

Annual Report for Multiple Employer Welfare Arrangements (Form M-1)
OMB Number 1210-0116
December, 2006

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as Part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. To insure compliance with Part 7, section 101(g) of ERISA, HIPAA permits the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, to report to the Secretary in such form and manner as the Secretary might determine. The Department of Labor (the Department) published a final rule providing for such reporting on an annual basis, together with a form (Form M-1) to be used by MEWAs for the annual report. The reporting requirement of the final rule provides a cost effective means of facilitating compliance with Part 7, as well as with other Federal and State requirements that may apply to MEWAs under ERISA, the Internal Revenue Code, the Public Health Service Act and State insurance laws.

The term "multiple employer welfare arrangement" (MEWA) is defined in Section 3(40) of ERISA to mean, in pertinent part:

(A) . . . an employee welfare benefit plan, or any other arrangement, (other than an employee welfare benefit arrangement), which is established or maintained for the purpose of offering or providing [welfare plan benefits] to the employees of two or more employers (including one or more self employed individuals), or their beneficiaries,

Under Section 514(b)(6) of ERISA, a fully insured employee welfare benefit plan that is a MEWA is generally subject to state insurance law. However, any such plans that are established or maintained under or pursuant to one or more agreements that the Secretary finds to be collectively bargained are not subject to state insurance law.

The primary purpose of the information collection contained in the Form M-1 is to provide the Department with a complete and uniform source of information that identifies MEWAs and helps the Secretary and State regulators evaluate Part 7 compliance by MEWAs. The use of the Form M-1 to supply the information and for evaluation purposes is more cost effective for both governmental entities and MEWAs than the alternative of active intervention by governmental compliance examiners or investigators.

In determining how best to obtain this information, the Department concluded that the

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annual reporting requirement should apply to entities that claim exception from ERISA's definition of "MEWA"¹ as well as entities that acknowledge their status as MEWAs under ERISA. The regulation therefore provides that both group health plans that are MEWAs and "Entities Claiming Exception" (ECEs) must file the Form M-1 annually. A reporting requirement limited to entities that acknowledge that they are MEWAs would make it difficult for governmental agencies to determine whether MEWAs and ECEs are properly interpreting the scope of the MEWA definition and would reduce the value of the data collected.

The collection of information regarding compliance with Part 7 is important because in the Department's experience compliance with ERISA by MEWAs has been inconsistent. Because MEWA arrangements are an alternative method for small employers to provide affordable health and welfare benefits to their employees, the Department needs an adequate means for determining the level of compliance of MEWAs with the requirements of Part 7.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

Pursuant to section 101(g) of ERISA, the Form M-1 information is used by governmental oversight entities to determine the extent of compliance with the requirements of Part 7 of ERISA by MEWAs and ECEs under section 3(40) of ERISA and to take appropriate compliance assistance and enforcement actions.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The Department has established a voluntary electronic filing system for the Form M-1. The M-1 can be filed electronically at <https://www.askebsa.dol.gov/mewa/default.aspx>. The Form M-1 is also available to be downloaded at <http://www.dol.gov/ebsa/pdf/2005M1Form.pdf>.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

Other than basic identifying information, the information provided on the Form M-1 is

¹ Section 3(37) of ERISA, which defines the term "multiple employee welfare arrangement," excludes certain specific types of arrangements, such as plans established and maintained by rural electric cooperatives, rural telephone cooperative associations, or under collective bargaining agreements.

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not available from other sources. Therefore, there is no duplication in this information collection.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The entities that are respondents to this information collection, which are organizations that provide welfare benefits to the employees of more than one employer, are generally not small entities. To the extent that MEWAs and ECEs may be, in some instances, small entities, the Department has provided a low-cost, simple voluntary electronic filing method for the Form M-1, which should reduce burdens on small entities.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The statute authorizes the Secretary of Labor (the Secretary) to require certain multiple employer welfare arrangements to report annually in a manner determined by the Secretary for the purpose of determining the extent of compliance with Part 7 of ERISA. Annual reporting is necessary to ensure that participants and beneficiaries of these arrangements are afforded the protections intended under the provisions of Part 7. Determining whether an entity is in compliance with Part 7 hinges in part on its structure and whether state law may be applied. The interplay of state and federal requirements for MEWAs, group health plans, and health insurance issuers necessitates the collection of information concerning the states in which MEWAs and other entities operate, state licensure, and insurance status.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and*

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reliable results that can be generalized to the universe of study;

- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the proposed extension of approval for this information collection, was published in the Federal Register on October 31, 2006, (71 FR 63783), providing 60 days for public comment. No comments were received.

