

January 25, 2011

Employee Benefits Security Administration  
Department of Labor

**Re: DOL Proposed ESOP Rule Change  
IIW Project No.: 10000-018**

Gentlemen:

It has come to our attention that the October 22<sup>nd</sup> edition of the *Federal Register* includes Department of Labor (DOL) proposed rules that will significantly revise its current regulation on the definition of a "fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA). The proposed rule will make individuals and/or firms providing appraisal services to Employee Stock Ownership Plans (ESOPs) fiduciaries, reversing 34 years of DOL policy that appraisers of ESOP stock are *not* fiduciaries.

IIW, P.C. has been an ESOP since 1999. The group of five (5) individuals who act as our ESOP Trustees, and bear the fiduciary responsibility for the ESOP, has remained constant since that time. Our ESOP administrator, legal counsel, and appraiser have also remained constant. We believe this provides stability to our ESOP, assuring our employee owners that the value they have helped build is determined on a consistent, objective, and legitimate basis. I am one of the ESOP Trustees and I personally work with IIW's staff and accountant to provide all of the necessary information to our appraiser each year, then thoroughly review their annual report and convey the critical information and insight it contains to the ESOP Trustees and our Board of Directors.

While the intent of the DOL's proposed rule change may appear to have merit, its effect is more likely to be damaging to ESOPs in general. While we find it unlikely that our appraiser would terminate this line of business, forcing us to find another appraiser, their added liability would undoubtedly increase the fees IIW pays to comply with the mandatory annual appraisal requirement.

If our appraiser does decide to terminate this line of business due to the added liability exposure, IIW would be forced to expend significant additional time and effort to find another business appraisal provider. Business appraisers have a limited number of accepted valuation methods available to them; however, with a different perspective their ultimate conclusion could differ significantly because numerous judgment calls are required in the valuation process. This further increases the possibility that IIW could be subjected to needless lawsuits and overhead expenses, thus reducing our capacity to conduct our core business and enhance the value of the company for the benefit of our employee owners.

While our concern for additional ESOP-related expense is significant, more important to us is the clear singular fiduciary responsibility of the ESOP Trustees. Introducing another fiduciary creates the potential for deflecting responsibility, increasing the potential for unnecessary legal exposure. In our opinion it is inappropriate for an ESOP appraiser to be considered a fiduciary. They exercise no power to make decisions or direct the activities of an ESOP, they simply evaluate the information provided to them to determine a fair market value of an active closely-held business entity. They are state-licensed professionals with an ethical obligation to exercise objectivity. Increasing their liability by arbitrarily adding a fiduciary responsibility is inappropriate in our opinion. IIW's ESOP

BUILDING DESIGN  
CIVIL ENGINEERING  
CONSTRUCTION SERVICES  
ENVIRONMENTAL ENGINEERING  
LAND SURVEYING  
MUNICIPAL ENGINEERING  
STRUCTURAL ENGINEERING  
TRANSPORTATION ENGINEERING

Dennis F. Waugh, PE/SE\*  
Charles A. Cate, PE  
Gary D. Sejkora, PE  
Michael A. Jansen, PE/SE  
Ronald A. Balmer, PE/SE/AIA  
John M. Tranmer, PLS  
Timothy J. Tranel, PE\*  
John F. Wandsnider, PE  
Julie P. Neebel, PE  
James P. Kaune, PE  
Thomas J. Oster, PLS  
Wray A. Childers, PLS  
Geoffry T. Blandin, PE  
Mark C. Jobgen, PE  
Lauren N. Ray, PE/SE\*  
Bradley J. Mootz, PE/SE  
Cody T. Austin, PE\*  
Marc D. Ruden, PE  
Mark R. Fassbinder, AIA\*  
Michael A. Ruden, AIA\*  
Alice M. Ohrtmann, PE  
Craig J. Elskamp, AIA  
Robert W. Blok, PE  
Eric J. Helminiak, PE/SE\*

\* LEED AP

appraiser is compensated for their time and expertise. Their fees are not connected in any way with the conclusions they reach.

Assigning a fiduciary responsibility to an ESOP appraiser is functionally contradictory. How can they determine the business value to the sole benefit of the employee owners who include both the parties responsible for making payments based on the appraisal (the lower the appraisal the less danger to the on-going operations of the company) and the parties receiving payments based on the appraisal (the higher the appraisal the more they receive)? Who is the proposed rule change intended to protect? The appraiser's objectivity is fundamentally crucial to the validity of their conclusions, and we believe that introducing a fiduciary responsibility into the equation could endanger their objectivity.

Further we believe the DOL's proposed rules are contrary to the law which stipulates that Federal agencies are not to hinder the creation or operation of ESOPs. In our opinion this rule change would significantly hinder the operation of IIW's ESOP, adding unnecessary expense and legal exposure. It could ultimately have the effect of eliminating existing ESOPs and reducing the potential for the creation of new ESOPs. In our opinion it is in the best interest of ESOPs and their employee owners to maintain the consistency of the current fiduciary structure that has served ESOPs appropriately for decades.

Sincerely,  
**IIW, P.C.**

Ronald Balmer, P.E.  
Vice President of Finance

On behalf of IIW's other ESOP Trustees:  
Dennis Waugh, Charles Cate, Gary Sejkora, and Michael Jansen

And IIW's employee owners:

Deb Juno	Mike Duehr	Mary Abbott
Laurie Wehrspann	Robert Timmons	Wray Childers
Michele Nemmers-Knief	Adam Moris	Thomas Oster
Robin Walter	Darin Jargo	James Kaune
Amanda Kennedy	John Tranmer	Cody Austin
Brad Mootz	Jeff Winter	Bill Heiken
John Berns	Steve Fuerst	Alicia Cram
Monica Kehren	Chris Huseman	Ryan Obrecht
Robert Blok	Mark Nicholas	James Bousley
Russ Vernon	Jeffry Brandt	John Wandsnider
Craig Elskamp	Robert Baumhover	Geoff Blandin
David Schwarz	Tim O'Brien	Mark Jobgen
Tim Tranel	Daniel Schlueter	Marc Ruden
Lauren Ray	Dawn Rick	Paul Winkler
Patrick Young	Stuart Summer	Troy Christianson
Nate Miller	Timothy Bahl	Lynn Neal
Nick Schneider	Terrence Kluesner	Julie Neebel
Luke Runde	Michael Busch	