
From: Rich Gogg [mailto:RichG@mylsb.com]
Sent: Friday, February 04, 2011 11:39 AM
To: EBSA, E-ORI - EBSA
Subject: Definition of Fiduciary Proposed Rule

To Whom It May Concern:

Lincoln Savings Bank (LSB) sponsors an employee stock ownership plan, or ESOP. Our ESOP makes employees of LSB beneficial owners of our stock.

Federal law requires that every year, as a privately-held company, not traded on a public stock exchange, that LSB pays to have a qualified, independent valuation establish the value of the employees' shares in the ESOP.

I have learned that on October 22, 2010, the Department of Labor issued a proposed regulation to reverse a 34-year old policy, honored by both Republican and Democratic Administrations that would automatically make any valuator of ESOP shares a fiduciary to our ESOP. (Current law clearly makes the trustee a fiduciary and company personnel with powers over the ESOP fiduciaries.)

This proposal will significantly increase the cost of establishing and maintaining an ESOP. If the valuation provider is a fiduciary, he or she will have to purchase fiduciary insurance; many will withdraw providing valuation services to an ESOP company like LSB and be subject to aggressive, needless lawsuits.

In addition, if the DOL proposal is finalized, it would create a contradiction. Internal Revenue Code §401(a)(28)(c) mandates the appraiser of private company ESOP stock be independent. If a valuator becomes a fiduciary to the ESOP, he or she would not be independent.

However, I do not write to protect the valuation profession; I write to protect our ESOP, and our employee owners.

If the DOL proposal becomes effective, it would diminish our profits, which means lower share value for employee owners, and thus less retirement savings. It would hinder any plans for expansion, stop the company from acquiring another company, and would increase the cost of transactions for the company.

The biggest concern is the way the proposal is written, and its impact makes all private ESOP companies, both our trustees and company fiduciaries sitting ducks for lawsuits. Candidly, the proposal will cause a reassessment of whether successful ESOP programs should continue.

The DOL proposal is contrary to the law, which says Federal agencies are not to hinder the creation and operation of ESOPs. (See enclosure)

I respectfully ask that you relay our concerns to the DOL.

I also respectfully ask that you consider expressing opposition and/or doubts about the DOL attack on private company ESOPs.

Sincerely,

Rich J. Gogg
Lincoln Savings Bank

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