

LARRY R COOK & ASSOCIATES, PC

Financial Valuation and Business Advisors

RE: Definition of Fiduciary Proposed Rule

Please accept this writing as opposition to the Department of Labor proposed rule defining the term "fiduciary" to include financial advisors (and appraisers) of ESOPs within its definition. It is my opinion and the opinion of others that serve in the capacity of employer securities appraisers, pension actuaries, plan administrators, trustees, financial advisors providing services to the maintenance and proliferation of Employee Stock Ownership Plans falling under the jurisdiction of the Department of Labor, that this proposed rule change is well intended but a bad idea.

We believe the above mentioned DOL proposals will have a harmful, caustic impact on existing ESOPs and ESOP candidates alike, and produce significant unintended results for the following reasons:

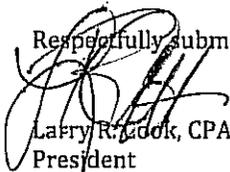
- Professional liability insurance carriers will either decline coverage to the financial advisor / appraiser or substantially increase premium costs;
- Appraisers with the most experience would leave the area of practice and no longer provide their services to ESOPs;
- Increased sustained costs, from any source including services to an ESOP by appraisers, ultimately are paid by the sponsoring company which will have detrimental impact on operating earnings of the Sponsor company and thereby negatively impact the value of its employer securities, including those held by plan participants. In any case, the ESOP participant will receive less;
- Shareholders of private companies will be less likely to consider implementing an ESOP, or continue an existing plan, as the cost to sponsor an ESOP would increase dramatically and the talent pool of financial advisors would decrease substantially;
- Vagueness of fiduciary duties and responsibilities with each ESOP potentially places the financial advisor / appraiser with fiduciary responsibility of discretionary accounts or pooled participant accounts of the plan;
- Independence of an appraiser would be challenged, as their relationship with the ESOP, its trustee (s), sponsoring company management would substantially alter their roles with the fiduciary responsibilities and authority over the plan, its management and administration;
- For those appraisers possessing an investment securities licenses, compliance with SEC mandates would likely bar them from providing services to ESOPs.

Fiduciary status for appraisers providing services to ESOPs is not the cure for poor valuations, rather prescribing qualifications and standards for providing appraisal services is the solution.

The proposed DOL term definition change rule including appraisers providing services to ESOPs as fiduciaries will have far reaching and serious unintended repercussions. There are viable, less expensive alternatives to regulate and insure well-reasoned, credible valuations of employer securities in an ESOP environment.

Rules to ensure that only qualified, credentialed valuation professionals provide appraisal services to ESOPs should be implemented. Those appraisers following generally accepted valuation standards, code of ethics, shared approaches and methodologies will present the solution.

Respectfully submitted,



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