

COMMENTS OF THE
SECTION ON TAXATION
OF THE DISTRICT OF COLUMBIA BAR

TO THE
DEPARTMENT OF LABOR
PENSION AND WELFARE BENEFITS ADMINISTRATION

REGARDING

PROPOSED REGULATION RELATING TO THE
DEFINITION OF PLAN ASSETS; PARTICIPANT CONTRIBUTIONS

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COMMENTS ON PROPOSED DEPARTMENT OF LABOR REGULATIONS

EXECUTIVE SUMMARY

The Department of Labor issued a proposed regulation on December 20, 1995, which would significantly shorten the outer limit that employers sponsoring pension plans and welfare plans would have to transmit employee contributions paid to the employer for use in such plans. The regulation would affect, for example, section 401(k) salary deferral contributions and employee contributions to health plans that are not otherwise exempt from the DOL's plan asset rules.

The Taxation Section proposes to file comments in response to the DOL's request for public comments. Expedited review is requested by the Board of Governors because a hearing is scheduled for February 23, and these comments should be filed by or near that date in order to be considered.

Under existing regulations, employee contributions to a plan constitute plan assets (which are subject to the requirement that they be held in trust) as of the earliest date on which the contributions can reasonably be segregated from the employer's general assets, but in no event later than 90 days from the date on which the participant contributions are received by the employer (for amounts that participants pay to the employer) or would otherwise have been payable to the participants in cash (for amounts that the employer withholds from the participants' wages). Under the proposed rule, the maximum period for an employer to transmit participant contributions to the plan would be the same number of days as the period in which the employer is required to deposit withheld income taxes and employment taxes under IRS rules.

The Taxation Section comments explain why the IRS tax deposit rules are an inapposite model and should not be adopted. Instead, the comments suggest the 90 day maximum period could be shortened to 60 days (90 days in the case of unusual circumstances). In addition, the comments recommend that, if the IRS tax deposit rules are adopted, they should not be applied to welfare plans (e.g., health plans) until further study is given to special issues that affect such plans.