

May 29, 1975

Dear :

This is in belated reply to your letter of November 15, 1974 to . Your letter, without its enclosures, was received in my office on Friday, May 2. Normally, our mail handling and distribution system works well, but occasionally errors are made. Although I am making inquiries to try to find out what happened to the enclosures, and why the letter was so delinquent in arriving at my office, I am writing now to apologize, on behalf of the Labor Department, for our delay in responding.

As best I can tell from your letter, you have filed a suit which involves, as one of its elements and probably as its primary element, an attempt by a participant of an employee benefit plan to recover benefits due him under the terms of the plan. The suit was apparently filed sometime prior to the date of your letter to November 15, 1974 and well before the January 1, 1975 effective date of the substantive reporting, disclosure, and fiduciary provisions of Title I of the Employee Retirement Income Security Act (ERISA).

Regarding causes of actions arising in time prior to the effective date of ERISA's substantive provisions, the Labor Department's position is that since there is no retroactive application of Title I, ERISA, the Department lacks authority to initiate or intervene in such actions.

Moreover, your letter indicates that the action is primarily, if not exclusively, one covered by section 502(a)(1)(B) - an action by a participant to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan. Such cases are normally disputes between participants and their plans which are resolved by reference to the contractual terms of the plan, trust or collective bargaining agreement. Under section 502(e)(1), such suits, of all the types of actions authorized by ERISA, are the only ones which may be brought in State courts as well as Federal

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courts. Under section 502(h), where the sole purpose of such a suit is to recover benefits due, a copy of the complaint need not be filed with the Secretary of Labor and the Secretary of the Treasury.

As you may imagine, suits of this type are extremely numerous, and Congress recognized not only the desirability of leaving the State courts open to such actions, but also the undesirability of the Federal Government's becoming involved in such actions which are largely contractual matters not involving interpretation of ERISA. Moreover, direct government involvement would divert scarce resources from other activities which are our primary responsibility.

For these reasons, even if your letter had been properly routed and considered when it should have been, the Labor Department would not participate in \_\_\_\_\_'s action.

Again, please accept our apologies for this delay.

Sincerely,