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Report to Congressional Requesters

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EMPLOYEE BENEFITS

States Need Labor's Help Regulating Multiple Employer Welfare Arrangements

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The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

The Honorable William J. Hughes
Chairman, Subcommittee on Retirement
Income and Employment
Select Committee on Aging
House of Representatives

The Honorable Sherwood L. Boehlert
Ranking Minority Member
Subcommittee on Retirement Income
and Employment
Select Committee on Aging
House of Representatives

Rising health care costs during the last decade have made it difficult for many small businesses to obtain affordable health insurance for their employees. In their search for alternatives to traditional insurance, some businesses have pooled funds as a way to pay for benefits or to buy group insurance. Others have contracted with entrepreneurs offering health benefits at reduced rates to groups of employers. Both arrangements are referred to as multiple employer welfare arrangements (MEWAs). Some have successfully provided health benefits; others have reneged on their obligations, leaving bills unpaid and MEWA-covered employees (participants) and their beneficiaries uninsured.

This report responds to your requests for information about MEWAs. As agreed with your offices, we focused on (1) the nature and extent of MEWA failures to pay bills and other problems; (2) hindrances to state regulation and enforcement of MEWA; and (3) Department of Labor actions to prevent MEWA problems, protect MEWA participants and their beneficiaries, and assist state enforcement efforts.

Background

In 1974, the Employee Retirement Income Security Act (ERISA) established limited federal standards, enforceable by the Department of Labor, for "welfare benefit plans." Such plans include funds and programs established or maintained by an employer or employee organization to provide benefits (other than pensions) for plan participants or their beneficiaries. In an attempt to ensure uniform application of federal standards and protect participants and their beneficiaries, ERISA originally exempted all plans from state insurance laws.

In the early 1980s, states received complaints about unpaid bills by entities with which businesses had contracted to provide medical and other benefits.[1] When states tried to enforce their insurance laws, the entities claimed to be ERISA plans and, therefore, exempt from state authority. States often were uncertain about the validity of the claims.

The Congress amended ERISA in 1983 to clarify state authority. The amendment defined a "multiple employer welfare arrangement" as an ERISA welfare benefit plan or other arrangement established or maintained to provide benefit coverage to the employees of two or more employers. To be an ERISA plan, a MEWA must be established or maintained by employers or employee organizations; other MEWAs are not ERISA plans and, therefore, not subject to ERISA.[2] The 1983 amendment made MEWAs that are ERISA plans subject to state insurance laws, thereby creating dual federal and state authority over MEWAs; states continued to have authority over MEWAs that are not ERISA plans.

Results in Brief

MEWAs have proven to be a source of regulatory confusion, enforcement problems, and, in some instances, fraud. Between January 1988 and June 1991, MEWAs left at least 398,000 participants and their beneficiaries with over $123 million in unpaid claims and many other participants without insurance. More than 600 MEWAs failed to comply with state insurance laws, and some violated criminal statutes. Moreover, MEWA problems increased in many states during this period.

State efforts to regulate MEWAs, enforce state laws, and recover unpaid claims were hindered because the states could not identify MEWAs operating within their boundaries. Further, when states learned about

[1]These entities were generally referred to as multiple employer trusts or METs.

[2]Labor applies ERISA standards to MEWAs that are not ERISA plans if such MEWAs contain assets for individual ERISA plans. In this situation, individuals exercising any discretionary authority or control over the disposition of the MEWA assets would be considered ERISA fiduciaries.

problems, usually through complaints, many of their efforts to enforce compliance and collect unpaid claims were slowed because MEWAs asserted that they were exempt from state regulation under ERISA. The 1983 amendment alone did little to clarify the situation. Moreover, Labor was sometimes slow responding to state questions.

In October 1991, Labor provided supplemental guidance to the states to help clarify ERISA preemption provisions. The initial reaction from some states, however, indicates that the guidance does not completely answer all their questions about exemption from state law and regulatory authority.

Protecting MEWA participants and their beneficiaries is a joint federal and state responsibility, and both can do more to prevent and correct MEWA enforcement problems. Labor should help states identify MEWAs. Labor should also improve procedures to quickly answer states' questions about such issues as ERISA preemption and state regulatory authority. With this assistance, states' enforcement efforts can be improved and MEWAs can continue to fill an important health coverage gap.

