

-----Original Message-----

From: Robert W Smiley Jr. [<mailto:rsmiley@esopbook.org>]
Sent: Wednesday, February 02, 2011 3:43 PM
To: EBSA, E-ORI - EBSA
Subject: Definition of Fiduciary Proposed Rule

e-ORI@dol.gov
From: Robert W. Smiley, Jr.
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Office of Regulations and Interpretations Employee Benefits Security
Administration Room N-5655 U.S. Department of Labor 200 Constitution
Avenue, NW.
Washington, DC 20210.
Attn: Definition of Fiduciary Proposed Rule

I am writing to respectfully request that the proposed definition of a
fiduciary be dropped from the proposed regulations. It is not in
keeping with the public law 90 Stat.1520, P.L. 94-455 Section 803.

The Tax Reform Act of 1976 (Pub. L. 94-455) contained a strong
statement of Congressional intent to support ESOPs and directed the IRS
to rewrite proposed ESOP regulations that Congress considered
burdensome and detrimental to ESOPs. This law has not been rescinded
nor modified.

Further, the supporting record for the Tax Reform Act of 1986, PL 99-
514 was clear that regulatory obstacles were not permitted. [see
Congressional Record, June 19, 1986, pp. S7901-S7912 and S. Rep. No.
313, 99th Cong., 2d Sess. p. 677 (1986)]

I am deeply concerned that achieving the objectives sought by the
series of many laws over the years that are favorable to broadened
employee ownership through ESOPs will be made more difficult, and
perhaps even unattainable by this regulation. I see it substantially
restricting the ability of the employee trust and employers and
employees to take the necessary steps to implement the plans, and would
block the establishment and success of these plans.

I would urge the Department to consider the many alternatives that have
been proposed in the past, are being proposed in the many other
comments that have been submitted, may have been submitted but not
posted, and will be suggested at the hearings. The Department's
concerns can be addressed with rational clarity in a much less
intrusive and expensive way. We ask the Department to find other
solutions among the many sound suggestions. As a crucial first step,
one of the most positive improvements to providing reliable appraisals
would be to define what constitutes an "independent"
appraiser. Practical guidance would be welcome.

Respectfully,

Robert W. Smiley, Jr.
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702-398-3222

Attachment: Statutory References -- Department Comments of Robert W. Smiley, Jr.pdf

Statutory References -- Department Comments of Robert W. Smiley, Jr.

90 Stat.1520, P.L. 94-455 Section 803

(h) Intent of Congress Concerning Employee Stock Ownership Plans. – The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, and the Tax Reduction act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trust and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. (Pub. L. 94-455, 90 Stat. 1520)

Tax Reform Act of 1976, PL 94-455, October 4, 1976, 90 Stat. 1520, Section 803(h) and for the supporting record for the Tax Reform Act of 1986, PL 99-514, *see Congressional Record*, June 19, 1986, pp. S7901–S7912 *and* S. Rep. No. 313, 99th Cong., 2d Sess. p. 677 (1986).

Tax Reform Act of 1986 (“TRA ’86”) (Senate Report page 1033 & 1034, Legislative History TRA-86, Conference Report II 852; and Technical Corrections Blue Book, page 158) U.S. Senate, Committee on Finance, *Report to Accompany H.R. 3838*, 99th Cong., 2d Sess. May 29, 1986, Rept. 99-313 Page 682.s