

**Summary of S 1232  
To Modify the Definition of Fiduciary Under  
The Employee Retirement Income Security Act of 1974  
To Exclude Appraisers of Employee Stock Ownership Plans**

**Why S. 1232 Is Important to ESOP Companies**

The Department of Labor has proposed that the appraiser of Private Company ESOP stock be ERISA fiduciaries. Note, DOL's proposal reverses a 34-year policy that was developed under President Ford, a Republican; continued by DOL under Presidents Carter (Democrat), Reagan (Republican), Bush I (Republican), Clinton (Democrat), and Bush II (Republican).

- The proposal if finalized will significantly increase the costs of establishing and maintaining an ESOP, because valuers will have to purchase fiduciary insurance.
  
- The proposal, if finalized, will hinder an ESOP company's desire to acquire another company, or to expand, or to be acquired, as any person rendering a fairness opinion for an ESOP trustee will be a fiduciary, increasing the cost of the transaction.
  
- Many valuation firms may drop their ESOP practice due to exposure to lawsuits, as many trial lawyers who now troll for lawsuits against ESOP public companies, will now have better monetary opportunities with lawsuits against private ESOP companies. (One impact of the proposal, if finalized, is one disgruntled employee can bring a lawsuit against the plan fiduciaries over the valuation.) Less competition among valuation firms doing private ESOP company valuations also mean higher costs, and more hassles finding competent valuation firms.
  
- Finally, the DOL proposal, if finalized, 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, s/he per se would not independent!

Led by Senator Ayotte, Senators Blunt, Brown, Collins, Landrieu, McConnell, and Snowe have sponsored S. 1232 to prohibit the DOL from deeming any appraiser of a private company's ESOP stock an ERISA fiduciary.

We respectfully request your joining your colleagues to stop the negative DOL proposal.