Scope and Methodology

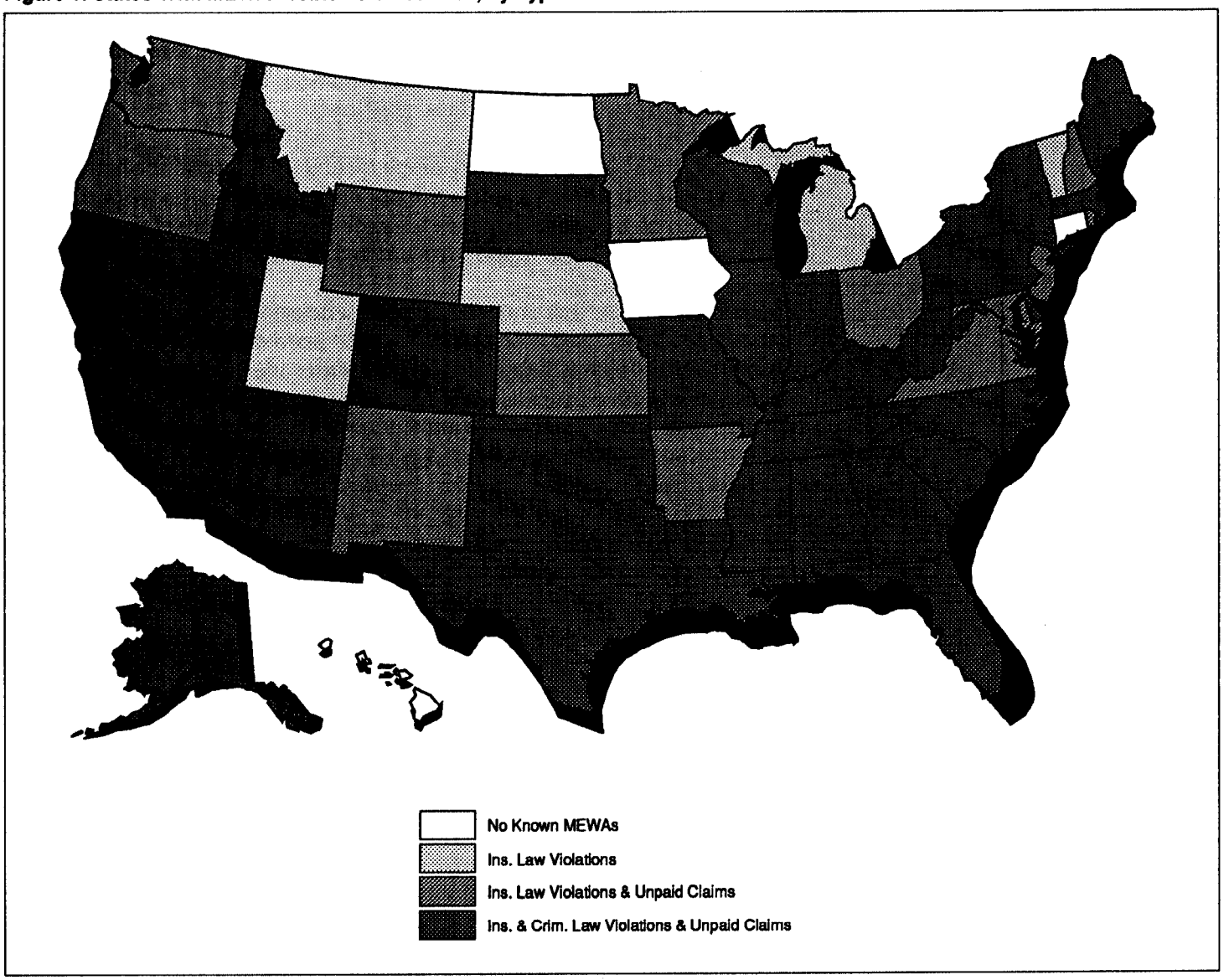
We obtained information primarily from state insurance officials in the 50 states and the District of Columbia (referred to as a state in this report) using a May-June 1991 telephone survey; we also visited, and made follow-up calls to, 5 states—Florida, Michigan, New Jersey, South Carolina, and Texas. We did not corroborate the views or independently verify the estimates obtained through the telephone survey. In addition, we interviewed Labor officials and spoke with representatives of selected interest groups (see app. I).

MEWA Problems Widespread

Since January 1, 1988, MEWAs have served the residents of 46 states (see app. II).[3] Officials in these states said that some MEWAs failed to pay medical claims, did not comply with insurance laws, and violated state criminal laws (see fig. 1). The majority of the 46 states reported the number of MEWA problems increased between 1988 and 1990.

[3]Officials in Connecticut, the District of Columbia, Hawaii, Iowa, and North Dakota said that between January 1, 1988, and December 31, 1990, (1) no MEWAs operated in their states or (2) they were unaware of any MEWA operations.

Figure 1: States With MEWA Problems Since 1988, by Type of Problem



Note: The District of Columbia had no known MEWAs.

Source: GAO May-June 1991 telephone survey.

State insurance officials in 41 states reported that some MEWAs had not paid claims in their states. Many officials did not quantify the problem, but those that did estimated that (1) MEWAs failed to pay claims for at least 398,324 participants and their beneficiaries and (2) unpaid claims totaled

at least $123.6 million.[4] Of 34 states trying to recover money on behalf of participants and their beneficiaries, 18 had recovered an estimated $9.6 million as of December 31, 1990 (see app. III).

Some MEWA losses were significant. For example, in 1988, Rubell Helm Insurance Services, a California-based MEWA, began enrolling Florida residents without Florida's knowledge and without complying with state insurance laws. Within a year, this MEWA enrolled about 4,000 residents. Rubell Helm paid a few small claims, but failed to pay any large claims, ultimately accumulating $3.2 million in unpaid claims. In 1989, Florida shut down Rubell Helm's operation in that state. The MEWA is now dissolved, with no identifiable assets, and Florida has recovered no money on behalf of its residents.

Thirty-three states said that MEWA participants and their beneficiaries are sometimes left without continuing health coverage when MEWAs stop operating. Small businesses face obstacles finding continuing coverage for employees, and traditional health insurance is more expensive than MEWA coverage, especially for such high-risk businesses as construction. Additionally, insurers sometimes refuse or limit coverage for former MEWA participants and their beneficiaries with preexisting health conditions.

