

M-1 Reporting Requirements

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The administrator of a multiple employer welfare arrangement (MEWA) must file a Form M-1 with the Department of Labor (DOL) for every calendar year, or portion thereof, that the MEWA offers or provides medical benefits to the employees of two or more employers (including one or more self-employed individuals). The annual M-1 filing for 2018 is due no later than **March 1, 2019** (unless an extension is requested).

■ What is a MEWA?

Briefly, a MEWA is an arrangement that offers health and other benefits to the employees of two or more different employers (including one or more self-employed individuals).

A MEWA does not include a plan or other arrangement that is established and maintained:

- pursuant to one or more collective bargaining agreements (as determined by the Secretary),
- by a rural electric cooperative, or
- by a rural telephone cooperative association.

A plan that provides coverage to two or more trades or businesses (whether incorporated or not) within the same controlled group is considered a single employer, and not a MEWA. A determination of whether or not two employers are within the same controlled group is based on the rules

contained in Internal Revenue Code § 414(c) and the applicable regulations (26 CFR § 1.414(c)-2). However, the definition of common control shall not be based on an interest of less than 25%.

Ownership interests that do not satisfy these requirements will not be viewed collectively as a single-employer plan, and thus will likely be considered a MEWA. Employers should seek the advice of legal counsel to determine whether or not their particular arrangement meets the controlled group requirements in order to avoid MEWA issues.

■ Who Must File the Form M-1?

The administrator of a MEWA that provides benefits for medical care to the employees of two or more employers (including self-employed individuals) must file the Form M-1 with the DOL.

There are a number of exceptions to the Form M-1 requirements. In particular, a MEWA that provides coverage consisting solely of excepted benefits (most standalone dental and vision benefits are considered excepted benefits) is not required to file a Form M-1. However, if the MEWA provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator must still file the M-1.

Also, a Form M-1 is not required when:

- The MEWA 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.
- The MEWA is a group health plan (or provides coverage through a group health plan) that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with workers' compensation laws.
- The MEWA provides coverage to the employees of two or more employers that share a common interest of at least 25% at any time during the plan year (determined under Code § 414(b) or (c)).
- There is a change in control of a business (e.g., merger or acquisition) as long as the reason for the change in control was not to avoid the M-1 filing requirement and it is temporary in nature (it does not extend beyond the end of the plan year following the plan year in which the change in control occurs).
- The MEWA provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor (e.g., nonemployee members of the board of directors or independent contractors), and the number of these individuals does not exceed 1% 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.

■ How is the Form M-1 Filed?

The Form M-1 must be filed electronically. The system may be accessed at <http://www.askebsa.dol.gov/mewa/>. Paper filings are no longer permitted.

■ When is the Annual Filing Deadline?

The Form M-1 must be filed no later than **March 1** following any calendar year for which a filing is required.

However, administrators may request an automatic 60-day extension. To request an extension, the administrator must:

- complete Parts I and II of the Form M-1 (and check Box B(3) in Part I);

- electronically sign, date, and provide the administrator's name at the end of the form; and
- electronically file this request for extension no later than the normal due date for the Form M-1 (by March 1, 2019).

When filing the completed Form M-1, a PDF copy of this request for extension must be attached to the completed Form M-1 when filed.

Is a Form M-1 Required At Other Times Besides the Annual Filing Requirement?

In addition to the annual filing requirement, administrators of both plan and non-plan MEWAs must file the Form M-1 within a certain time upon the following five registration events:

- 30 days prior to operating in any state.
- Within 30 days of knowingly operating in any additional state or states that were not indicated on a previous Form M-1 filing.
- Within 30 days of operating with regard to the employees of an additional employer (or employers, including one or more self-employed individuals) after a merger with another MEWA.
- Within 30 days of the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year.
- Within 30 days of experiencing a material change as defined in the Form M-1 instructions.

■ Are there Filing Requirements other than the Form M-1 that Apply?

Possibly. MEWAs that are employee benefit welfare plans (a plan MEWA) are required to file a Form 5500 regardless of size. Part III of the Form 5500 (Form M-1 Compliance Information) requests information regarding M-1 compliance, and requests the Form M-1 Receipt Confirmation Code from the last-filed M-1.

■ Are there Penalties for Not Reporting?

The DOL may assess a civil penalty for failure to file a Form M-1, failure to file a completed Form M-1 and for late filings. In the event of no filing, an incomplete filing or a late filing, a penalty of up to \$1,597 a day for each day that the administrator fails to comply with the requirement may apply.

In addition, changes under health care reform also may impose criminal penalties on any person who knowingly submits false statements or false representations of fact in filing reports required under the rule (including Form M-1).

There is no voluntary compliance program available for delinquent Forms M-1.

■ Help with Completing the Form M-1

For questions on completing the Form M-1, contact the Employee Benefits Security Administration's (EBSA's) Form M-1 help desk at **(202) 693-8360**.

For inquiries regarding electronic filing capability, contact the EBSA computer help desk at **(202) 693-8600**.

For inquiries regarding the Form M-1 filing requirement, contact the Office of Health Plan Standards and Compliance Assistance at **(202) 693-8335**.

■ Additional Information

For the Form M-1 Online Filing System (and additional information), visit <http://www.askebsa.dol.gov/mewa/>.

MEWAs: Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation (revised August 2013) <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>.

