

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB51

Final Revision and Publication of the 2012 Form M-1, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of 2012 Form M-1 Revisions and Availability.

SUMMARY: This document announces revisions to the Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), and its availability. The revisions can be viewed on the Employee Benefits Security Administration’s (EBSA) website at www.dol.gov/ebsa. The revised form is substantively different from previous versions of the Form M-1. Elsewhere in this edition of the **Federal Register**, EBSA is publishing Final Rules for Filings Required for Multiple Employer Welfare Arrangements and Certain Other Related Entities. These rules amend the existing MEWA regulations to implement the registration requirement added to section 101(g) of Title I of the Employee Retirement Income Security Act of 1974, (ERISA), as amended by the Patient Protection and Affordable Care Act (Affordable Care Act), as well as to enhance compliance, enforcement, and protection of employer-sponsored health benefits. The form and the accompanying instructions facilitate the filing requirements for MEWAs and ECEs under ERISA.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the Form M-1 filing requirement, contact Allison Goodman or Suzanne Bach, Office of Health Plan Standards and

Compliance Assistance, at (202) 693-8335. This is not a toll-free number. For inquiries regarding how to obtain or file a Form M-1, see the Supplementary Information section below.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, 29 U.S.C. 1021(g), providing the Secretary with the authority to require, by regulation, annual reporting by MEWAs that are not ERISA-covered plans. The Patient Protection and Affordable Care Act (Affordable Care Act), Pub. L. 111-148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require that such MEWAs register with the Department prior to operating in a State. Specifically, this section now provides that the Secretary shall, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)) which are not ERISA-covered group health plans to register with the Secretary prior to operating in a State and may, by regulation, require such MEWAs 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 of subtitle B of title I of ERISA are being carried out in connection with such benefits.

In addition to the relevant provisions of HIPAA and the Affordable Care Act, other laws are also set forth in part 7 of ERISA with which MEWAs and ECEs must annually report compliance. A Self-Compliance Tool, which may be used to help assess an entity's compliance

with part 7 of ERISA, will continue to be included in the Form M-1 instructions. The current version of that document is available at <http://www.dol.gov/ebsa/healthlawschecksheets.html>. The Self-Compliance Tool undergoes changes to reflect the current provisions of part 7 of ERISA as they become effective.

II. Discussion of the Revisions

A. Final Regulatory Amendments

The Department is simultaneously publishing Final Rules in today's **Federal Register** that amend the original Form M-1 requirements under § 2520.101-2, implement the new registration requirement enacted by the Affordable Care Act, and amend the Department's annual reporting regulations to strengthen the Form M-1 requirements for all MEWAs and ECEs. The new registration requirement is an important new enforcement tool to help Federal and State regulators better identify and monitor MEWAs and ECEs and give the Secretary authority to collect additional information than had been collected in previous versions of the Form M-1, including custodial and financial information.

B. Overview of Form Revisions

To reflect the regulatory amendments to the Form M-1 reporting requirements, the Department has made revisions, described in the paragraphs below, to the Form M-1. Corresponding changes were also made to the Form M-1 instructions including the line-by-line instructions. The revisions result in a Form M-1 that is substantially different from previous versions of the Form M-1. The changes described below are very similar to those described in the notice of proposed form revisions published in the Federal Register on December 6, 2011 (76 FR 76250). Changes have been made to the proposed form and instructions only to reflect modifications to the final rule and to provide greater clarity.

Part I of the 2012 Form M-1 requires filers to indicate the type of filing entity (i.e. plan MEWA, non-plan MEWA, or an ECE) and the type of filing being submitted (i.e. annual report, registration, origination, or special filing).

Part II of the 2012 Form M-1 requires more extensive custodial and financial information than requested in previous versions of the Form M-1. In addition to providing information regarding the entity's administrator and entity's sponsor, the 2012 Form M-1 now requires an entity to report individuals associated with the entity as follows: agent for service of process or registered agent; members of the Board, officers, trustees, custodians; promoters and/or agents responsible for marketing; any person, financial institution, or other entity holding assets; any actuaries providing services; any third party administrator (TPA) with whom the MEWA or ECE has a contract with; any person or entity that has authority or control over the assets of the MEWA or ECE or over assets paid to the entity by plans or employers for the provision of benefits; any person or entity that has discretionary authority, control, or responsibility with respect to the administration of the MEWA or ECE or any benefit program offered by it; and information regarding any merger with another filing entity. Additionally, the 2012 Form M-1 now requires the filing entity to respond to several "yes or no" questions with respect to the entity's assets and the fiduciaries responsible for those assets.

