



The Department of Labor (DOL) is in the process of re-proposing its fiduciary regulations. As part of that re-proposal, the DOL has apparently abandoned its attempt to classify an appraiser who performs valuations of employer securities for employee stock ownership plans (ESOPs) as a fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA). In previous proposals of the regulations, the DOL had included provisions that would have treated appraisers as ERISA fiduciaries.

That rule has been long opposed by many in the ESOP community. It would have subjected appraisers to specific ERISA duties to participants and undermined the objective unbiased role appraisers are supposed to bring to the valuation assignment.

As a practical matter, the rule would have increased the cost of such assignments as appraisers would most likely have purchased fiduciary insurance and the cost would be included in the cost of the engagement.

The increased fiduciary exposure under DOL's proposed regulations and the increased costs might have caused many valuation firms to abandon the ESOP arena.

The DOL decision to drop its attempt to treat appraisers as fiduciaries should be welcomed by the ESOP community.



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