

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



MAY 31 1990

ERISA OPINION 90-16A
Sec. 606

Mr. William A. Harding
Heron, Burchette, Ruckert & Rothwell
500 The Atrium
1200 N Street
P.O. Box 82028
Lincoln, Nebraska 68501

Dear Mr. Harding:

This is in reply to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether a plan administrator, under certain circumstances, can be relieved of the notification requirements of the health care continuation provisions of Part 6 of title I, which were originally enacted by title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Section 606 of title I of ERISA (29 USC §1166) as amended by Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, §7891, 103 Stat. 2106, provides, in pertinent part:

Section 606. (a) In General. -- In accordance with regulations prescribed by the Secretary -

(1) . . .

(2) . . .

(3) . . .

(4) the administrator shall notify --

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 603, any qualified beneficiary with respect to such event, and (B) in the case of a qualifying event described in paragraph (3) or (5) of section 603 where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event, of such beneficiary's rights under this subsection.

(b) . . .

(c) Rules Relating to Notification of Qualified Beneficiaries by Plan Administrator. -- For purposes of subsection (a)(4), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary

as the spouse of the covered employee shall be treated as notification of all other qualified beneficiaries residing with such spouse at the time such notification is made.

It is the view of the Department of Labor (the Department) that the use of the word "shall" in section 606 means that the administrator must provide notification and that the notification must be made within the specified time frame.

In Opinion 84-19A (issued April 26, 1984, copy enclosed), the Department opined that the statutory duty on persons required to retain records in accordance with section 107 of title I of ERISA cannot be avoided by contract, delegation, or otherwise. It is similarly the view of the Department that an administrator cannot be relieved of the notification requirements of the health care continuation provisions of Part 6 of title I of ERISA. Therefore, if an administrator of a plan arranges with another person to notify qualified beneficiaries of their rights under the health care continuation provisions of Part 6 of title I of ERISA, the statutory requirement to see that such beneficiaries are properly notified remains with the administrator. Accordingly, the administrator must make such agreements and arrangements with the other person as necessary to insure that qualified beneficiaries are properly notified.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. We also note the Department's position stated herein must be reviewed in light of any regulations which may be issued interpreting section 606 of title I of ERISA.

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations