

§ 2520.101-1

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AUTHORITY: 29 U.S.C. 1021-1025, 1027, 1029-31, 1059, 1134 and 1135; and Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101-2 also issued under 29 U.S.C. 1132, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Sec. 2520.101-4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101-6 also issued under 29 U.S.C. 1021(k) and Pub. L. 109-280, § 502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102-3, 2520.104b-1 and 2520.104b-3 also issued under 29 U.S.C. 1003, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.104b-1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

Subpart A—General Reporting and Disclosure Requirements

§ 2520.101-1 Duty of reporting and disclosure.

The procedures for implementing the plan administrator's duty of reporting to the Secretary of Labor and dis-

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closing information to participants and beneficiaries are located in subparts D, E and F of this part.

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[41 FR 16962, Apr. 23, 1976, as amended at 46 FR 62845, Dec. 29, 1981]

§ 2520.101-2 Annual reporting by multiple employer welfare arrangements and certain other entities offering or providing coverage for medical care to the employees of two or more employers.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA) permits the Secretary of Labor to require, by regulation, multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (within the meaning of section 733(a)(2) of ERISA), and that are not group health plans, to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for annual reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). These requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

Administrator means—

(1) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(2) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(3) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

Entity Claiming Exception (ECE) means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and 29 CFR 2510.3-40.

Excepted benefits means *excepted benefits* within the meaning of section 733(c) of ERISA and 29 CFR 2590.732(b).

Group health plan means a *group health plan* within the meaning of section 733(a) of ERISA and 29 CFR 2590.701-2.

Health insurance issuer means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and 29 CFR 2590.701-2.

Medical care means *medical care* within the meaning of section 733(a)(2) of ERISA and 29 CFR 2590.701-2.

Multiple employer welfare arrangement (MEWA) means a multiple employer welfare arrangement within the meaning of section 3(40) of ERISA and 29 CFR 2510.3-40.

Origination means the occurrence of any of the following three events (and a MEWA or ECE is considered to have been *originated* when any of the following three events occurs)—

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-em-

ployed individuals) after a merger with another MEWA or ECE (unless all of the MEWAs or ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(3) The number of employees receiving coverage for medical care under the MEWA or ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

(c) *Persons required to report*—(1) *General rule*. Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section—

(i) The administrator of a MEWA that offers or provides benefits consisting of medical care, regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE that offers or provides benefits consisting of medical care during the first three years after the ECE is originated.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE if the MEWA or ECE—

(A) Is licensed or authorized to operate as a health insurance issuer in every state in which it offers or provides coverage for medical care to employees;

(B) Provides coverage that consists solely of excepted benefits, which are not subject to Part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) Is a group health plan that is not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections (4)(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) Provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage);

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances:

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying the principles of section 414(b) or (c) of the Internal Revenue Code (26 U.S.C.);

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M-1 filing and is temporary in nature. For purposes of this paragraph, "temporary" means the MEWA or ECE does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, in the case of a 90-day origination report, determined as of the 60th day following the origination date.

(d) *Information to be reported*—(1) The annual report required by this section shall consist of a completed copy of the

Form M-1 Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) and any additional statements required in the Instructions to the Form M-1.

(2) The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with 29 CFR 2560.502c-5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and 29 CFR 2560.502c-5).

(e) *Reporting requirement and timing*—(1) *Period for which report is required.* A completed copy of the Form M-1 is required to be filed for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care to the employees of two or more employers (including one or more self-employed individuals).

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* A completed copy of the Form M-1 is required to be filed on or before each March 1 that follows a period to be reported (as described in paragraph (e)(1) of this section). However, if March 1 is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(ii) *Special rule requiring a 90-Day Origination Report when a MEWA or ECE is originated*—(A) *In general.* Subject to paragraph (e)(2)(ii)(B) of this section, when a MEWA or ECE is originated, the administrator of the MEWA or ECE is also required to file a completed copy of the Form M-1 within 90 days of the origination date (unless 90 days after the origination date is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the next business day).

(B) *Exception.* Paragraph (e)(2)(ii)(A) of this section does not apply if the origination occurred between October 1 and December 31. (Thus, no 90-day

origination report is due when an entity is originated between October 1 and December 31. However, the March 1 filing deadline of paragraph (e)(2)(i) of this section continues to apply.)

(iii) *Extensions.* An extension may be granted for filing a report if the administrator complies with the extension procedure prescribed in the Instructions to the Form M-1.

(f) *Filing address.* A completed copy of the Form M-1 is filed with the Secretary by sending it to the address prescribed in the Instructions to the Form M-1.

(g) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see 29 CFR 2560.502c-5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see 29 CFR 2570.90 through 2570.101.

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA A began offering coverage for medical care to the employees of two or more employers July 1, 1989 (and continues to offer such coverage). MEWA A does not claim the exception under section 3(40)(A)(i) of ERISA.

(ii) *Conclusion.* In this *Example 1*, the administrator of MEWA A must file a completed copy of the Form M-1 each year by March 1.

Example 2. (i) *Facts.* ECE B began offering coverage for medical care to the employees of two or more employers on January 1, 1992. ECE B has not been involved in any mergers and the number of employees to which ECE B provides coverage for medical care has not grown by more than 50 percent in any given year.

(ii) *Conclusion.* In this *Example 2*, ECE B was originated on January 1, 1992 and has not been originated since then. Therefore, the administrator of ECE B is not required to file a 2003 Form M-1 on March 1, 2004 because the last time the ECE B was originated was January 1, 1992 which is more than 3 years prior to March 1, 2004.

Example 3. (i) *Facts.* ECE C began offering coverage for medical care to the employees of two or more employers on July 1, 2004.

(ii) *Conclusion.* In this *Example 3*, the administrator of ECE C must file a completed copy of the 2004 Form M-1 on or before September 29, 2004 (which is 90 days after the origination date). In addition, the adminis-

trator of ECE C must file an updated copy of the 2004 Form M-1 by March 1, 2005 because the last date C was originated was July 1, 2004, which is less than 3 years prior to the March 1, 2005 due date. Furthermore, the administrator of ECE C must file a 2005 Form M-1 by March 1, 2006 and a 2006 Form M-1 by March 1, 2007 (because July 1, 2004 is less than three years prior to March 1, 2006 and March 1, 2007, respectively). However, if ECE C is not involved in any mergers that would result in a new origination date and if ECE C does not experience a growth of 50 percent or more in the number of employees to which ECE C provides coverage from the last day of the previous calendar year to any day in the current calendar year, then no Form M-1 report is required to be filed after March 1, 2007.

Example 4. (i) *Facts.* MEWA D begins offering coverage to the employees of two or more employers on January 1, 2000. MEWA D is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 4*, the administrator of MEWA D is not required to file Form M-1 because it is licensed or authorized to operate as a health insurance issuer in every state in which it offers coverage for medical care to employees.

Example 5. (i) *Facts.* MEWA E is originated on September 1, 2004.

(ii) *Conclusion.* In this *Example 5*, because MEWA E was originated on September 1, 2004, the administrator of MEWA E must file a completed copy of the Form M-1 on or before November 30, 2004 (which is 90 days after the origination date). In addition, the administrator of MEWA E must file a completed copy of the Form M-1 annually by every March 1 thereafter.

Example 6. (i) *Facts.* Company F maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company F establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles under section 414(b) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company F continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 6*, the administrator is not required to file the Form M-1 because Company F's group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company F's group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

Example 7. (i) *Facts.* Company G maintains a group health plan that provides benefits

for medical care for its employees. The plan year of Company *G*'s group health plan is the fiscal year for Company *G*, which is October 1st—September 30th. Therefore, October 1, 2004—September 30, 2005 is the 2005 plan year. Company *G* decides to sell a portion of its business, Division *X*, to Company *H*. Company *G* signs an agreement with Company *H* under which Division *X* will be transferred to Company *H*, effective September 30, 2005. The change in control of Division *X* therefore occurs on September 30, 2005. Under the terms of the agreement, Company *G* agrees to continue covering all of the employees that formerly worked for Division *X* under its group health plan until Company *H* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *G* will not be required to cover the employees of Division *X* under its group health plan beyond the end of the 2006 plan year, which is the plan year following the plan year in which the change in control of Division *X* occurs.

(i) *Conclusion.* In this *Example 7*, the administrator of Company *G*'s group health plan is not required to file the Form M-1 on March 1, 2006 for fiscal year 2005 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M-1 and is temporary in nature. Under the exception, “temporary” means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2005 Form M-1 because it is anticipated that Company *G* will not be required to cover the employees of Division *X* under its group health plan beyond the end of the 2006 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

Example 8. (i) *Facts.* Company *I* maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company *I*'s group health plan uses calendar year data to report for purposes of the Form M-1. The administrator of Company *I*'s group health plan determines that the number of independent contractors covered under the group health plan as of the last day of calendar year 2004 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2004.

(ii) *Conclusion.* In this *Example 8*, the administrator of Company *I*'s group health plan is not required to file a Form M-1 for

calendar year 2004 (which is otherwise due by March 1, 2005) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

[68 FR 17501, Apr. 9, 2003]

§ 2520.101-3 Notice of blackout periods under individual account plans.

(a) *In general.* In accordance with section 101(i) of the Act, the administrator of an individual account plan, within the meaning of paragraph (d)(2) of this section, shall provide notice of any blackout period, within the meaning of paragraph (d)(1) of this section, to all participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by the blackout period (the “affected participants and beneficiaries”) and to issuers of employer securities subject to such blackout period in accordance with this section.

(b) *Notice to participants and beneficiaries—(1) Content.* The notice required by paragraph (a) of this section shall be written in a manner calculated to be understood by the average plan participant and shall include—

(i) The reasons for the blackout period;

(ii) A description of the rights otherwise available to participants and beneficiaries under the plan that will be temporarily suspended, limited or restricted by the blackout period (e.g., right to direct or diversify assets in individual accounts, right to obtain loans from the plan, right to obtain distributions from the plan), including identification of any investments subject to the blackout period;

(iii) The length of the blackout period by reference to:

(A) The expected beginning date and ending date of the blackout period; or

(B) The calendar week during which the blackout period is expected to begin and end, provided that during such weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected participants and beneficiaries, such as via a toll-free number or access to a specific web site, and the notice describes how to access the information;