

**U.S. Department of Labor**

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



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Sec.

Mr. Lynn A. Arnhold  
Corporate Counsel  
Pension and Group Services, Inc.  
The Haymarket, Suite 400  
161 East Michigan Avenue  
Kalamazoo, Michigan 49007-3932

Dear Mr. Arnhold:

This is in response to your letter on behalf of Pension and Group Services, Inc., requesting an advisory opinion regarding the application of the annual reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an advisory opinion with respect to whether certain types of "fees" must be reported in item 12 of the Form 5500. We regret the delay in responding to your request.

Your letter sets forth the following facts and representations. Pension and Group Services, Inc. (P&G), is a third party administrator for a number of self-funded health and welfare plans. In the past, employees of P&G were directly marketing its services to various employers throughout the state. Recently, management has been discussing the possibility of marketing its services through outside insurance agents who would not be employees of P&G.

It is contemplated that an insurance agent would make an initial self-funded proposal to an employer and if the employer accepts the proposal then P&G would provide ongoing administrative and consulting services. In return for an insurance agent's efforts in "finding" a case, P&G would pay him a "finders fee" or commission of a flat rate based upon the number of employees in the case. P&G will pay the insurance agent this fee out of its general assets for as long as P&G continues to provide services to the employer. In this regard, you have inquired whether the fee paid by P&G to an insurance agent is required to be reported on the annual report (Form 5500 Series) of the plans utilizing P&G's services.

The commissions described in your letter would not constitute "fees" or "commissions" paid by an insurance carrier; accordingly, such commissions would not be reported on the Schedule A (Insurance Information) of the Form 5500 Series. However, section 103(c) of ERISA provides,

in relevant part, that the plan administrator shall furnish as part of the annual report the following:

(3) ... the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest. (Emphasis supplied.)

The information described in section 103(c)(3) is required to be reported in accordance with the instructions to item 12 of the Form 5500. The instructions to item 12 provide, in part, that the administrator:

(a) Include any individual, trade or business, whether incorporated or unincorporated, responsible for managing the clerical operations (e.g., handling membership rosters, claims payments, maintaining books and records) of the plan on a contractual basis ....

(b) Include any other person who (1) had any control over plan assets, or (2) was paid more than \$1,000 a month as a plan employee, or (3) was not a plan employee, but received compensation of more than \$600 from the plan during the year. Do not list persons whose only compensation in relation to the plan consists of insurance fees and commissions listed in Schedule A (Form 5500). Include only persons who were paid by the plan, either indirectly (such as through the plan sponsor) or directly....

It is the view of the Department that where an independent agent is engaged by a service provider, other than an insurance carrier, to market its services and, as a direct result of that agent's transactions with an employee benefit plan, fees or commissions are paid to the agent, such fees or commissions are required to be reported in accordance with ERISA section 103(c)(3) and the instructions to item 12(b) of the Form 5500 of the plan. For this reason, the commissions described in your letter would, if such compensation exceeds \$600, be required to be reported in item 12 of the Form 5500 for each year during which the described commissions are paid with respect to the employee benefit plan.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel  
Assistant Administrator for Regulations and Interpretations

Enclosure