

# Publications

January 17, 2025 • Updates

## Department of Labor Proposes Rule on Valuing Stock for ESOP Stock Purchase and Sale Transactions

On January 16, 2025, the Employee Benefits Security Administration (EBSA) at the Department of Labor (DOL) released drafts of long-awaited proposed regulations seeking to clarify the definition of “adequate consideration” as set forth in Section 3(18)(B) of ERISA and a proposed class exemption from certain prohibited transaction restrictions in connection with an employee stock ownership plan’s (ESOP) initial acquisition of privately held employer stock from a selling shareholder.

The ESOP community has sought clear guidance on what the term “adequate consideration” means ever since ERISA’s inception 50 years ago. Although EBSA first proposed “adequate consideration” regulations in 1988, the DOL never finalized these rules. Without such guidance, the ESOP community has expressed concerns that plan sponsors, selling shareholders and ERISA fiduciaries could be left exposed to allegations that the ESOP overpaid for shares at the time of the initial transaction through investigations and civil lawsuits brought later with the benefit of hindsight.

The proposed regulations are in response to the latest Congressional mandate in Section 346(c)(4) of the SECURE 2.0 Act of 2022 for the Secretary of Labor, in consultation with the Department of Treasury, to “issue formal guidance, for . . . acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan.” The proposed regulations are scheduled to be published on January 22, 2025, and if so published would trigger a comment period ending April 7, 2025. However, with a new administration starting January 20<sup>th</sup>, it is possible that the publication of the proposed regulations may be delayed.

Polsinelli is currently reviewing both the 128-page set of proposed regulations and the 70-page proposed safe harbor class exemption and will be providing additional alerts in the coming weeks.

If you have any questions, please do not hesitate to contact any member of the Polsinelli ESOP team.

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