

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

**A. Justification**

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 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 annual reporting requirement should apply to entities that claim exception from ERISA's definition of "MEWA"<sup>1</sup> 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.

The Affordable Care Act (ACA) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111-152, 124 Stat. 1029, was enacted on March 30, 2010. The ACA amended section 101(g) of ERISA to require MEWAs that provide benefits consisting of medical care (within the meaning of ERISA section 733(a)(2)) which are not group health plans to register with the Secretary before operating in a State, in addition to reporting annually regarding their compliance with part 7 of ERISA. The final regulations, which are the subject of this revised information collection request, implemented ERISA section 101(g) which mandates MEWA registration. Thus, paragraph (a) of the final rule sets forth how section 101(g) of ERISA requires MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary prior to operating in a State, and to report annually regarding compliance with part 7 of ERISA.

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

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<sup>1</sup> 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.

compliance assistance and enforcement actions. These revised from will be used for MEWAs to meet their obligation to register with the Department before operating in a state as required by ERISA section 101(g).

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.*

Paragraph (f) of the final rule eliminates the option to file a paper copy of the completed Form M-1. As is now the case for all Form 5500 Annual Report filings, and consistent with the goals of E-government, as recognized by the Government Paperwork Elimination Act and the E-Government Act of 2002, the Form M-1 would have to be filed electronically. A mandate of electronic filing of benefit plan information, among other program strategies, will facilitate EBSA's achievement of its Strategic Goal to "assure the security of the retirement, health and other workplace related benefits of American workers and their families." EBSA's strategic goal directly supports the Secretary of Labor's Strategic Goal to "secure health benefits." A cornerstone of our enforcement program is the collection, analysis, and disclosure of benefit plan information. Requiring electronic filing will minimize errors and provide faster access to reported data, assisting EBSA in its enforcement, oversight, and disclosure roles and ultimately enhancing the security of plan benefits. Electronic filing of the M-1 will also reduce the paperwork burden and costs related to printing and mailing forms and, with the use of secure account access, allow updating of previously reported information to facilitate simplified future reporting. Finally, the information will be available, almost immediately, for reference by participants, beneficiaries, and participating employers.

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 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 describe any methods used to minimize burden.*

According to 2012-2014 Form M-1 data, approximately 622 MEWAs exist. Of these 622 MEWAs, 102 (16 percent) are small. The Department notes that the reporting burden that would be imposed on all MEWAs by the rule is estimated as an average cost of \$202

for each MEWA filing Form M-1. For all but the smallest MEWAs (less than 15 participants), this represents less than one-half of one percent of revenues. The Department has made electronic filing of the Form M-1 mandatory, which should reduce burdens on small entities when compared with the historic burden associated with filing the Form M-1.

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 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.*

As required by 5 CFR 1320.8(d), the proposed rule was published in the Federal Register on November 23, 2015 (80 FR 72990) providing the public a 60-day comment period. No comments on the PRA were received in response to the solicitation of public comments.

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.

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.*
  - *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.*

An average of 456 entities filed Form M-1 with the Department annually from 2012 to 2014.

For MEWAs that use in-house resources to file the Form M-1, the Department estimates that Part I of the Form (the identifying information) would require five minutes to complete. The time required to complete Part II would vary based on the number of States in which the entity provides coverage, and the Department estimates that this would require 60 minutes for single-State filers and 120 minutes for multi-State filers. The Department expects the time required to complete Part III would be 15 minutes. Table 1 below summarizes the estimates of time required to complete each part of the form.

The Department estimates that the annual hour burden for Form M-1 filings prepared in-house would be approximately 95 hours as summarized in Table 2. The Department's estimate is based on the assumption that approximately ten percent of filers (46 MEWAs) will file the Form M-1 using in-house resources each year and that six of them will be new.<sup>2</sup> The Department estimates that MEWAs preparing the form in-house would spend

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<sup>2</sup> An average of 13.6 percent of MEWAs originate each year according to Form M-1 data.

