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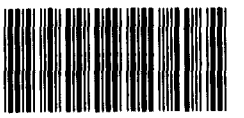

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STATES NEED MORE DEPARTMENT OF LABOR HELP TO REGULATE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS AND CORRECT PROBLEMS

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Before the
Subcommittee on Retirement Income and
Employment
Select Committee on Aging
House of Representatives

SUMMARY

The Employee Retirement Income Security Act of 1974 (ERISA) defines a multiple employer welfare arrangement (MEWA) as any arrangement to provide health or other benefits to employees of two or more employers. MEWAs provide an alternative to traditional insurance for small businesses, which often cannot find affordable coverage. While MEWAs fill an important gap in health coverage, they also have proven to be a source of long-standing regulatory confusion; enforcement problems; and, in some instances, fraudulent activity.

Prompted by problems with welfare plans, the Congress amended ERISA in 1983 to clarify state regulatory authority over MEWAs. Until that time, ERISA plans were exempt from most state laws. The amendment allows states to apply their insurance laws, with some limitations, to MEWAs that are ERISA plans.

Yet, despite the amendment, most states still have problems with MEWAs. They believe that some aspects of their authority remain unclear and that additional federal efforts are needed to help them protect consumers. GAO found that MEWA problems are widespread and growing. States estimate that, since 1988, MEWAs have failed to pay at least $132 million in claims for almost 400,000 workers and their beneficiaries, and left countless others without insurance. Moreover, states reported that MEWAs violate their insurance laws.

States identified factors that hinder their efforts to regulate MEWAs and correct problems. States often cannot enforce their insurance requirements because they do not know that MEWAs are serving their residents. When they learn about problem MEWAs--usually through complaints--enforcement and collection efforts are often delayed because MEWAs assert that federal law preempts state law. While states almost always establish jurisdiction, doing so is sometimes costly and may give fraudulent MEWAs time to collect more premiums. Moreover, several states expressed concern about new problems regarding the preemption issue.

Noting a marked increase in MEWA problems, the Secretary of Labor announced a program in May 1990 to help states, but has made only limited progress in implementing it. Most states said that Labor assistance provided to date has been adequate, but over 40 percent said it was untimely and unclear. Labor also planned to provide guidance to clarify states' regulatory authority and help states identify MEWAs, but has not yet done so.

GAO reviewed H.R. 2773, which proposes federal standards for certain MEWAs. The bill has some positive features, such as requiring certain MEWAs to register, but contains provisions that merit further consideration. For example, questions include whether the federal government should set funding standards for selected welfare plans and preempt selected MEWAs from state insurance laws.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results to date from our review of multiple employer welfare arrangements (MEWAs).

The Employee Retirement Income Security Act of 1974 (ERISA) defines a MEWA as any arrangement to provide health or other benefits to employees of two or more employers. MEWAs provide an alternative to traditional health insurance for small businesses, which often cannot find affordable coverage. By allowing such businesses to pool their funds to pay for benefits or to buy group insurance, MEWAs fill an important gap in health coverage. However, MEWAs also have proven to be a source of long-standing regulatory confusion; enforcement problems; and, in some instances, fraudulent activity.

During hearings in the early 1980s, the Congress learned about problems with "multiple employer trusts" that frequently did not meet solvency requirements established by states to protect health care consumers, and did not pay medical claims. The trusts claimed to be employee benefit plans established under ERISA and, thereby, exempt from state regulation.

In an effort to clarify states' authority to apply their insurance laws and regulations to MEWAs and protect health insurance consumers, the Congress amended ERISA in 1983. Yet,

despite the amendment, most states still have problems with MEWAs and believe that some aspects of their authority remain unclear and that additional federal efforts are needed to help them protect consumers.