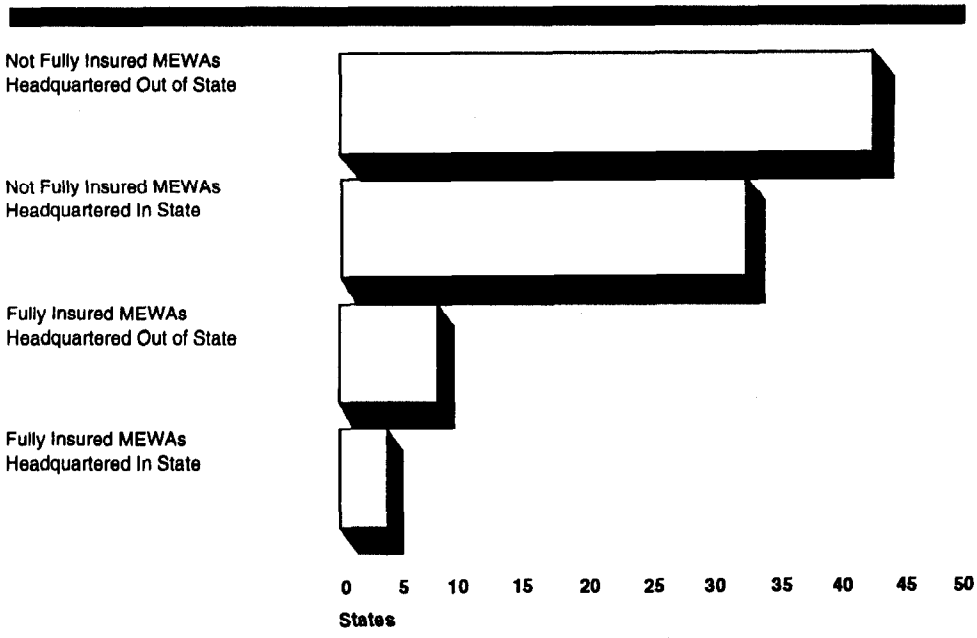
Most states have insurance laws that generally prohibit entities from providing coverage unless they meet state requirements designed to protect their residents. Forty-six states reported that MEWAs did not comply with such laws, particularly those laws pertaining to reporting and disclosure, funding, registration or licensure, and "unauthorized insurer" requirements. Forty-four of these states tried to make a total of 663 MEWAs comply. States were able to force some MEWAs to cease operations or comply with state laws as a result of the enforcement efforts, but other MEWAs continued out-of-compliance operations.

Twenty-eight states also reported that some MEWAs had violated state fraud, embezzlement, or other criminal laws. Twelve of these states sought criminal sanctions against officials of 49 MEWAs, but, at the time of our survey, only California and Texas had obtained indictments and convictions. The other 10 states were either unsuccessful or still seeking criminal sanctions.

[4]Officials in 12 states did not provide estimates of unpaid claims or affected participants and beneficiaries, and officials in 6 other states only provided estimates of unpaid claims.

Problems were especially prevalent for MEWAs that were not fully insured[5] and headquartered out-of-state, as shown in figure 2.

Figure 2: States Reporting a MEWA Problem, by Insured Status and Where Headquartered (Jan. 1988-June 1991)



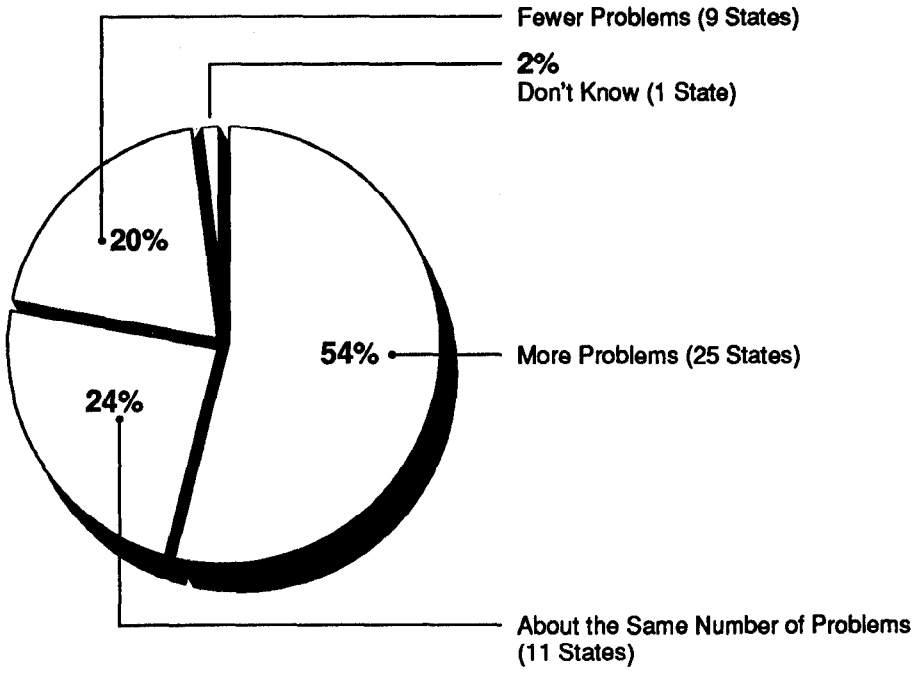
Note: This figure excludes 5 states with no known MEWAs.

Source: GAO May-June 1991 telephone survey.

The number of reported problems with MEWAs, between 1988 and 1990, increased in 25 states and decreased in 9 states, as shown in figure 3. State officials most frequently attributed increases in reported problems to more MEWAs providing coverage to residents, more public participation in MEWAs, and increased likelihood of complaints about MEWA problems because of state insurance agency efforts or greater media coverage. State officials attributed decreases in MEWA problems to such reasons as fewer MEWAs and increased state enforcement efforts.

