

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995:
ANNUAL REPORT FOR MULTIPLE EMPLOYER WELFARE ARRANGEMENTS
(FORM M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs)
and Certain Entities Claiming Exception (ECEs))**

This ICR seeks approval of a revision to an existing control number.

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. HIPAA also added section 101(g) to ERISA, providing the Secretary of Labor (Secretary) with authority to require, by regulation, multiple employer welfare arrangements (MEWAs) as defined in section 3(40) of ERISA, that offer or provide coverage for medical benefits but which are not group health plans (non-plan MEWAs), to report annually for the purpose of determining compliance with Part 7 requirements. While the statutory authority was directed at non-plan MEWAs, based on the authority in ERISA sections 101(g), 505, and 734, the Department of Labor (Department) in 2003 promulgated a regulation at 29 CFR §2520.101-2 that required the administrators of both plan MEWAs and non-plan MEWAs that offer or provide coverage for medical benefits, as well certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to as “Entities Claiming Exception” or “ECEs”), to file the Form M-1 on an annual basis (Form M-1 annual report).

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (these are collectively known as the “Affordable Care Act” or “ACA”) amended section 101(g) of ERISA to require non-plan MEWAs that provide benefits consisting of medical care to register with the Secretary before operating in a State. In 2011, the Department amended the Form M-1 reporting regulations to enact the ACA required provisions by requiring all MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits and ECEs to register with the Secretary upon occurrence of certain registration events, such as prior to operating in a State, in addition to continued reporting on an annual basis regarding compliance with part 7 of ERISA.

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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, employee welfare benefit plans that are MEWAs are generally subject to state insurance law to different degrees depending on whether the plan is fully insured or not. 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 by statute excluded from the definition of MEWA and therefore are not subject to the provisions in ERISA section 514(b)(6) regarding state insurance regulation of plans that are MEWAs (if such a collectively bargained plan uses insurance to provide benefits, the insurance company and insurance policy would, however, be subject to state insurance regulation). Plans maintained by rural electric cooperatives and rural telephone cooperative associations are similarly excluded by statute from the definition of MEWA.

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.

As discussed above, in determining how best to obtain this information, the Department concluded that the annual reporting requirement should apply to ECEs as well as plan and non-plan MEWAs. The regulation therefore provides that all MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits and ECEs must file the Form M-1 annually as well as upon occurrence of certain registration events. A reporting requirement limited to entities that acknowledge that they are non-plan 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.

SECURE Act

The SECURE Act was enacted December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94). Effective for plan years beginning on or after January 1, 2022, the Department is proposing to amend the Form M-1 by moving an existing question on the Form 5500 currently answered by plan MEWAs on the Form 5500 to the Form M-1. Specifically, under the current requirement, MEWA-plans, including those that provide coverage for medical benefits, must report participating employer information on an attachment to the Form 5500. Moving the question to the Form M-1 would result in all MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits having to report participating employer information by name and employer identification number (EIN). Like the 2014 interim final rule issued under ERISA section 103(g) and the existing Form 5500 instructions, the proposal would not require contribution information from unfunded or insured MEWAs on the Form M-1, regardless of whether the entity was a plan or non-plan MEWA. ECE's would not be required to answer the participating employer questions on the Form M-1.

- 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.**

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The Form M-1, similar to the Form 5500 Annual Report filings (OMB Control Number 1210-0110)), consistent with the goals of E-government as recognized by the Government Paperwork Elimination Act and the E-Government Act of 2002, must be filed electronically. A mandate of electronic filing of benefit plan information, among other program strategies, facilitates 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 minimizes errors and provides 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 also reduces 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.

5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.

The Department notes that the Form M-1 reporting burden that would be imposed on all MEWAs 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. Also, electronic filing of the Form M-1 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. If this collection were not conducted or conducted less frequently, the Department would be less effective in protecting the benefits of the MEWA's participants and beneficiaries.

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.**

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

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.

DOL published a Notice of Proposed Rulemaking that proposes amendments to regulations relating to annual reporting requirements under Title I of ERISA. DOL, Treasury/IRS, and PBGC also published in the Federal Register a separate Notice of Proposed Forms Revision containing proposed form changes and these proposed regulatory amendments. Both notices were published in the Federal Register on September 15, 2021. The Federal Register citations are 86 FR 51284 and 86 FR 51488 respectively. Comments are due by November 1, 2021. To avoid unnecessary duplication of effort, the Agencies also will treat public comments submitted in response to this notice of proposed rulemaking as public comments on the Notice of Proposed Forms Revisions to the extent they include information relevant to the proposed regulatory amendments.

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

No payments or gifts will be made to respondents.

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.

There are no questions of a sensitive nature.

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.**

In the 2018 calendar year, 687 entities filed Form M-1 with the Department. Of the 687 entities, there were 640 plan MEWAs and 47 non-plan MEWAs. Additionally, among plan MEWAs, there were 389 single-State filers and 251 multi-State filers. Finally, among non-plan MEWAs, there were 36 single-State filers and 11 multi-State filers.

