
From: Emily Girsch [mailto:Emilys@mylsb.com]
Sent: Wednesday, February 02, 2011 6:22 PM
To: EBSA, E-ORI - EBSA
Subject: Comments on the DOL Proposed Regulation - Definition of the Term "Fiduciary"
(Federal Register, Volume 75, Number 204, Pages 65263-6578, October 22, 2010, Proposed Regulation)

February 2, 2011

Mr. Fred J. Wong
Employee Benefits Security Administration
U.S. Department of Labor
Office of Regulations and Interpretations Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210

SUBJECT: Comments on the DOL Proposed Regulation – Definition of the Term "Fiduciary" (Federal Register, Volume 75, Number 204, Pages 65263-6578, October 22, 2010, Proposed Regulation)

Dear Mr. Wong:

I am the Chief Financial Officer of Lincoln Savings Bank, a \$550 million community bank located in Iowa with approximately 175 employees. Our holding company, Lincoln Bancorp, has sponsored an ESOP since 1986. Through the ESOP our employees own approximately 23% of the Company and are working to gain more ownership as other shareholders wish to retire their shares. We believe that both participants of existing ESOP companies and employees that will or would otherwise become ESOP participants in the future will be significantly harmed by the [DOL Proposed Regulation – Definition of the Term "Fiduciary" \(Federal Register, Volume 75, Number 204, Pages 65263-6578, October 22, 2010, Proposed Regulation\)](#). Here are 8 reasons why the DOL proposed regulations should be modified to remove the requirement that persons providing ESOP appraisals and fairness opinions are fiduciaries:

1. The cost to perform an ESOP appraisal would significantly increase. Firms performing ESOP appraisals would need to obtain additional and more expensive insurance, hire counsel, and take additional steps to comply with the regulations and manage the additional risk of litigation. These additional costs will be passed through to the ESOP companies and negatively impact the accounts of ESOP participants. Annually our Board determines the level of contribution the Bank will make to the ESOP and it is sure to decline should expenses of plan sponsorship go up.
2. The previously-mentioned additional cost and risk associated with performing ESOP appraisals would cause some to leave the industry. This

- would reduce the number and quality of available appraisers, which would further increase the cost of performing an appraisal and decrease the quality. These additional costs will also be passed through to the ESOP companies and negatively impact the accounts of ESOP participants.
3. The Internal Revenue Code requires that an appraiser be independent. The fiduciary responsibility to the plan participants would violate that independence.
 4. The previously-mentioned lack of independence would likely cause a selling shareholder to hire a second valuation firm, further increasing the cost of implementing and maintaining an ESOP, and further negatively impacting the accounts of ESOP participants.
 5. The fiduciary responsibilities of the trustee and appraiser would be unclear and would create confusion problems in determining who is responsible for what and how each party is supposed to satisfy their fiduciary obligations.
 6. The increased costs to establish and maintain an ESOP would significantly reduce the number of new ESOPs and cause existing ESOP companies to terminate their ESOP. This would negatively impact ESOP participants, ESOP companies, and society. A study, [Effects of ESOP Adoption and Employee Ownership: Thirty years of Research and Experience](#), summarized years of research on the effects of ESOPs and employee ownership. The study found that ESOP participants benefit by increased employee wealth and wages, greater employment stability, and increased job satisfaction. It found that ESOP companies experienced an increase in productivity, profitability, and likelihood of firm survival. One of our mottos at Lincoln Savings Bank is to “Act Like an Owner” because each and every employee, no matter their position at the Bank, is an owner. It also found that ESOPs benefit society by providing economic growth with increased sales and employment growth.
 7. The DOL proposed regulations do not address the root causes of the problems you have identified. These problems include a lack of clear, concise and current valuation regulations and a lack of professional competence standards, qualifications, and/or credentials to perform an ESOP appraisal.
 8. ESOP trustees are fiduciaries that are currently responsible for determining the fair market value. Existing case law and current regulations provide remedies for when the ESOP trustee is using an incorrect valuation and when appraisers are acting with discretion over plan assets. Remedies also exist for parties that are not satisfying their legal, fiduciary, and contractual responsibilities.

We respectfully request that you modify the DOL proposed regulations to remove the requirement that persons providing ESOP appraisals and fairness opinions are fiduciaries. If you do not find that current regulations provide sufficient remedies, working with the ESOP professional community to create professional

standards and enforcement procedures and providing the community with clear guidance are two solutions that would effectively address your concerns.

Sincerely,

Emily J. Girsch, CPA, MBA
Executive Vice President – Chief Financial Officer
Lincoln Savings Bank
508 Main Street
Reinbeck, IA 50669
Ph: (319) 788-6441
Fx: (319) 788-6697

--

=====
CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, are confidential and are intended solely for the use of the addressed recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.
=====

=====
===PROTECT YOURSELF FROM INTERNET CRIME!===
Please DO NOT send any of your vital account information via email. This includes account number, login ID or passwords. This is NOT a secure form of communication.