

PUBLIC SUBMISSION

As of: February 02, 2011 Received: February 01, 2011 Status: Pending_Post Tracking No. 80bd82d5 Comments Due: February 03, 2011 Submission Type: Web

Docket: EBSA-2010-0050
Definition of the Term "Fiduciary"

Comment On: EBSA-2010-0050-0001
Definition of the Term Fiduciary

Document: EBSA-2010-0050-DRAFT-0016
Comment on FR Doc # 2010-26236

Submitter Information

Name: Peter H Briggs
Address:
 306 E Jefferson St
 Charlottesville, VA, 22902
Email: pbriggs@shareholderstrategies.com
Phone: 434-984-0474
Organization: Shareholder Strategies, Inc.

General Comment

Additional comments from Shareholder Strategies, Inc.

1) No well-informed person or entity would ever serve as a Fiduciary (a grave responsibility) of an ESOP without having his own specialized ESOP counsel. If this rule is finalized, our firm would have to engage a qualified ESOP attorney for each and every case we work on. The estimate that the fees borne by Plan Sponsors would double or treble is probably low, for this reason.

2) Continued investigation into Fiduciary Liability Insurance for ESOP appraisers concludes that there is nothing available. There is no such product. There are good reasons why.

3) Continued discussions with well-informed specialists indicates that the confusion factor at the Trustee level will be considerable under the new rule. Who is the boss? If my firm is a Fiduciary, I will certainly not feel as though I work for the Trustee. I will bear as much litigation risk as he.

4) Again, it is unclear whether ESOP appraisers will be able to accept a variety of facts as presented to them without confirming them. Limiting Conditions are necessary in the appraisal field. Does each of you at the DOL feel we as a nation should be spending many thousands of dollars for a simple residential real estate appraisal so the appraiser can dig the soil and check for heating oil, check for engineering flaws, termites, a host of other things that he necessarily assumes in his \$400 appraisal? Of course not. Nor do you want my firm to hire Special Agent Gibbs of NCIS to confirm everything we are told about the subject company. But having the necessary Limiting Conditions may very well be inconsistent (impossible?) in our role as Fiduciaries.

5) I never would have entered this field and built my practice if I knew I would be a Fiduciary of 45 ESOPs. I might as well put one bullet in the barrel of a handgun and point it at my head and then pull the trigger.