
From: Dana Schurr [mailto:Dana.Schurr@minco.com]

Sent: Wednesday, February 02, 2011 7:17 PM

To: EBSA, E-ORI - EBSA

Subject: Definition of Fiduciary Proposed Rule

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 CEO of Minco Products, Inc. and we have an ESOP with almost 600 participants. The proposed rule to define the appraiser as a fiduciary would increase our costs and would HARM our ESOP participants.

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. The firm performing our ESOP appraisal 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 Minco and negatively impact the accounts of our ESOP participants.
2. The previously-mentioned additional cost and risk associated with performing ESOP appraisals would cause some to leave the appraisals 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 Minco and negatively impact the accounts of our 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. At Minco, the ESOP owns 33% of our shares. 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 maintain our ESOP might cause us to terminate the ESOP. This would negatively impact our ESOP participants.
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.

Please consider my comments and those from others in the ESOP community and contemplate their impact.

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,

Dana Schurr

CEO

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