



ESOPS & U.S. Department of Labor

Regulation only by Enforcement Action Threatens Employee Ownership

Industry Requests Guidance

BACKGROUND

- ESOPs are subject to the Employee Retirement Income Security Act of 1974 (ERISA), which is overseen, in part, by the Department of Labor (DOL).
 - ERISA imposes fiduciary duties on ESOP trustees and others and prohibits various non-exempt conflicts of interest.
- A key decision for an ESOP fiduciary is the approval to purchase or sell shares of stock for “adequate consideration” based upon a valuation. The valuation sets the range of fair market value for a subject company at which the ESOP purchases or sells shares of stock.
 - Valuing ESOPs is a complex process, involving a number of different factors, and ESOP fiduciaries generally retain business valuation professionals to advise them on the range of fair market value of privately held stock.
 - ESOP appraisers follow longstanding methods developed in the business valuation profession and follow the standards set forth under Internal Revenue Ruling 59-60 and in the Uniform Standards of Professional Appraisal Practice.
- DOL has not issued any definitive guidance to help ESOP fiduciaries make the determination as to whether the price paid or sold for employer stock is for “adequate consideration.”
 - In 1988, DOL proposed a regulation to provide guidance regarding ESOP valuation by defining adequate consideration under ERISA, but that regulation was never finalized.
- Despite the absence of formal guidance, DOL has targeted ESOPs with an aggressive enforcement campaign relying on fundamentally flawed theories in its analysis of ESOP valuations, which are often at odds with longstanding valuation practices.
- DOL’s focus on enforcement and litigation to the exclusion of regulatory guidance is having a profoundly negative impact on employee ownership.
 - It is discouraging owners and employers from the formation of new ESOPs and driving competent ESOP service providers out of the market.
 - It also results in excessive and unnecessary costs, which decrease the employee-owners’ retirement holdings.
- The Department should end its policy of regulation through litigation and instead work with the ESOP community to develop consistent and fair policies and regulatory guidance.

Ask:

- The ESOP Association requests that you please consider reaching out to the Department of Labor, Employee Benefits Security Administration to express your support for issuing clear guidance on adequate consideration.
- For more information contact:

The ESOP Association (202) 297-2971 or ADVOCACY@esopassociation.org