In a recent survey of insurance commissions in the 50 states and the District of Columbia, supplemented by visits to five states, we found that MEWA problems are widespread and growing. Since 1988, MEWAs have failed to pay more than $132 million in claims for almost 400,000 workers and their beneficiaries. Moreover, two-thirds of the states reported that when MEWAs have failed, some participants have been unable to obtain subsequent health coverage. State officials report difficulties in identifying MEWAs and in bringing them into compliance with applicable state laws and little success in recovering money on behalf of beneficiaries. My testimony today will focus on these problems and steps that can be taken to alleviate them.

MOST STATES FEEL HINDERED IN EFFORTS TO REGULATE MEWAs AND CORRECT PROBLEMS

Under its preemption provisions, ERISA generally supersedes state laws pertaining to employee benefit plans covered by ERISA. The 1983 amendment defined a MEWA and specified that the states have authority to apply their insurance laws, with some limitations, to MEWAs that are ERISA plans. MEWAs that are not ERISA plans are fully subject to state regulation.

Notwithstanding these provisions, most states believed that some MEWAs did not comply with their laws and regulations. Ninety percent of the states said they knew of MEWAs that they suspected had violated their insurance laws, particularly those pertaining to reporting and disclosure, funding, and registration or licensure requirements. Forty-four states reported that they had tried to correct compliance problems suspected with an estimated 663 MEWAs.

States' efforts have not necessarily resulted in MEWAs' payment of participant claims or the continuation of medical coverage. States reported recovering only $10 million of an estimated $132 million in claims on behalf of participants. Thirty-three states reported that individuals were left without health coverage when MEWAs stopped operating.

State insurance commission officials told us that several problems hindered their efforts to regulate MEWAs and correct problems. While states usually were able to establish their jurisdiction over MEWAs, claims of federal preemption hindered enforcement efforts. Eighty percent of the states said that MEWAs claimed preemption under ERISA. While most states established their jurisdiction without court involvement, 13 states said they had to resolve the issue through the courts. Noting that they won almost all cases, state officials said that such legal battles were costly in terms of time and resources. Moreover, officials in one

state said that fraudulent MEWAs sometimes claim preemption specifically to stall for time to collect more premiums.

Preemption concerns are not static. Eleven states expressed concern about new problems with ERISA's preemption provisions. They said that certain entities that they considered to be MEWAs were claiming exemption from state regulation as union-affiliated or single-employer plans. For example, Florida officials questioned the validity of entities claiming exemption as union-affiliated plans. They said that by selling "associate memberships," these entities marketed health benefit coverage to individuals with no participation or representation in a union. South Carolina officials also questioned the validity of a labor-leasing entity claiming exemption as a single-employer plan. They said the entity hired employees of several companies and then leased the employees back.

At issue is whether these are arrangements contrived to qualify entities for exemption from state regulation. In June 1991, Florida and South Carolina officials told us that in October and September 1990, respectively, they had requested advisory opinions[1] from the Department of Labor on the validity of claimed exemptions, but had received no response, thus leaving the issues

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[1]Case-specific decisions on questions raised by states and others about ERISA plans.

unresolved. In our opinion, more guidance is needed from Labor on the overall issue of preemption.

Also at the heart of enforcement problems is the fact that state regulators are often constrained by the inability to identify MEWAs until after problems occur. Over 70 percent of the states said they were unable to proactively apply such established standards as funding and reporting and disclosure standards because they were unable to identify MEWAs until they received complaints. For example, New York and Ohio officials said they could not enforce state licensing requirements on some MEWAs because the states were not aware of the MEWAs until receiving complaints from participants and others. To the extent that states are able to react only after problems have occurred, their options for protecting participants and curtailing losses are lessened. In our opinion, Labor and the states should work together to identify and obtain more timely information on MEWAs.

MORE LABOR ASSISTANCE NEEDED

Noting a marked increase in MEWA problems, the Secretary of Labor announced a program in May 1990 to help states, but has made only limited progress over the past year in implementing it. The program contained several objectives, including better communication with states, the issuance of guidance to clarify

states' regulatory authority, and the provision of information to help states identify MEWAs.

