

**MEMO# 14789**

June 6, 2002

## **DOL ISSUES ADVISORY OPINION ON APPLICATION OF PROHIBITED TRANSACTION RULES TO PLAN LOAN REPAYMENTS**

[14789] June 6, 2002 TO: PENSION MEMBERS No. 27-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 37-02 RE: DOL ISSUES ADVISORY OPINION ON APPLICATION OF PROHIBITED TRANSACTION RULES TO PLAN LOAN REPAYMENTS The Department of Labor recently issued Advisory Opinion 2002-02A, which addresses the issue of when participant loan repayments withheld from employee wages by an employer become plan assets subject to the prohibited transaction rules of ERISA. In the Advisory Opinion, the Department observed that an employer's failure to remit loan repayments to a plan as soon as the repayments are considered plan assets would constitute a prohibited transaction. While such loan repayments are not subject to the participant contribution regulation issued in 19961 — which provides guidance on when participant contributions to a pension plan become plan assets — the Department considered the matter sufficiently similar to the transmittal of participant contributions. The Department, therefore, took the position that "principles similar to those underlying the final participant contribution regulation" apply for purposes of determining when loan repayments become assets of the plan. Accordingly, the Advisory Opinion concluded that participant loan repayments made to or withheld by employers for purposes of transmittal to a plan become plan assets as of the earliest date on which such repayments can reasonably be segregated from the employer's general assets. The Advisory Opinion also noted that holding participant loan repayments beyond the maximum period provided in the participant contribution regulation (i.e., the 15th business day of the month immediately following the month in which participant contributions are received by the employer) would raise "serious questions" about whether the employer forwarded the repayments to the plan as soon as they were reasonably segregable. Thomas T. Kim Associate Counsel Attachment 1 See 29 C.F.R. 2510.3-102. 2 Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14789, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14789. Attachment (in .pdf format)