

does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, in the case of a 90-day origination report, determined as of the 60th day following the origination date.

(d) *Information to be reported*—(1) The annual report required by this section shall consist of a completed copy of the Form M-1 Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) and any additional statements required in the Instructions to the Form M-1.

(2) The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with 29 CFR 2560.502c-5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and 29 CFR 2560.502c-5).

(e) *Reporting requirement and timing*—(1) *Period for which report is required.* A completed copy of the Form M-1 is required to be filed for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* A completed copy of the Form M-1 is required to be filed on or before each March 1 that follows a period to be reported (as described in paragraph (e)(1) of this section). However, if March 1 is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(ii) *Special rule requiring a 90-Day Origination Report when a MEWA or ECE is originated*—(A) *In general.* Subject to paragraph (e)(2)(ii)(B) of this section, when a MEWA or ECE is originated, the administrator of the

MEWA or ECE is also required to file a completed copy of the Form M-1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day).

(B) *Exception.* Paragraph (e)(2)(ii)(A) of this section does not apply if the origination occurred between October 1 and December 31. (Thus, no 90-day origination report is due when an entity is originated between October 1 and December 31. However, the March 1 filing deadline of paragraph (e)(2)(i) of this section continues to apply.)

(iii) *Extensions.* An extension may be granted for filing a report if the administrator complies with the extension procedure prescribed in the Instructions to the Form M-1.

(f) *Filing address.* A completed copy of the Form M-1 is filed with the Secretary by sending it to the address prescribed in the Instructions to the Form M-1.

(g) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see 29 CFR 2560.502c-5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see 29 CFR 2570.90 through 2570.101.

(h) *Examples.* The rules of this section are illustrated by the following examples:

*Example 1.* (i) *Facts.* MEWA A began offering coverage for medical care to the employees of two or more employers July 1, 1989 (and continues to offer such coverage). MEWA A does not claim the exception under section 3(40)(A)(i) of ERISA.

(ii) *Conclusion.* In this *Example 1*, the administrator of MEWA A must file a completed copy of the Form M-1 each year by March 1.

*Example 2.* (i) *Facts.* ECE B began offering coverage for medical care to the employees of two or more employers on January 1, 1992. ECE B has not been involved in any mergers and the number of employees to which ECE B provides coverage for medical care has not grown by more than 50 percent in any given year.

(ii) *Conclusion.* In this *Example 2*, ECE B was originated on January 1, 1992 and has not been originated since then. Therefore, the administrator of ECE B is not required to file a 2003 Form M-1 on March 1, 2004 because the last time the ECE B was originated was January 1, 1992 which is more than 3 years prior to March 1, 2004.

*Example 3.* (i) *Facts.* ECE C began offering coverage for medical care to the employees of two or more employers on July 1, 2004.

(ii) *Conclusion.* In this *Example 3*, the administrator of ECE C must file a completed

copy of the 2004 Form M-1 on or before September 29, 2004 (which is 90 days after the origination date). In addition, the administrator of ECE C must file an updated copy of the 2004 Form M-1 by March 1, 2005 because the last date C was originated was July 1, 2004, which is less than 3 years prior to the March 1, 2005 due date. Furthermore, the administrator of ECE C must file a 2005 Form M-1 by March 1, 2006 and a 2006 Form M-1 by March 1, 2007 (because July 1, 2004 is less than three years prior to March 1, 2006 and March 1, 2007, respectively). However, if ECE C is not involved in any mergers that would result in a new origination date and if ECE C does not experience a growth of 50 percent or more in the number of employees to which ECE C provides coverage from the last day of the previous calendar year to any day in the current calendar year, then no Form M-1 report is required to be filed after March 1, 2007.

*Example 4.* (i) *Facts.* MEWA D begins offering coverage to the employees of two or more employers on January 1, 2000. MEWA D is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 4*, the administrator of MEWA D is not required to file Form M-1 because it is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

*Example 5.* (i) *Facts.* MEWA E is originated on September 1, 2004.

(ii) *Conclusion.* In this *Example 5*, because MEWA E was originated on September 1, 2004, the administrator of MEWA E must file a completed copy of the Form M-1 on or before November 30, 2004 (which is 90 days after the origination date). In addition, the administrator of MEWA E must file a completed copy of the Form M-1 annually by every March 1 thereafter.

*Example 6.* (i) *Facts.* Company F maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company F establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles under section 414(b) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company F continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 6*, the administrator is not required to file the Form M-1 because Company F's group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company F's group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

*Example 7.* (i) *Facts.* Company G maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company G's group health plan is the fiscal year for Company G, which is October 1st—September 30th. Therefore, October 1, 2004—September 30, 2005 is the 2005 plan year. Company G decides to sell a portion of its business, Division X, to Company H.