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9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No assurance of confidentiality has been provided. All Forms M-1 submitted to the government are available for public inspection.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

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12. *Provide estimates of the hour burden of the collection of information. The statement should:*
- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.*
 - *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
 - *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

In 2005, 515 entities filed Form M-1 with the Department. This is a significantly smaller number than reported in previous years, which the Department attributes to a decline in the use of MEWAs to provide benefits to employees. Of the total filings, 289 were submitted via the mail and 226 were submitted electronically through the Form M-1 electronic filing system provided by the Department via the Internet.

Previous analyses assumed that filers would require 2 hours to familiarize themselves with the requisite forms. This assumption has been limited to only those entities that file the Form M-1 for the first time and perform the task in-house, roughly 2 percent of all filings, as the forms have not significantly changed over time and appear to be straightforward.² Moreover, since only one form is required per filer, the current burden estimates will be based solely on the number of filers.

² The previous ICR assumed that a MEWA or ECE would likely file a Form M-1 on behalf of each ERISA-covered plan under which it provided benefits, which resulted in a higher estimate of responses. The burden of Parts I and II was estimated based on the number of MEWA/ECE filers, while the burden of Parts III and IV was based on the number of plans. This ICR assumes instead, based on the filing instructions of the 2006 Form M-1, that each MEWA or ECE will file only one Form M-1 annually.

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The Department estimates that it will take 2 hours for each entity that first files a Form M-1, performing the task in-house, to familiarize itself with the form. Parts I and II of the Form (the identifying information), are estimated to take five minutes each to complete and one minute each to copy and mail, if submitted on paper. The time required to complete Part III is expected to vary based on the number of states in which the entity provides coverage, and is estimated at thirty minutes for single-state filers and sixty minutes for multi-state filers. The time required to complete Part IV is expected to vary based on whether the entity is fully-insured or not and is estimated to require fifteen minutes for fully-insured filers; thirty minutes for self-insured filers. All time is assumed to be either professional time, at \$83 per hour, or clerical time, at \$25 per hour (for copying and mailing).³ Mailing and materials are expected to cost .50 per paper filing; the mailing and material costs for web-filings are expected to be negligible.

As in previous estimates, the Department assumes that 10 percent of filers will complete the forms in-house with the remaining 90 percent purchasing services from a third party service provider to comply with this requirement.⁴ The numbers of burden hours generated by in-house and third-party filings respectively are displayed in the table below:

In-House Hours

Paper Submissions	Preparing					Copying & Mailing Hours
	Fully-Insured		Self-Insured		Total	
	One State	Multi States	One State	Multi States	All	
Fixed	2.86	3.67	2.28	1.02	9.83	0.00
Part I & II	0.70	0.90	0.56	0.25	2.41	0.48
Part III	4.20	10.80	3.35	3.00	21.35	0.00
Part IV	2.10	2.70	3.35	1.50	9.65	0.00
Total Time	9.86	18.07	9.54	5.77	43.23	0.48

Web Submissions	Preparing					Copying & Mailing Hours
	Fully-Insured		Self-Insured		Total	
	One State	Multi States	One State	Multi States	All	
Fixed	1.94	3.47	1.19	1.09	7.68	0.00
Part I & II	0.48	0.85	0.29	0.27	1.88	0.00
Part III	2.85	10.20	1.75	3.20	18.00	0.00
Part IV	1.43	2.55	1.75	1.60	7.33	0.00
Total Time	6.69	17.07	4.98	6.15	34.89	0.00

³ Hourly cost estimates are based on the hourly wage and benefits for these workers in the DC Metro Area as reported by the 2005 National Compensation Survey and the 2006 Employer Cost for Employee Compensation.

⁴ This assumption is made in connection with EBSA's principal reporting form, the Form 5500, and was validated through a filer survey.