[5]Fully insured MEWAs that are ERISA plans are subject only to state contribution and reserve requirements. MEWAs that are not fully insured ERISA plans are subject to all state insurance laws not in conflict with ERISA's reporting and disclosure, fiduciary, and administrative provisions.

Figure 3: Changes in Number of Problems Reported by States With MEWAs (1988-90)



Note: This figure excludes 5 states with no known MEWAs.

Source: GAO May-June 1991 telephone survey.

State Regulation and Enforcement Efforts Hindered

State insurance officials said their efforts to regulate MEWAs, enforce state laws, and recover unpaid claims were hindered by factors such as an inability to identify MEWAs, MEWA claims of exemption from state laws, and difficulty imposing criminal sanctions.

Inability to Identify MEWAs

The inability to identify MEWAs until after problems occur is at the heart of enforcement problems. Thirty-eight states said they were unable to proactively apply established standards—such as reporting and disclosure, as well as funding—because states were unable to identify MEWAs until complaints were received. For example, New York and Ohio officials said they could not enforce state-licensing requirements until the states had identified MEWAs through complaints from participants and others. To the extent that states are able to react only after problems have occurred, state options for protecting participants and curtailing losses are lessened.

MEWA Claims of Exemption

MEWA claims of exemption from state insurance laws hindered enforcement efforts, although states were usually able to establish jurisdiction over identified MEWAs. Forty-two states said that MEWAs claimed exemption from state law under ERISA; most states established their jurisdiction without court involvement, but 13 said they attempted to establish jurisdiction through the courts. Although states ultimately won almost all court cases, officials said that such legal battles were costly in terms of staff and time. Moreover, officials in 1 state said, fraudulent MEWAs sometimes claim exemption specifically to stall for time to collect more premiums.

Eleven states told us about relatively new problems with ERISA's preemption provisions. Certain entities that these states considered to be MEWAs were claiming that they were collectively bargained or single-employer plans rather than MEWAs and thus were exempt from state regulation. States sometimes questioned whether the entities were contrived solely to qualify for exemption from state regulation. For example, Florida officials questioned the validity of entities' claiming exemption as collectively bargained plans, noting that by selling "associate memberships," these entities marketed health benefit coverage to individuals with no participation or representation in the union. South Carolina officials questioned the validity of a labor-leasing entity's claiming exemption as a single-employer plan, noting that the entity hired employees of several companies and then leased the employees back just to qualify for the exemption. In the fall of 1990, Florida and South Carolina requested advisory opinions from Labor on these questions.[6]

Labor guidance on these issues has been slow, and some questions remain open. As of January 17, 1992, Labor had not responded to Florida's request concerning the validity of the entity's claiming exemption as a collectively bargained plan. In commenting on a draft of this report (see app. IV), Labor said it is conducting its own examination of the facts in this case. On December 20, 1991, Labor responded to South Carolina's request for an advisory opinion on its labor-leasing question, declaring that the entity was a MEWA, subject to state regulation. According to Labor, these advisory opinions involved very difficult questions that were time-consuming to answer and required obtaining additional information from the states.

[6]Advisory opinions are case-specific decisions on questions raised by states and others about ERISA plans.

Difficulty Imposing Criminal Sanctions

State insurance officials reported difficulty imposing criminal sanctions. In 19 of the 28 states that believed MEWAs had violated state criminal laws, insurance officials said that low priority given to MEWA cases by each state attorney general's office made it difficult to impose criminal sanctions. In addition, limited resources in the state insurance offices, state attorney general's offices, or both made it difficult for 16 states to impose criminal sanctions.

Labor Action to Prevent MEWA Problems

Labor has taken some action to mitigate MEWA problems, but more is needed. Noting a marked increase in MEWA problems, the Secretary of Labor, in May 1990, announced a program to help states. The program consisted of a number of steps to improve MEWA enforcement efforts. These steps included distributing to each state, on a quarterly basis, copies of Labor's advisory opinions; training state and federal officials; sharing information on investigations; developing technical assistance material; and reviewing information, reported by plans to the Internal Revenue Service,[7] to determine the feasibility of providing a list of MEWAs to the states.

As planned, Labor began distributing advisory opinions to all states, holding seminars and meetings to train state officials, and sharing information on MEWA investigations. Forty-four states said that Labor had provided some type of assistance since 1988 to help them correct problems with MEWAs. Over 90 percent of these states said Labor provided advisory opinions; half said Labor helped them coordinate with agencies in other states; and several said Labor provided other types of assistance, including information from investigations and staff to help in court proceedings. The majority of states said the comprehensiveness and relevance of Labor's assistance was adequate. However, over half of the states deemed either the timeliness or clarity of Labor assistance inadequate. Moreover, most states identified other ways Labor could help, such as clarifying ERISA's preemption provisions.

In October 1991, Labor provided a technical assistance booklet to state insurance offices. The booklet addressed many of the questions states had previously raised concerning the effect of ERISA on federal and state regulation of MEWAs. For example, the booklet attempted to clarify what constitutes an ERISA plan and Labor's authority over such plans. However, states had different reactions to the booklet. Of the five states we visited,

[7]ERISA requires most plans to file annual reports—showing various financial, actuarial, and demographic data—with the Internal Revenue Service.

information. South Carolina and Florida officials, however, said the booklet did not adequately address all questions. South Carolina continued to have questions about labor-leasing, and Florida, about collectively bargained arrangements.

