



New Form M-1, Form 5500 and Enforcement Rules for MEWAs

The Department of Labor (DOL) has released final regulations on reporting requirements and enforcement rules for multiple employer welfare arrangements (MEWAs). As stated by the DOL in its news release, these final rules “increase the department's enforcement authority to protect participants in MEWAs and call for such plans to adhere to enhanced filing requirements.”

Reporting Requirements

- **Updated Form M-1; Electronic Filing Required.** The DOL made several changes to the 2012 Form M-1, required to be filed by MEWAs. The revised Form M-1 expands the custodial and financial information collected as well as the identification of those associated with the MEWA (such as Board members, TPAs, and actuaries). Additionally, the form includes fields for filers to indicate the type of entity (such as a MEWA that is also an employee welfare benefit plan within the meaning of ERISA section (3)(3)).

For 2012 filings and all future years, Form M-1 filings must be completed electronically. MEWAs that have not previously filed electronically will need to set up an online filing account.

MEWAs subject to the Form M-1 filing requirement should take note that the **2012 filing deadline has been extended from March 1, 2013 to May 1, 2013**. An extension of time for the 2012 filing is available until July 1, 2013 if the administrator requests an extension in accordance with the Form M-1 Instructions.

- **Additional Form M-1 Filing Requirements.** MEWAs subject to the Form M-1 reporting requirements generally must file annually on or before March 1 for the previous year. In addition to the annual filing requirement, the final rule adds a registration filing requirement as well as filing requirements upon the occurrence of certain events.

MEWAs must now register with the DOL prior to operating in any state by filing a Form M-1, 30 days prior to beginning operations in any state.

Note: An exception exists for MEWAs that were already in operation in a state prior to April 1, 2013 (the effective date of the final rules). These entities are still required to file an annual Form M-1.

MEWAs must also now file a Form M-1 within 30 days after any of the following events:

- Knowingly operating in any additional state that was not indicated on a previously filed Form M-1;
- Operating with regard to employees of an additional employer after a merger with another MEWA;
- The date the number of employees receiving medical coverage under the MEWA is at least 50% greater than the number of employees receiving coverage on the last day of the prior calendar year; or
- Experiencing a material change. A “material change” is defined as a change in any of the custodial or financial information reported on Part II of the Form M-1.

An extension of time for any required filing may be granted if the administrator requests an extension in accordance with the Form M-1 Instructions. If multiple filings are required based on the above outlined rules, a single filing can be used to satisfy the filing requirement so long as the filing is timely for each required filing.

- **Revised Form 5500 and filing requirement.** All MEWAs subject to the Form M-1 reporting requirements must now also file a Form 5500 Annual Report, regardless of plan size or funding. The revised Form 5500 (which takes effect beginning with the 2013 Form 5500) includes a new section specifically addressing Form M-1 compliance and requires a plan to include proof of the Form M-1 filing as part of the Form 5500. This will enhance the DOL’s ability to enforce the Form M-1 reporting requirements.

Note: The revised Form 5500 requires submission of the 2013 Form M-1 Receipt Confirmation Code. Failure to provide this information will cause the Form 5500 to be rejected as incomplete.

- **Penalties.** Civil penalties may be assessed for failure to file. Additionally, criminal penalties are assessable for knowingly making false statements or false representations of fact in a filing.

Enforcement Rules

The final rules provide the DOL with increased enforcement authority over MEWAs to prevent fraudulent or dangerous activities, and protect against financially hazardous conditions. Specifically, the rules provide the following enforcement authority:

- **Cease and Desist Orders.** The DOL is authorized to issue a cease and desist order, without prior notice or hearing, when it appears a MEWA's conduct is fraudulent, creates an immediate danger to the public, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.
- **Administrative Hearings.** Persons receiving a cease and desist order may request an administrative hearing before a DOL administrative law judge (and an appeal to the Secretary) to show cause why the order should be modified or set aside.
- **Summary Seizure Orders.** When the DOL has probable cause to believe a MEWA is in a financially hazardous condition, the rules authorize the issuance of a summary seizure order to preserve plan assets. Normally, the DOL first obtains judicial authorization, and appointment of an independent fiduciary/receiver, before issuing a summary seizure order. In the event the DOL reasonably believes any delay will result in dissipation or concealment of assets, the rules authorize the DOL to issue the order first and then promptly seek authorization.

Please let us know if you have any questions about compliance with the new reporting requirements or the enforcement rules.

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