Part II of the 2012 Form M-1 includes information previously contained in Part III of the Year 2011 Form M-1 and includes several modifications that capture information regarding entities that are operating in a State. Pursuant to the definition of "operating" in the final rule published elsewhere in today's edition of the **Federal Register**, these modifications may apply to entities that are not actively providing coverage.

The information collected in Part III of the 2012 Form M-1 (previously designated as Part IV in the Year 2011 Form M-1) remains generally unchanged, except information regarding legal proceedings is now included in Part II of the 2012 Form M-1.

III. Filing the Form M-1

This document announces the availability of the 2012 Form M-1. Pursuant to the final rule, administrators are now required to file the Form M-1 electronically using the online filing system. Detailed information on electronic filing is available at www.askebsa.dol.gov/mewa2013. For assistance on completing the Form M-1, call the Form M-1 Help Desk at 202-693-8360. For questions regarding the electronic filing system, contact the EBSA computer Help Desk at (202) 693-8600.

A. In General

The Form M-1 is required to be filed annually by March 1 following each calendar year during all or part of which the MEWA is operating, and for three calendar years following an origination during all or part of which the ECE is operating.

Pursuant to the new registration requirement enacted by the Affordable Care Act, the administrator of a MEWA is also required to file the Form M-1 30 days prior to operating in any State. In addition, the administrator of a MEWA must file the Form M-1 within 30 days of: (1) knowingly operating in any additional State or States that were not indicated on a previous Form M-1 filing; (2) operating with regard to the employees of an additional employer (or employers, including one or more self-employed individuals) after a merger with another MEWA; (3) the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar

year; (4) or experiencing a material change (as described in the accompanying instructions to the Form M-1).

The administrator of an ECE is required to file the Form M-1 during the three-year period following any of the following origination events: (1) the ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals); (2) the ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated three years prior to the merger); or (3) the number of employees receiving coverage for medical care under the 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 ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

With respect to the events described above, the administrator of an ECE is required to file 30 days before it begins operating with regard to the employees of two or more employers (including one or more self-employed individuals), and within 30 days of: (1) when the ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated three years prior to the merger); and (2) when the number of employees receiving coverage for medical care under the 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 ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger). In addition, during any three year period in which the ECE is required to file a Form M-1, the ECE must make a special filing within 30 days after it begins knowingly operating in any additional State or States that were not

indicated on a previously required Form M-1 filing or experiences a material change (as described in the accompanying instructions to the Form M-1).

A 60-day one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension pursuant to the Form M-1 instructions.

B. The 2012 Form M-1

The filing deadlines for the 2012 Form M-1 have been delayed due to the addition of the all-electronic filing requirement and to allow filers to become familiar with the new filing requirements and deadlines. For annual reports, the 2012 Form M-1 is now due May 1, 2013, with an extension until July 1, 2013 available. For registration, origination, or special filings, the 2012 Form M-1 is due for events beginning on or after July 1, 2013, with a 60-day extension available.

More details on filing requirements are available in the final rule published elsewhere in this edition of the **Federal Register**. As noted previously in this notice, a Self-Compliance Tool, which may be used to help assess an entity's compliance with part 7 of ERISA, will continue to be included in the Form M-1 instructions. The current version of that document is available at <http://www.dol.gov/ebsa/pdf/cagappa.pdf>.

EBSA is committed to working together with administrators to help them comply with the Form M-1 filing requirements. While the Form M-1 is now required to be filed electronically, printed copies will be available for reference by calling the EBSA toll-free publication hotline at 1-866-444-EBSA (3272). Questions on completing the Form M-1 are being directed to the EBSA Help Desk at (202) 693-8360. For questions regarding the electronic filing system, contact the EBSA computer Help Desk at (202) 693-8600.

IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

This notice revises the information collection request (ICR) titled the “Annual Report for Multiple Employer Welfare Arrangements (Form M-1)” approved by OMB under OMB Control Number 1210-0116, which currently is scheduled to expire on February 29, 2016. For the hour and cost burden associated with this revision, please see the regulation titled “Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers,” which is published elsewhere in today’s issue of the **Federal Register**.

Statutory Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor’s Order 1-2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191-1191c. Sec. 2520.103-1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101-6 also issued under sec. 502(a)(3), 120 Stat. 780, 940 (2006);

Secs. 2520.102-3, 2520.104b-1 and 2520.104b-3 also issued under 29 U.S.C. 1003, 1181-1183, 1181 note, 1185, 1185a-d, 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).

Signed at Washington, DC this 26th day of February, 2013.

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration

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