In its comments on a draft of this report, Labor said this booklet should help states handle more technical questions about MEWAs. For example, Labor said that information in the booklet, along with pertinent advisory opinions, provides states sufficient guidance for determining whether any plan maintained by a labor-leasing entity is a MEWA, subject to state regulation. Labor, however, said it was considering regulatory and legislative options to help states recognize valid collectively bargained arrangements.

Labor was not able to provide states a list of MEWAs from information reported by plans. Information needed to create a MEWA list that would permit ready identification of MEWAs, officials said, could not be developed because data were incomplete and not timely. MEWAs that are not ERISA plans have no reporting requirement. Moreover, MEWAs that are ERISA plans are not required to report until 7 months after the plan year ends; MEWA operators may disappear or other serious problems may develop before Labor knows about the MEWAs.

Labor has also taken other actions to help states. For example, although not a party to the suits, in two cases, Labor filed written arguments with the courts to help Texas establish jurisdiction over MEWAs. In addition, in its comments, Labor noted extensive communication and information-sharing with states.

National MEWA Identification

To help states identify MEWAs, Labor has sought legislative authority to establish an annual federal registration process. Forty-four states said they favor such registration. Legislative proposals addressing registration were introduced in the Congress in both 1990 and 1991, but were not adopted. Whatever the ultimate outcome of legislative efforts, a number of unresolved issues will need to be addressed to make registration effective. For example, Labor has not decided on the types of entities that would be required to register; we found that states consider a wide variety of entities to be MEWAs. In addition, Labor has not decided on the type of information MEWAs should report; states would like such information as whether MEWAs are insured and whether they operate across state lines. Moreover, Labor

has not decided how to enforce registration or what sanctions to impose if MEWAs do not comply.

Federal certification of MEWAs is another way to help states identify such organizations.[8] In June 1991, a bill was introduced in the Congress that would, among other things, establish a federal MEWA certification requirement for MEWAs that are not fully insured.[9] At the time of our review, Labor officials had not analyzed the full effects of such certification, but were considering the implications of such issues as whether the federal government should (1) establish, for the first time, funding and other standards for selected welfare plans and arrangements and (2) exempt from state insurance laws MEWAs that meet federal certification requirements.

Increased Labor Investigations of MEWAs

Labor has increased MEWA investigations. Ongoing MEWA-related investigations by Labor's Pension and Welfare Benefits Administration (PWBA), which has primary responsibility for federal enforcement of ERISA, increased from 30 in December 1989 to 86 in September 1991, according to Labor. PWBA officials also said they are conducting more criminal investigations—23 as of September 1991—and that their investigations are often more complex than they used to be. For example, investigation of the validity of labor-leasing entities' claiming to be exempt from state law under ERISA are time-consuming and complex. Ongoing MEWA-related criminal investigations by Labor's Office of Inspector General also rose from 7 to 30 during the period. Some of these investigations were conducted jointly with PWBA. In addition, some have resulted in successful criminal prosecutions of MEWA officials; one has resulted in monetary recoveries for participants.

Conclusions

MEWA regulation and enforcement are a joint federal and state responsibility. Labor and the states must cooperate to protect participants and prevent MEWA problems.

At the heart of regulation and enforcement problems is the fact that state regulators are often constrained by the inability to identify MEWAs until after MEWA problems occur. To the extent that states are able to act only

[8]Certification might include a process whereby Labor would review MEWAs to determine if they meet certain requirements and, if so, grant them exemption from state insurance regulation.

[9]H.R. 2773, introduced in the House of Representatives on June 26, 1991.

after problems occur, their options for preventing problems and curtailing losses are significantly lessened. But, with better data, states will most likely increase enforcement efforts.

States need help from Labor to identify MEWAs. If registration or certification is used to identify MEWAs, Labor should resolve such issues as which entities should register or be certified, what information should be reported, and how registration or certification should be enforced; these issues should be resolved before Labor seeks legislative authority to require registration or certification of MEWAs that are not ERISA plans. In considering certification, Labor also must fully analyze such policy implications as establishing funding and other standards for selected welfare plans and exempting selected MEWAs from state authority. Other alternatives, including the feasibility of establishing a national list of MEWAs, using information obtained from such existing sources as states' registration and licensing data bases, should also be considered by Labor.

Even after identifying MEWAs, efforts to regulate them, enforce state laws, and recover unpaid claims have frequently been hindered by such factors as MEWAs' claiming exemption from state regulatory authority. Labor's guidance to states concerning exemption was sometimes not timely. The initial reaction of two of the states we visited is that Labor's recent technical assistance booklet is helpful, but more guidance is needed on such issues as the validity of exemption of labor-leasing and collectively bargained arrangements.

Recommendations

We recommend that the Secretary of Labor direct the Assistant Secretary for PWBA to (1) develop a mechanism to help states identify MEWAs and (2) improve procedures to quickly answer questions about such issues as ERISA preemption and state regulatory authority, thus enabling states to more aggressively deal with problem MEWAs.

Agency Comments and Our Evaluation

The Department of Labor commented on a draft of this report and generally agreed that MEWAs have proven to be a source of regulatory and enforcement problems (see app. IV). Noting serious concerns about the protection of MEWA participants and beneficiaries, Labor said it has devoted a substantial portion of available resources to deal with the problem. Correcting MEWA abuses, Labor said, is a priority for the Department.

In addressing our recommendation that it develop a mechanism to help states identify MEWAs, Labor acknowledged that its 1990 legislative proposal contained operational problems; the Administration, Labor said, was considering a variety of options dealing with MEWA registration. Labor, however, did not provide details or agree to take specific action. We continue to believe that the inability to identify MEWAs, particularly those operating interstate, is at the heart of regulation and enforcement problems. Accordingly, we believe that Labor should develop specific means to help states identify MEWAs and that such mechanisms are best developed nationally.

