

# PUBLIC SUBMISSION

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Definition of the Term "Fiduciary"

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Definition of the Term Fiduciary

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## Submitter Information

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## General Comment

Shareholder Strategies, Inc. is the independent stock appraiser for approximately 45 ESOPs in the U.S.

This proposed rule is likely to drive some of the best ESOP valuation firms out of the business (e.g. Duff & Phelps, HLHZ, Prairie Capital, Stout Risius Ross) and will consequently result in worse ESOP valuations. Being a fiduciary of only one retirement plan is a risky. Being a fiduciary of dozens (or hundreds) is an unthinkable risk for a company with substantive assets. Note that fiduciary liability insurance for appraisers is now unavailable for this very reason. They will underwrite the risk for one plan - not for dozens in all industries across the economy.

The proposed rule will create confusion regarding the authority and decision-making process of the fiduciaries. Who is the boss? Who decides what?

The new rule is the wrong way to make ESOP transactions cleaner and more thoughtful. Instead, you should DISALLOW EMPLOYEES TO SERVE AS A TRUSTEE. They are often unqualified to do so and often do not understand their risks and duties. It is not my job as the financial analyst to solve this. I am not a professional fiduciary.

You should also require that the Trustees have their own independent legal counsel. They don't always have it and they should.

I myself have considered whether to stay in the business. And ESOPs are mostly all I do. Why would I consider this? Because I am knowledgeable. The good firms may exit, leaving the worse, less well informed appraisers.