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 expects that the time required to identify each participating employer in the MEWA by name and employer identification number (EIN) as an

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attachment to the Form M-1 would require 30 minutes.

The Department estimates that the annual hour burden for Form M-1 filings prepared in-house would be approximately 175 hours as summarized in Table 2. The Department's estimate is based on the assumption that approximately ten percent of filers (69 MEWAs) will file the Form M-1 using in-house resources each year and that eight of them will be new.¹ The Department estimates that MEWAs preparing the form in-house would spend six hours completing Part I, 95 hours completing Part II, and 17 hours completing Part III. Administrators of new MEWAs using in-house resources will require an additional 19 hours to familiarize themselves with the requirements. The equivalent cost of this annual hour burden is estimated to be \$20,898, assuming a \$119.37 hourly labor rate for an employee benefits professional.²

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

	One State	Multi States
New Filing	120	120
Account Creation		
Part I	5	5
Part II	60	120
Part III	15	15
Participating Employers Attachment	30	30

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

	One State	Multi States	All Filers	Total
# of MEWAs	43	26	23	69
New Filing	12	7		19
Account Creation			4	4
Part I	4	2		6
Part II	43	52		95
Part III	11	7		17

1 An average of 14.1 percent of MEWAs originate each year according to Form M-1 data.

2 DOL estimates of labor costs by occupation reflect estimates of total compensation and overhead costs. Estimates for total compensation are based on mean hourly wages by occupation from the 2019 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the 2020 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2017 Service Annual Survey. To estimate overhead cost on an occupational basis, OPR allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2019 dollars.

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Participating Employers Attachment	21	13	34
Total Time	90	82	175

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Total Burden Cost
Single State Filers- New Filings	6	1	6	2	12	\$119.37	\$1,431
Multi-State Filers- New Filings	4	1	4	2	7	\$119.37	\$882
Single-State Filers- Prepare Part I	43	1	43	5/60	4	\$119.37	\$423
Single-State Filers- Prepare Part II	43	1	43	1	43	\$119.37	\$5,073
Single-State Filers- Prepare Part III	43	1	43	15/60	11	\$119.37	\$1,268
Multi-State Filers- Prepare Part I	26	1	26	5/60	2	\$119.37	\$261
Multi-State Filers- Prepare Part II	26	1	26	2	52	\$119.37	\$6,253
Multi-State Filers- Prepare Part III	26	1	26	15/60	7	\$119.37	\$782
Account Creation	43	1	43	5/60	4	\$119.37	\$422
Participating Employers Attachment	69	1	69	30/60	34	\$119.37	\$4,100

Total	687*	1	687*	0.254825	175		\$20,898
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*The total number of respondents and responses is calculated in the following manner: 69 (Number of MEWAs that use in-house resources to file the Form M-1) + 618 (Number of MEWAs that will use third-party service providers) = 687

- 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 cost estimate should be split into two components: (a) a total capital and start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The Department assumes that 90 percent of the 687 MEWAs (618 MEWAs) that will file the Form M-1 will use third-party service providers to complete and submit the Form M-1.³

³ This assumption is made in connection with EBSA's principal reporting form, the Form 5500, and was validated through a filer survey.

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 (\$119.37). Based on the foregoing, the total cost burden for MEWAs that use purchased third-party resources to file the Form M-1 is \$163,459 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	383	236	618
New Filing	\$0	\$0	\$0
Part I	\$3,805	\$2,346	\$6,151
Part II	\$45,659	\$56,295	\$101,954
Part III	\$11,415	\$7,037	\$18,452
Participating Employers Attachment	\$22,830	\$14,074	\$36,903
Total Time	\$83,708	\$79,751	\$163,459

- 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 \$7,200. 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	\$2,200
Maintenance of System	\$5,000
Total	\$7,200

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

As described above, the changes in the information collection would update the Form M-

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1 and instructions by transferring the multiple employer participating employer information questions currently applicable to plans that are MEWAs from the Form 5500 to the Form M-1. Since plan MEWAs would be answering the same questions as currently required on the Form 5500, there would be no increase in the regulatory burden. Non-plan MEWAs (47) would now also be required to report participating employer information on the Form M-1.

This submission reflects updated data on the number of annual Form M-1 filings and new Form M-1 filings based on data from the most recent year of submission. It also reflects updated labor costs. These updated data inputs increase the number of responses by 115 responses, increase the hour burden by 55 hours, and increase the cost burden by \$52,082 compared with the prior submission.

- 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.**

The Form M-1 is not a collection of information for statistical use. Once collected, however, the information is available to the Department and the public, and it is used for purposes other than enforcement and disclosure, to include research publications.

- 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.**

There are no exceptions to the certification statement.

- B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.**

Not Applicable.