Labor generally agreed with our draft recommendation that it provide states with additional guidance to answer questions on exemption and regulatory authority. Labor also said that it will provide whatever guidance it can to help states. At the same time, Labor said that it has made a concerted effort to provide technical assistance to states over the last few years. Labor added that with the guidance provided in its October 1991 technical assistance booklet, states should be able to handle more technical questions.

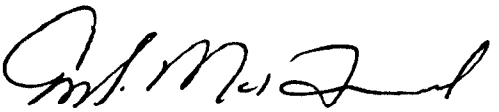
We recognize many of Labor's actions in our report, including its May 1990 program, legislative proposal to identify MEWAs, and increased MEWA investigations. We also agree that Labor's recent actions, including publication of its October 1991 technical assistance booklet, will help states. However, as we point out, Labor's guidance has been slow, and some questions remain open. For example, Florida has yet to receive an advisory opinion, requested in the fall of 1990, about the validity of an entity's claiming to be exempt from state law because it is a collectively bargained plan. Moreover, new questions about ERISA's preemption provisions will most likely arise. Consequently, we revised our report to recommend that Labor improve procedures to quickly answer questions about such issues as ERISA preemption and state regulatory authority to enable states to more aggressively deal with problem MEWAs.

Labor believes that the problem of fraudulent MEWAs is primarily a state one, although correcting MEWA abuses remains a Labor priority. Labor said it has worked to help states with regulation and enforcement and will continue to investigate allegations of MEWA illegality. States, however, must enhance their efforts, Labor said; the low risk of criminal sanctions—because of the reluctance or inability of states to bring criminal actions—if perceived by MEWAs, compounds the problem.

We believe both Labor and the states have a responsibility for MEWA regulation and enforcement. The 1983 amendment to ERISA made MEWAs subject to state law, but did not relieve Labor of its responsibility to enforce ERISA provisions applicable to MEWAs. Increased state enforcement would be desirable, but the federal government cannot require states to increase their enforcement efforts. In our view, limited state regulation and enforcement increase the importance of Labor's efforts to pursue ERISA violations involving MEWAs.

In addition, Labor provided supplemental information about its assistance to states and suggested a number of technical changes. We considered this information and revised the report, as appropriate.

We are sending copies of this report to the Secretary of Labor and will send copies to other interested parties on request. If you have questions concerning this report, please call me on (202) 512-7225. Other major contributors to this report are listed in appendix V.



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Contents

Letter 1

Appendix I
Scope and Methodology 18

Appendix II
Estimated Number of MEWAs and Participants and Beneficiaries Served 19

Appendix III
Selected Information on Unpaid MEWA Claims 21

Appendix IV
Comments From the Department of Labor 23

Appendix V
Major Contributors to This Report 26

Tables

Table II.1: MEWA Headquarters Location and Insurance Status, by State, and Participants and Beneficiaries Served (Dec. 31, 1990) 19

Table III.1: Participants and Beneficiaries, Unpaid Claims, and Recoveries, by State 21

Figures

Figure 1: States With MEWA Problems Since 1988, by Type of Problem 4

Figure 2: States Reporting a MEWA Problem, by Insured Status and Where Headquartered (Jan. 1988-June 1991) 6

Figure 3: Changes in Number of Problems Reported by States With MEWAs (1988-90) 7

Abbreviations

ERISA	Employee Retirement Income Security Act of 1974
MEWA	multiple employer welfare arrangement
PWBA	Pension and Welfare Benefits Administration

Scope and Methodology

Most of the information presented in this report was obtained from state insurance officials. To gather information on the nature and extent of MEWA problems and hindrances to state regulation and enforcement, we used a telephone survey of these officials in the 50 states and the District of Columbia. For example, we asked whether officials suspected that any MEWAs failed to pay claims, failed to comply with state insurance laws, and violated state criminal laws. When these officials reported they believed such problems existed, we asked questions about attempted corrective actions. We also asked questions about the effects of such actions, including how much money was collected on behalf of MEWA-covered participants and their beneficiaries. We did not corroborate officials' views or independently verify the data provided. The survey was conducted in May and June of 1991.

We supplemented the state survey with more detailed information from insurance offices in Florida, Michigan, New Jersey, South Carolina, and Texas. We visited these offices to gather detailed information about their MEWA efforts. In addition, we placed follow-up calls to them to obtain their views on such matters as whether Labor's technical assistance booklet, distributed in October 1991, adequately answered their questions about ERISA preemption provisions and state regulatory authority.

We also gathered information on Labor's MEWA enforcement program and initiatives to prevent MEWA problems and to protect MEWA participants and their beneficiaries. We reviewed the 1983 ERISA amendment and its legislative history to determine federal and state jurisdiction over MEWAs. At Labor headquarters in Washington, D.C., we interviewed and gathered information from staff of the Pension and Welfare Benefits Administration (PWBA), which is responsible for enforcing ERISA standards for MEWAs; the Solicitor's Office; and the Office of Inspector General. Finally, to obtain views on how to improve federal and state MEWA regulation and enforcement, we interviewed representatives of the National Association of Insurance Commissioners, Coalition of Association Employee Benefit Plans, Society of Professional Benefit Administrators, and the United States Chamber of Commerce.

We carried out our review between July 1990 and November 1991 and did our work in accordance with generally accepted government auditing standards.

