

Statement of Robert Reilly, CPA/ABV/CFE

**On behalf of the
American Institute of Certified Public Accountants
Forensic and Valuation Services Executive Committee**

**Before the United States Department of Labor
Employee Benefit Security Administration**

Proposed Rule on Definition of the Term “Fiduciary”**March 2, 2011**

I am Robert Reilly and I am here today representing the American Institute of Certified Public Accountants’ (AICPA) Forensic and Valuation Services Executive Committee (FVSEC). Thank you for the opportunity to present our views on the Department’s proposed rule redefining the circumstances under which a person is considered to be a fiduciary under ERISA by reason of providing advice to an employee benefit plan or a plan participant. The proposal specifically includes the provision of appraisals in connection with plan transactions concerning the value of securities or other property.

The AICPA is the national professional member organization of over 360,000 certified public accountants. The AICPA has a Forensic and Valuation Services Section for CPAs that perform business valuation services, and administers the Accredited in Business Valuation (ABV) credential program. ABV credential holders must hold a valid CPA certificate, pass a rigorous examination, and have a sufficient level of business valuation experience and continuing education. ABV credential holders are committed to continuously improving valuation skills and expertise, resulting in increased professional competency.

Many CPAs perform business valuation services. Many of these CPAs regularly value the stock of employer corporations that sponsor an employee stock ownership plan (i.e., an ESOP) or other employee benefit plans. These employer stock valuations are typically performed for transaction, taxation, or plan administration purposes.

We commend the Department for its concern and diligence related to the quality of employee benefit plan sponsor company valuations. The issue of the quality of sponsor company valuations is real and affects plan participants. Substandard valuations of the sponsor company may cause the associated benefit plan to make an incorrect investment decision if the sponsor company stock was improperly valued at the time of the benefit plan purchase of the employer securities. If the employer stock valuation is too high then plan participants would earn a decreased rate of return on their investment.

We firmly believe, however, that treating the sponsor company valuation analyst as a plan fiduciary is exactly the *wrong* way to address this issue. In fact, defining the valuation analyst as a fiduciary will be *disadvantageous* to benefit plan participants for several reasons.

Let me take a few minutes to summarize our concerns as discussed in our comment letter. Then I will spend the remainder of my time discussing what we believe is an appropriate and cost-effective solution to the problem of substandard valuations.

As stated in our formal comment letter to the Department, we have four significant concerns with the proposed change:

- The proposed change to the definition is incompatible with the Internal Revenue Service's requirements for an independent appraisal of employer securities,
- The proposed change does not address the underlying issue of proper qualifications and standards for performing valuation services,
- The proposed change will increase the cost of valuation services for ESOP plans, and
- The proposed change will restrict the number of valuation specialists willing to do valuations for ESOP plans

The conflict with the IRS's requirements for independence is a real and significant issue. As a fiduciary, a valuation analyst would have to perform the valuation in a manner that is in the best interest of the plan participants, whereas the IRS requirements require the valuation to be performed such that the value is the most correct, without regard for the impact of the value to the end user. Holding valuation preparers to the standard of a fiduciary would open the door to increased litigation, which in turn would significantly drive up the cost of insurance for valuation analysts, if they could get insurance at all. Many of the most reputable and well established firms would likely quit offering valuation services for plans due to the increased risk, driving the very people who are best suited to preparing valuations away from this work. For firms that continue offering these services, the increased cost would be passed on to the participants, through higher plan administration costs or reduced earnings of the company.

So what is the solution? An appraisal should be prepared by a qualified individual in accordance with appropriate valuation standards. We believe a qualified appraiser should have proper credentials that demonstrate the individual has the education and experience to perform plan valuations. We recommend that the Department require all sponsor company valuations to be performed by professionally credentialed valuation analysts who would be required to prepare the valuations in compliance with generally accepted business valuation standards, similar to those standards encompassed in Internal Revenue Code Section 170(f)(11)(E) on qualified appraisers. Those standards include minimum education, experience and licensure or certification requirements. We recommend the Department establish similar minimum qualification requirements for employer stock valuations. If the Department were to require similar requirements for the preparation of valuations for employee benefit plans then the risk of a plan receiving a poor quality appraisal would be substantially mitigated.

The AICPA issued Statement on Standards for Valuation Services No1 (SSVS1) in June of 2007 which established standards for AICPA members who are engaged to estimate the value of a business, business ownership interest, security, or intangible asset. Since SSVS1 was issued, all other domestic valuation organizations have changed their valuation standards so that they are all significantly equivalent. These standards outline minimum requirements for the development of an opinion of value and the reporting of that opinion.

We believe the AICPA professional credentials and professional standards meet the current valuation analyst requirements of the Internal Revenue Code. In contrast, the definition of the sponsor company valuation analyst as a fiduciary is fundamentally in conflict with the independence requirements for valuation analyst in the Internal Revenue Code.

Again, thank you for your time and interest today. I would be happy to answer any questions.

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