

Proposed DOL Regulations

If the proposed DOL regulations to mandate that all appraisers of private ESOP company stock be ERISA fiduciaries becomes law it will have a negative effect as follows:

1. Cost of maintaining an ESOP will increase considerably as appraisers conducting required valuations will pass along increased costs as they will buy fiduciary insurance and retain ERISA counsel.
2. There will be confusion as to what the appraiser does under her/his new fiduciary duties and what he/she as an appraiser.
3. The appraiser will have a conflict of interest as current tax law requires the appraiser to be independent whereas ERISA fiduciaries are to act only in the best interest of plan participants; if tax law mandates the appraiser be "independent" of all parties with interest in an ESOP, how can the appraiser act only for plan participants under DOL rule?

Questions for the Secretary of Labor

1. Will the DOL re-propose regulations in early 2012?
2. If the DOL regulations are passed how will private ESOP companies protect themselves from lawsuits by disgruntled employees?

Tax Reform

1. How do we protect ESOP companies from tax reform?