

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
February 28, 2013

Final Affordable Care Act Regulations Related to Multiple Employer Welfare Arrangements

Under the Affordable Care Act, the Department of Labor (the Department) today published final rules relating to reporting requirements for multiple employer welfare arrangements (MEWAs) and entities claiming exception (ECEs) and the additional enforcement authority to crack down on fraudulent health plans. Specifically, the law gives the Department additional authority to issue ex parte cease and desist orders and to seize assets when it is apparent that fraud is taking place within a MEWA.

The final rules contain the following components:

- **Cease and Desist Orders:** The statute authorizes the Secretary to issue a cease and desist order, without prior notice or hearing, when it appears that the conduct of a MEWA is fraudulent, creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. The final rules define this conduct and the persons to whom orders may apply.
- **Administrative Hearings:** Persons who are the subject of a cease and desist order may request an administrative hearing to show cause why the order should be modified or set aside. The final rules describe the procedures for a hearing before a Department of Labor administrative law judge (ALJ) and an appeal to the Secretary, or a designee. These hearing procedures are based in large part on current ALJ procedural regulations.
- **Summary Seizure Orders:** The statute provides for issuance of a summary seizure order to preserve plan assets when the Secretary has probable cause to believe that a MEWA is in a financially hazardous condition. The Secretary will normally obtain judicial authorization, and appointment of an independent fiduciary or receiver, before issuing the order. The final rules allow the Secretary to issue the order first and then promptly seek authorization when she reasonably believes any delay will result in dissipation or concealment of assets.
- **MEWA Reporting/Registration:** For more than a decade, MEWAs have been required to report on compliance with part 7 of ERISA. The Affordable Care Act also now requires non-plan MEWAs to register with the Department before operating in a State. The final rules implement this new requirement by expanding the existing reporting structure for plan and non-plan MEWAs and ECEs under ERISA section 101(g) and 29 CFR 2520.101-2. Additionally, under the final rules, all employee welfare benefit plans that are MEWAs or ECEs subject to the Form M-1 reporting requirements must file a Form 5500 Annual Return/Report, regardless of the plan size or type of funding, and include information on compliance with the Form M-1 filing requirements as part of the Form 5500.
- **Changes to the Form M-1:** The revised Form M-1 includes additional fields for filers to indicate the type of entity and the type of filing. The revised Form also expands the amount of custodial and other financial information collected.

- **Changes to the Form 5500:** The revisions to the Form 5500 enhance the Department's ability to enforce the Form M-1 reporting requirements by requiring all employee welfare benefit plans subject to the Form M-1 filing requirements to indicate whether they are currently in compliance with the Form M-1 requirements and include proof of Form M-1 filings as part of the Form 5500.