



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

July 10, 2013

The Honorable Tom Harkin
Chairman, Health Education Labor and
Pensions Committee
United States Senate
Washington, DC 20510

The Honorable Lamar Alexander
Ranking Member, Health Education Labor and
Pensions Committee
United States Senate
Washington, DC 20510

The Honorable John Kline
Chairman, Education and Workforce
Committee
United States House of Representatives
Washington, DC 20515

The Honorable George Miller
Ranking Member, Education and Workforce
Committee
United States House of Representatives
Washington, DC 20515

RE: S. 273 and H.R. 2041

Dear Chairman Harkin, Ranking Member Alexander, Chairman Kline and Ranking Member Miller:

On behalf of the nearly 386,000 members of the American Institute of Certified Public Accountants (AICPA), I am writing to encourage you to cosponsor S. 273/H.R. 2041, a bill that would prohibit the Department of Labor (DOL) from moving forward on its re-proposal to expand the definition of a fiduciary under the Employee Retirement Income Security Act (ERISA) to include independent appraisers of Employee Stock Ownership Plans (ESOPs).

Many CPAs perform business valuation services for ESOPs by providing an independent, third-party objective appraisal of the stock of employer companies that sponsor ESOPs. Many of these appraisals are also used for other purposes including satisfying the Internal Revenue Service (IRS) requirements related to the ESOP's tax-exempt status. The Internal Revenue Code (IRC) requires that ESOP valuations be obtained from an independent appraiser at least annually. If the DOL were to redefine an ERISA fiduciary to include ESOP appraisers an inherent conflict would arise between the DOL and IRS requirements for ESOP appraisers. An ERISA fiduciary must act solely in the interest of plan participants and their beneficiaries and therefore cannot provide an independent, third-party objective perspective.

The DOL has not demonstrated a need for such a broad and far-reaching change from more than 35 years of established policy. The DOL proposal is a draconian response to a very small number of deficient ESOP appraisals. In testimony before Congress and responses to Congressional inquiries and private requests from the AICPA, the DOL has provided only a few cases of deficient appraisals over the past 20 years out of tens of thousands of ESOP appraisals performed annually. Further, our analysis of the DOL cases involving CPAs found that in the vast majority of these cases the courts found the appraisers' work to be satisfactory but that the plan trustee improperly used the work of the appraiser.

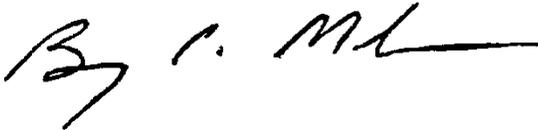
The DOL has announced plans to re-issue its previous 2010 proposal later this year. The AICPA is concerned that the new proposal will essentially mirror the previous proposal and, if finalized, will unnecessarily subject all ESOP appraisers to an increased legal liability and require them to purchase expensive fiduciary liability insurance. This would, in turn, increase the costs to all ESOP plans and reduce the amount available for participants and beneficiaries.

The DOL's concerns with the quality of ESOP appraisals could be addressed with a far more targeted solution. Unlike other federal agencies including the IRS and Small Business Administration (SBA), the DOL, does not have any minimum requirements or standards for appraisers. The AICPA and other stakeholders have suggested in comment letters and testimony that the DOL implement rules to ensure that only properly qualified individuals perform ESOP valuations and those individuals follow recognized valuation standards. Requiring ESOP appraisers to have specialized training, credentials, and to adhere to professional standards would protect participants and beneficiaries in a cost effective manner. This approach would be consistent with the IRS and SBA rules for appraisals and thus avoid the potential for conflicting requirements across federal agencies.

The AICPA fully supports the goal of protecting the interests of plan participants and beneficiaries of employee benefit plans. Ensuring the quality of sponsor company valuations is critical to making prudent decisions regarding plan investments.

Thank you for considering cosponsorship of S.273/H.R. 2041. Please feel free to contact Diana Huntress Deem, Director, Congressional and Political Affairs Team at 202.434.9276 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry C. Melancon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barry C. Melancon, CPA, CGMA
President and CEO

cc: Members of the Senate Health Education Labor and Pensions Committee
Members of the House Education and Workforce Committee