

ESCA

EMPLOYEE-OWNED S CORPORATIONS OF AMERICA

January 12, 2011

Mr. Fred J. Wong
Employee Benefits Security Administration (EBSA)
Office of Regulations and Interpretations
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comments on Proposed Regulation Defining the Term "Fiduciary"

Dear Mr. Wong:

Employee-Owned S Corporations of America ("ESCA") is pleased to submit comments on the proposed regulation that would revise the existing regulatory definition of the term "fiduciary" under Section 3(21)(A) of Employee Retirement Income Security Act (the "Proposed Regulation").

ESCA is the national voice for employee-owned S corporations, and its exclusive mission is to preserve and protect employee-owned S corporations and the benefits provided to their employee-owners. Accordingly, ESCA strongly supports regulations that encourage and facilitate the proper administration of employee stock ownership plans ("ESOPs"). We, therefore, are concerned about reports of possible conflicts of interest with respect to ESOP advisors and support the promotion of regulations that ensure ESOPs are receiving quality services.

ESCA, however, is concerned that the Proposed Regulation, which expands the definition of investment advice to include a valuation of closely-held employer securities that an ESOP is required to obtain at least annually, would have the perverse effect of limiting the number of qualified appraisers available to give such valuations and would significantly increase the costs of this necessary service.

If the Proposed Regulation is finalized as drafted, ESCA is concerned that many of the established and well-respected appraisal firms will choose to discontinue their ESOP appraisal business rather than face the additional insurance costs and legal exposure that the Proposed Regulation would impose. For many of the best, top-tier firms that conduct appraisals, we understand that ESOP valuations are not a major component of the firm's client portfolio.

Taking these professionals out of the market would increase the use of smaller, less-experienced appraisers, who may not provide superior service and expertise to ESOP companies.

As previously noted, the Proposed Regulation would also expose ESOP appraisers to a major expansion of their legal liability. This exposure can only be mitigated by substantially broader insurance protection, which inevitably means a major increase in insurance premiums. These costs will impose additional transactional costs that will inevitably be passed on to employee-owned S corporations and their employees.

It has been 35 years since the Department of Labor ("DOL") first issued the regulations that govern the types of investment advice relationships that give rise to fiduciary duties on the part of an investment adviser. Given the potential problems raised by the Proposed Regulation, ESCA respectfully requests that the DOL consider other ways to ensure that S corporation ESOPs receive reliable appraisals.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda E. Carlisle".

Linda E. Carlisle
ESCA General Counsel