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four hours completing Part I, 68 hours completing Part II, and 11 hours completing Part III. Administrators of new MEWAs using in-house resources will require an additional 12 hours to familiarize themselves with the requirements. The equivalent cost of this annual hour burden is estimated to be \$10,000,<sup>3</sup> assuming a \$109.96 hourly labor rate for an employee benefits professional.<sup>4</sup>

Table.1--*Estimated Time to Fill Out Form (Minutes)*

|            | One State | Multi States |
|------------|-----------|--------------|
| New Filing | 120       | 120          |
| Part I     | 5         | 5            |
| Part II    | 60        | 120          |
| Part III   | 15        | 15           |

TABLE. 2-- *Hour Burden to Prepare Form M-1, In-House Preparation*

|            | One State | Multi States | Total |
|------------|-----------|--------------|-------|
| # of MEWAs | 24        | 22           | 46    |
| New Filing | 6         | 6            | 12    |
| Part I     | 2         | 2            | 4     |
| Part II    | 24        | 44           | 68    |
| Part III   | 6         | 5            | 11    |
| Total Time | 38        | 57           | 95    |

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).*

The Department assumes that 90 percent of the 456 MEWAs (411 MEWAs) that will file the Form M-1 will use third-party service providers to complete and submit the Form M-1.<sup>5</sup>

<sup>3</sup> The Department's estimated 2016 hourly labor rates include wages, other benefits, and overhead are calculated as follows: mean wage from the 2014 National Occupational Employment Survey (May 2014, Bureau of Labor Statistics [http://www.bls.gov/oes/2014/may/oes\\_nat.htm](http://www.bls.gov/oes/2014/may/oes_nat.htm)); wages as a percent of total compensation from the Employer Cost for Employee Compensation (June 2015, Bureau of Labor Statistics [http://www.bls.gov/news.release/archives/ecec\\_09092015.pdf](http://www.bls.gov/news.release/archives/ecec_09092015.pdf)); overhead is a flat \$60,500 annually converted to \$29.09 per hour based on EBSA's annual budget requests from past experience on overhead spending; annual inflation assumed to be 2.0 percent annual growth of total labor cost since 2014 (Employment Costs Index data for private industry, September 2015 [http://www.bls.gov/news.release/archives/eci\\_10302015.pdf](http://www.bls.gov/news.release/archives/eci_10302015.pdf)).

<sup>4</sup> Actuaries (15-2011):  $\$52.93(2014 \text{ BLS Wage rate}) / 0.691(\text{ECEC ratio}) + \$29.09(\text{Overhead Load Factor}) * 1.02(\text{Inflation rate}) ^2(\text{Inflated 2 years from base year}) = \$109.96$

<sup>5</sup> 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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The total estimated cost burden for preparing the form is arrived at by multiplying the number of filers (found in Table 3 below) by the amount of time required to prepare the documents (Table 1 in question 12) and multiplying this result by the hourly cost of an employee benefits professional (\$109.96). Based on the foregoing, the total cost burden for MEWAs that use purchased third-party resources to file the Form M-1 is \$81,900 annually. Table 3 summarizes the estimates of the cost burden.

*TABLE. 3--Cost Burden to Prepare Form M-1, Third-Party Preparation*

|            | One State | Multi States | Total    |
|------------|-----------|--------------|----------|
| # of MEWAs | 214       | 197          | 411      |
| New Filing | \$0       | \$0          | \$0      |
| Part I     | \$2,000   | \$1,800      | \$3,800  |
| Part II    | \$23,500  | \$43,300     | \$66,800 |
| Part III   | \$5,900   | \$5,400      | \$11,300 |
| Total Time | \$31,300  | \$50,600     | \$81,900 |

Note: The displayed numbers are rounded to the nearest hundred and therefore may not add up to the totals.

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 Department estimates that the cost to the Federal government to process Form M-1s is approximately \$4,557. This includes the cost to process online submissions and maintain the processing system, and was estimated by the offices within EBSA that are responsible for overseeing these activities.

*Table.4—Cost of Federal Government of Form M-1*

| Processing of M1 Forms |         |
|------------------------|---------|
| Online                 | \$1,557 |
| Maintenance of System  | \$3,000 |
| Total                  | \$4,557 |

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14.*

This submission reflects updated data on the number of annual Form M-1 filings based on data from the most recent three years of submissions and updated wage rates reflecting inflation.



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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.*

OMB previously granted approval for the Department to omit the expiration date from the Form M-1. The Department requests continued approval to omit the expiration date.

The Department will publish a notice notifying the public of the expiration date after OMB approves renewal of the ICR.

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

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.