Labor has begun sharing advisory opinions with all states on a quarterly basis and holding periodic seminars and meetings for states and other interested parties to share information about MEWAs. While the majority of states said that Labor assistance provided to date has been adequate, over 40 percent said that it was untimely and unclear.

Labor has not taken other actions outlined in the program. To date, Labor has not issued a "plain English" technical assistance package clarifying states' regulatory authority. Officials have been working on the technical assistance material since January 1990. We understand that Labor plans to issue such guidance in conjunction with these hearings or shortly thereafter. Labor also has been unable to provide a list of MEWAs it hoped to develop from information reported annually by pension and welfare plans. Officials said that information needed to develop the MEWA list could not be obtained because reported data were incomplete and inaccurate.

As a separate initiative to help states identify MEWAs, Labor is considering establishing an annual MEWA registration. Over 85 percent of the states told us that they favored such registration. A legislative proposal for registration was introduced in the

Congress in 1990, but did not pass. Labor officials told us that they are still considering registration, but much work remains to be done. For example, Labor has not decided the types of entities that must register--a challenging task since our survey showed that states consider a wide variety of entities as MEWAs. Also, Labor has not decided the types of information MEWAs should report. In addition, Labor has not decided how to enforce registration or what sanctions to impose if MEWAs do not register.

Labor officials said that they have increased federal MEWA enforcement efforts. Open MEWA-related investigations by the Pension and Welfare Benefits Administration, which has primary responsibility for federal enforcement of ERISA, increased from 30 in 1989 to 67 in May 1991. In addition, open MEWA-related criminal investigations by the Office of Inspector General rose from 7 to 28 during that period. Some of these were being handled jointly with the Pension and Welfare Benefits Administration.

VIEWS ON PROPOSED LEGISLATION TO ESTABLISH MEWA STANDARDS

In response to your August 21, 1991, letter, we reviewed H.R. 2773, a bill to set standards for less than fully insured MEWAs that provide health benefit coverage. The bill allows certain MEWAs that meet prescribed requirements to obtain a certification from Labor and preemption from state insurance regulation. Less than fully insured MEWAs covered by the bill that are not certified

would be required to register with Labor. However, the bill does not affect MEWAs that are fully insured, MEWAs that provide nonhealth benefits, or other welfare plans.

MEWAs would have to meet numerous requirements to be certified. They would have to meet reserve requirements set forth in the bill and obtain insurance for payment of claims above a specified amount. Only trade associations and certain other qualified organizations may be sponsors. Certified MEWAs would be required to submit annual reports to Labor and comply with other administrative requirements.

The bill has some positive features, such as identifying certain MEWAs through certification and registration. However, many MEWAs would not be affected by the bill. Also, the bill raises issues that merit further consideration. These include whether the federal government should (1) establish, for the first time, funding and other standards for selected welfare plans and arrangements and (2) preempt from state insurance laws MEWAs that meet federal certification requirements.

In addition, the bill raises several implementation questions, including Labor's ability to meet the legislative mandate without additional resources and the need for sanctions against MEWAs failing to comply with the bill's provisions.

CONCLUSIONS

Regulation of MEWAs is a joint federal and state responsibility. Both must cooperate to provide protection to workers and their beneficiaries from fraudulent and mismanaged MEWAs. There are several steps that Labor could take to assist states in better regulating these entities.

Additional guidance from Labor is needed to clarify how to distinguish among entities legitimately claiming to be collective bargaining or single-employer plans from those that should be subject to state regulation.

Additional Labor assistance also is needed to help states identify MEWAs, although the best approach for doing so is uncertain. If done through registration or certification, Labor should first work out definition, reporting, and enforcement details. Labor should also consider alternatives, including the feasibility of establishing a national list of MEWAs using information obtained from such existing sources as states' registration and licensing and Labor's ERISA reporting data bases.

Mr. Chairman, this concludes my remarks. At this time, I will be glad to answer any questions.