Estimated Number of MEWAs and Participants and Beneficiaries Served

Below, by state, are state estimates of (1) the number of MEWAs operating within the state's boundaries, with headquarters location (in or out of state) and insurance status (fully and not fully insured) and (2) the number of participants and beneficiaries that MEWAs headquartered in the state serve. States reported 1,034 fully and not fully insured MEWAs headquartered in state. The estimates of MEWAs headquartered out of state offer some insight into the extent of MEWAs operating across state lines. But the numbers should not be added to ascertain total multistate MEWAs because multistate MEWAs could have been counted by each state in which the MEWAs operated.

Table II.1: MEWA Headquarters Location and Insurance Status, by State, and Participants and Beneficiaries Served
(Dec. 31, 1990)

	MEWA headquarters location				
	In state		Out of state		
State	Fully insured	Not fully insured	Fully insured	Not fully insured	Participants and beneficiaries served
Alabama	0	0	135	13	0
Alaska	5	0	10	1	[a]
Arizona	0	0	50	4	0
Arkansas	[a]	[a]	0	0	[a]
California	50	500	450	75	2,250,000
Colorado	[a]	1	[a]	[a]	[a]
Connecticut	[b]	[b]	[b]	[b]	[b]
Delaware	0	0	[a]	4	0
District of Columbia	[b]	[b]	[b]	[b]	[b]
Florida	6	5	[a]	[a]	30,000
Georgia	[a]	[a]	[a]	[a]	[a]
Hawaii	[b]	[b]	[b]	[b]	[b]
Idaho	0	0	8	1	0
Illinois	[a]	[a]	[a]	[a]	[a]
Indiana	0	2	0	8	800
Iowa	[b]	[b]	[b]	[b]	[b]
Kansas	[a]	10	[a]	6	[a]
Kentucky	11	10	[a]	12	20,000
Louisiana	2	7	[a]	[a]	[a]
Maine	0	0	0	0	0
Maryland	10	0	400	8	3,000
Massachusetts	[a]	1	[a]	[a]	[a]
Michigan	100	20	1	4	27,000
Minnesota	[a]	2	[a]	[a]	2,500

(continued)

	MEWA headquarters location				
	In state		Out of state		
State	Fully insured	Not fully insured	Fully insured	Not fully insured	Participants and beneficiaries served
Mississippi	10	[a]	55	75	[a]
Missouri	[a]	[a]	[a]	[a]	[a]
Montana	0	2	2	7	7,000
Nebraska	[a]	1	1	0	[a]
Nevada	1	6	61	17	500
New Hampshire	12	4	15	0	35,000
New Jersey	[a]	1	0	1	[a]
New Mexico	[a]	[a]	18	[a]	[a]
New York	[a]	11	0	2	[a]
North Carolina	20	7	[a]	8	15,000
North Dakota	[b]	[b]	[b]	[b]	[b]
Ohio	1	8	5	1	405
Oklahoma	[a]	[a]	[a]	[a]	[a]
Oregon	25	72	100	4	150,883
Pennsylvania	[a]	11	0	3	7,000
Rhode Island	0	0	0	0	0
South Carolina	[a]	2	[a]	4	[a]
South Dakota	[a]	[a]	[a]	2	[a]
Tennessee	0	2	[a]	[a]	350
Texas	[a]	69	[a]	21	26,000
Utah	0	0	0	0	0
Vermont	[a]	[a]	20	[a]	[a]
Virginia	10	10	550	35	3,000
Washington	0	0	0	[a]	0
West Virginia	1	0	0	5	[a]
Wisconsin	[a]	6	0	0	3,000
Wyoming	0	0	[a]	1	0
Total	**264**	**770**	**1,881**	**322**	**2,581,438**

[a]No estimate provided.

[b]No known MEWAs.

Selected Information on Unpaid MEWA Claims

For states that believed MEWAs failed to pay claims since January 1988, the following are estimates of the number of residents affected and the amounts of claims owed and recovered by state insurance offices.

Table III.1: Participants and Beneficiaries, Unpaid Claims, and Recoveries, by State

State	Participants and beneficiaries affected	Claims	
		Owed	Recovered
Alabama	[a]	$588,000	0
Alaska	6	25,000	5,000
Arizona	190	120,000	14,500
Arkansas	[a]	[a]	[a]
California	200,000	45,000,000	1,500,000
Colorado	[a]	300,000	0
Delaware	20	100,000	100,000
Florida	155,000	24,000.000	0
Georgia	6,000	7,000,000	600,000
Idaho	1,700	1,000,000	0
Illinois	[a]	5,000,000	0
Indiana	[a]	[a]	[b]
Kansas	[a]	91,000	[a]
Kentucky	[a]	[a]	[a]
Louisiana	6,000	6,000,000	315,000
Maine	[a]	[a]	[b]
Maryland	1,400	3,000,000	300,000
Massachusetts	400	2,800,000	[a]
Minnesota	[a]	[a]	[b]
Mississippi	5,000	2,500,000	1,000,000
Missouri	500	250,000	0
Nevada	[a]	[a]	[a]
New Hampshire	400	550,000	250,000
New Jersey	[a]	[a]	[b]
New Mexico	[a]	550,000	300,000
New York	2,500	2,100,000	2,100,000
North Carolina	5,000	6,000,000	300,000
Ohio	[a]	[a]	[b]
Oklahoma	[a]	[a]	[a]
Oregon	[a]	[a]	[b]
Pennsylvania	3,500	2,500,000	0
Rhode Island	[a]	[a]	[b]
South Carolina	[a]	1,000,000	900,000
South Dakota	5	50,000	0

(continued)

State	Participants and beneficiaries affected	Claims	
		Owed	Recovered
Tennessee	200	1,000,000	50,000
Texas	1,500	4,908,000	750,000
Virginia	3,000	4,000,000	20,000
Washington	3,000	2,000,000	[a]
West Virginia	[a]	[a]	50,000
Wisconsin	3,000	1,200,000	1,000,000
Wyoming	3	1,500	[a]
Total	**398,324**	**$123,633,500**	**$9,564,500**

Note: Participants and beneficiaries, as well as unpaid claims, as of June 1991; recoveries as of December 31, 1990.

