer welfare arrangement (MEWA) means a multiple employer welfare arrangement within the meaning of section 3(40) of ERISA and 29 CFR 2510.3-40.

Origination means the occurrence of any of the following three events (and a MEWA or ECE is considered to have been *originated* when any of the following three events occurs)—

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section—

(i) The administrator of a MEWA that offers or provides benefits consisting of medical care, regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE that offers or provides benefits consisting of medical care during the first three years after the ECE is originated.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE if the MEWA or ECE—

(A) Is licensed or authorized to operate as a health insurance issuer in every state in which it offers or provides coverage for medical care to employees;

(B) Provides coverage that consists solely of excepted benefits, which are not subject to Part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) Is a group health plan that is not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) Provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage);

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances:

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying the principles of section 414(b) or (c) of the Internal Revenue Code (26 U.S.C.);

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M-1 filing and is temporary in nature. For purposes of this paragraph, "temporary" means the MEWA or ECE