

ESOP Appraisers Not Fiduciaries Yet



Dale R. Vlasek | Friday, April 17, 2015

The Department of Labor (DOL) released its latest version of its proposed regulations defining who is a fiduciary under the Employee Retirement Security Act of 1974 (ERISA). One of the items closely watched by members of the Employee Stock Ownership Plan (ESOP) community was the treatment of ESOP appraisers.

In earlier versions of the proposed regulations, which were rescinded, the DOL included appraisers of employer securities for ESOPs as ERISA fiduciaries. Such treatment created concern in the ESOP world that heightened risk of litigation from plan participants, would dramatically increase the cost of valuations, and drive many appraisers out of the ESOP market.

The DOL backed off of that treatment. In the recently released version of the proposed regulations the DOL specifically excludes persons who provide appraisals, fairness opinions, or statements of value to ESOPs regarding employer securities from being ERISA fiduciaries.

In essence, such firms or individuals retain their current status and continue to only have a contractual or professional responsibility to the ESOP or to the real ESOP fiduciaries who engaged them. They are still responsible for providing accurate appraisals, fairness opinions, or statements of value.

But, before one considers this matter settled, one should note the DOL has hinted that it is not through with ESOP appraisers. In the preliminary remarks to the proposed regulations, the DOL indicated that it “remains concerned” about valuation advice related to an ESOP’s purchase of employer securities and the ESOP’s reliance on such advice when purchasing securities.

The DOL went on to specifically state that it feels its concerns are more appropriately addressed in a

esop appraisers not fiduciaries yet

separate regulatory initiative. It seems, therefore, that the DOL will revisit the issue of appraisers as fiduciaries in the future.

So “it ain’t over yet.”



Dale R. Vlasek

Team member bio