[a]No estimate given.

[b]No recoveries attempted.

Comments From the Department of Labor

U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

January 17, 1992

Mr. Joseph F. Delfico
Director, Income Security Issues
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Delfico:

We have reviewed the draft report prepared by the General Accounting Office (GAO) entitled "States Need Labor's Help Regulating Multiple Employer Welfare Arrangements" (MEWAs). We are well aware of the problems associated with obtaining affordable health insurance. We, too, have serious concerns about the protection of MEWA participants and beneficiaries and have devoted a substantial portion of available resources to deal with the problem. It is important to note, however, that this is only one of many areas of potential abuse in employee benefit arrangements. The Department of Labor's (DOL) regulatory and enforcement responsibilities under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) cover a myriad of employee benefit regulatory issues and a vast universe of private sector pension plans and health benefit arrangements. This letter addresses our general comments concerning the draft report; a number of specific comments are provided in Enclosure I.

Not included in this report.

First, we believe that the draft report does not adequately describe the substantial increase over the last few years in the amount of technical assistance being provided to state insurance departments by DOL's Pension and Welfare Benefits Administration (PWBA). In addition, there has been a significant increase in the number of MEWA-related enforcement cases under investigation by PWBA and some important civil litigation and criminal indictments resulting from these investigations which were not mentioned in the draft report. (Further information as to the nature and extent of these efforts is contained in Enclosure II.)

Not included in this report.

Second, from the report's recommendations, it would seem that GAO acknowledges that the problem of fraudulent MEWAs is primarily a state one. We agree with that premise and have worked to assist the state governments to address what must be primarily a state regulatory and enforcement program. As you know, the Department has a six-point program to provide a more effective and efficient state and Federal strategy for dealing

2

with MEWAs and to eliminate the confusion which seems to exist relative to the ability of the states to regulate MEWAs. The six components of this initiative included training for state officials, developing technical assistance materials, arranging to share information concerning MEWA investigations, reviewing expeditiously state requests for MEWA-related advisory opinions, distributing quarterly MEWA-related advisory opinions to state insurance commissioners, and reviewing the Form 5500 ERISA annual report to determine if MEWAs can be identified from information on the form.

The DOL has successfully fulfilled its commitments under this priority program. As the additional information enclosed with this letter demonstrates, we have provided increased assistance to the National Association of Insurance Commissioners and state insurance officials, facilitating their regulatory and enforcement programs and clarifying the states' role in the oversight of MEWAs. Speaking on behalf of the National Association of Insurance Commissioners, at a September 17, 1991, hearing before the House Select Committee of Aging's Subcommittee on Retirement Income and Employment, the Commissioner of Insurance of the State of Georgia said "The states' responses to self-funded MEWAs have improved dramatically in recent years, primarily as a result of better understanding of the ERISA provisions, improved communication among regulators, and greater cooperation from the Department of Labor." The same conclusion was reached by the RAND Corporation during a recent study on MEWAs funded by DOL, that is, "Federal efforts to educate and involve state officials in regulating MEWAs appear to have worked to increase state oversight and enforcement."

In regard to the first recommendation made in the draft report, i.e., that DOL should "develop a mechanism to help states identify MEWAs," we recognized that there were some operational difficulties in our 1990 MEWA legislative proposal. A variety of options dealing with MEWA issues is now under consideration by the Administration.

GAO's second recommendation, i.e., to "provide states, where necessary, additional guidance to adequately answer their questions on exemptions and regulatory authority," is troublesome. As discussed above, we believe that PWBA's enforcement and regulatory staff have made concerted efforts to provide technical assistance to state insurance officials, in addition to handling all of the other responsibilities of the agency. Although many requests for advisory opinions are simply determinations on the status of a MEWA arrangement, others present very difficult interpretative issues which take time, and occasionally require additional facts from the state insurance department or investigations by PWBA, to resolve. With the guidance provided in DOL's October 1991 MEWA technical assistance booklet, we expect that state officials will be able to handle

3

more of their own technical questions on MEWAs. We will, of course, continue to provide whatever guidance we can to assist the states in the discharge of their responsibilities.

In conclusion, the rectification of abuse in the Administration of MEWAs remains a priority for the Department. While PWBA will continue to investigate vigorously allegations of illegality in the operation of MEWAs, we also believe state authorities must also enhance their efforts. In this regard, we note that GAO found that "insurance officials reported that low priority [was] given to MEWA cases by . . . state attorney general's office[s] . . . . In addition, limited resources in the state insurance offices, state attorney generals' offices, or both, hindered 16 states in seeking or imposing criminal sanctions." See, page 13 of the draft report. The low risk of criminal sanctions due to the reluctance or inability of states to bring criminal actions, if perceived by unscrupulous MEWA operators, compounds the overall problem.

Now on page 9.

We would be pleased to discuss these comments with the GAO study team.

Sincerely,

Delbert L. Spurlock, Jr.

Enclosures

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