
From: Michael Keeling [mailto:Michael@esopassociation.org]
Sent: Wednesday, January 12, 2011 11:18 AM
To: EBSA, E-ORI - EBSA
Subject: Fiduciary Definition Hearing

January 12, 2011

Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue, NW
Washington, DC 20210

By email: e-ORI@dol.gov

Subject: Fiduciary Definition Hearing

Dear Assistant Secretary Borzi:

On behalf of The ESOP Association, a 501[c][6] trade association with 2,400 members nationwide, I respectfully request that a representative of the Association testify at the March 1, 2011, public hearing on the proposed regulation, Definition of the Term "Fiduciary." [Published October 22, 2010 Federal Register, page 65263-65278.]

The ESOP Association since 1978 has been the largest advocacy entity for corporations sponsoring employee stock ownership plans [ESOPs] in the U.S.

Of its 2,400 members, 98 to 99% are not publicly traded, and 91% employ fewer than 500 employees, and of these, 50% or so employ 50 to 100 employees. Thus the proposed rule would have a direct impact on these businesses sponsoring ESOPs who must have an independent valuation of their ESOP annually, at a minimum.

For the past 30 plus years, representatives of the Association have presented oral testimony to committees of Congress and to regulatory agencies with jurisdiction over laws and regulations that impact ESOPs.

In addition to the near 1,500 corporations, the Association has as secondary professional membership of approximately 900 service providers who offer services to ESOP sponsors.

Approximately 100 of these secondary professional members value ESOP stock issued by privately held companies sponsoring ESOPs. Thus, needless to say, the Association's corporate members sponsoring ESOPs and its secondary professional members wish to be heard on the proposed regulation to mandate all valutors of privately held companies sponsoring ESOPs be ERISA fiduciaries to the ESOPs.

As is traditional when the Association has a representative testify at a regulatory hearing, the Association asks that the chair of its Advisory Committee on Legislative and Regulatory Issues be its representative.

This person is currently:

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Before the March 1st public hearing, the Association will submit a written comment on the proposed regulation defining fiduciaries before the deadline to comment, February 3, 2011. Attached is a general outline and proposed oral testimony by The ESOP Association representative.

If inquiry, comments, or notification is required, please contact me, the undersigned. My contact information is included in this email.

Your consideration of this request is appreciated.

Sincerely,

J. Michael Keeling, CAE
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**Outline of the Proposed Oral Testimony of The ESOP Association's
Representative at the March 1, 2011 Department of Labor's Public Hearing
on the Proposed Regulation of ERISA Fiduciary Definition**

- I. Brief overview of demographics of ESOP Association and members
- II. Economic impact on ESOP plan sponsors if proposed rule is finalized as drafted
- III. Thirty plus years of history of ESOP Association members and DOL audits triggering valuation disputes
- IV. Current law and/or finalizing regulation on adequate consideration can address issues of "rogue" valuations
- V. Would proposed rule alter "best practices" of valuation community's methodologies of valuing ESOP transactions
- VI. Summary of laws governing ESOPs as national policy
- VII. Conclusion: Proposed definition of a fiduciary should not discourage employee ownership and retirement savings through the ESOP model