

## The Season for ESOP Valuation Updates

*“In the spring a young man’s fancy lightly turns to thoughts of ... [ESOP updates]?”*

With apologies to Tennyson, this is the time of year when trustees of Employee Stock Ownership Plans, or “ESOPs,” begin to receive and review annual updates to ESOP valuation reports. These updates are a regular part of the ongoing administration of an ESOP.

ERISA requires that the job of determining the fair market value of ESOP stock be performed by a fiduciary, typically the ESOP trustee. Although the trustee (or other designated fiduciary) is required to engage an independent appraiser to assist with that determination, the final determination of fair market value is the responsibility of the trustee. Trustees can fulfill their fiduciary duties by following a prudent process that includes the following steps:

- Choosing a qualified appraiser with the appropriate certifications and specific ESOP experience.
- Being sure the appraiser is truly independent (including from the company) and properly retained (by the responsible fiduciary).
- Being actively involved in reviewing the update – the process should be an interactive one that involves testing the reasonableness of the assumptions and valuation conclusions, checking the math and asking questions. Trustees will want to pay particular attention to any changes in the valuation from one year to the next and be sure those are adequately explained.
- Documenting the process the trustee has followed in a contemporaneous memo that includes the steps taken and questions asked, and filing the memo with the final valuation report.

Courts have acknowledged that ESOP trustees do not have to become experts in the valuation of closely-held businesses, but they are expected to be actively engaged in the valuation process.

For more information about ESOP valuation updates, fiduciary duties under ERISA, or ESOPs generally, please contact [Caryn McNeill](#) or another member of Smith Anderson’s Employee Benefits and Executive Compensation group.

---

### Author

**Caryn C. McNeill**  
919.821.6746  
[cmcneill@smithlaw.com](mailto:cmcneill@smithlaw.com)

---

### Practice Area

[Employee Benefits and Executive Compensation](#)

---

---

SMITH ANDERSON  
150 Fayetteville Street, Suite 2300  
Raleigh, NC 27601  
919.821.1220  
[www.smithlaw.com](http://www.smithlaw.com)

---