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Third Party Preparation Hours

Paper Submissions	Preparing					Copying & Mailing Hours
	Fully-Insured		Self-Insured		Total	
	One State	Multi States	One State	Multi States	All	
Fixed	0.00	0.00	0.00	0.00	0.00	0.00
Part I & II	6.30	8.10	5.03	2.25	21.68	4.34
Part III	37.80	97.20	30.15	27.00	192.15	0.00
Part IV	18.90	24.30	30.15	13.50	86.85	0.00
Total Time	63.00	129.60	65.33	42.75	300.68	4.34

Web Submissions	Preparing					Copying & Mailing Hours
	Fully-Insured		Self-Insured		Total	
	One State	Multi States	One State	Multi States	All	
Fixed	0.00	0.00	0.00	0.00	0.00	0.00
Part I & II	4.28	7.65	2.63	2.40	16.95	0.00
Part III	25.65	91.80	15.75	28.80	162.00	0.00
Part IV	12.83	22.95	15.75	14.40	65.93	0.00
Total Time	42.75	122.40	34.13	45.60	244.88	0.00

The total estimated annual hour burden for Form M-1 filings prepared in-house is 78 hours. This is a total of 120 minutes times 9 new in-house filers (18 hours); plus 5 minutes times 52 in-house filers (4 hours); plus 30 minutes times 24 in-house, one-state filers (12 hours); plus 60 minutes times 27 in-house, multi-state filers (27 hours); plus 15 minutes times 35 in-house, fully-insured filers (9 hours); plus 30 minutes times 16 in-house, self-insured filers (8 hours); plus 1 minute for copying and mailing times the 29 in-house filers that submit the forms in paper form, (0.5 hours). The equivalent cost of this annual hour burden is estimated at \$6,496, assuming an \$83 hourly rate for preparing the forms and a \$25 hourly rate for photocopying and mailing the filings. The mailing and copying costs are accounted for separately in the response to item 13, below.

13. *Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

As noted above, it has been assumed that service providers will prepare and submit Form M-1 filings for 90 percent of filers. Total estimated cost for this information collection is arrived at by multiplying the number of filers (by type of submission) by the amount of time required to prepare the documents and finally multiplying this by the hourly cost for professionals (\$83 dollars an hour) and, for those submitting the Form M-1 on paper rather than through electronic filing, clerical workers (\$25 dollars an hour). The resulting annual estimated cost burden is \$45,390. Added to this amount is the actual cost for copying and mailing filings submitted in

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paper -- \$.50 per mailing, for a total annual cost of \$130. The total annual estimated cost burden for the 90 percent of plans that use service providers, including the cost of copying and distributing filings submitted on paper, is \$45,520.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

The estimated cost to the Federal government for the Form M-1 was approximately \$9,900 in 2005. This includes the cost of printing forms, sending out reminders to former filers, processing both paper and online submissions, and maintaining the processing system, as reported by the EBSA offices responsible for those activities. These costs are expected to decline somewhat in 2006 due to reduced submissions and increased governmental usage of e-mail in lieu of paper reminders to former filers.

Cost of Federal Government of Form M-1

Forms	2005	2006
Printing FORM M-1 Forms	\$900	450
Sending reminders	\$300	0
Processing of M1 Forms		
Online	\$2,200	\$2,200
Paper	\$1,000	\$1,000
Maintenance of System	\$5,000	\$5,000
Paper Processing M1 Forms	\$500	\$500
Total	\$9,900	\$9,150

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

There have been no program changes to this information collection. The changes in burden estimates derive solely from adjustments. The estimate of respondents is based on actual 2005 Form M-1 filings. In addition, while the previous ICR assumed the likelihood that a MEWA/ECE would make a separate filing for each ERISA-covered plan for which it provided benefits, this ICR assumes instead, based on the 2006 instructions to the Form M-1, that each MEWA/ECE will file one Form M-1 per year. As a result, the burden estimates has been adjusted downwards from 564 hours to 78 hours, a difference of 486 hours, and from \$348,997

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to \$45,520, a difference of \$303,477. The adjustment of the cost burden also reflects more recent rates for professional and clerical wages and postal costs.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The Department requests continuing approval to not display the expiration date on Form M-1. Printing of the expiration date on the Form M-1 might require the destruction of otherwise usable forms and create confusion among filers if forms with differing expiration dates were available to them. For these reasons, the Department believes the public interest will be better served by omitting an expiration date from the Form M-1. There have been no changes to the form itself since its development.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. The use of statistical methods is not relevant to this collection of information.