
Other Helpful Free Information Available

- ‘ International Glossary of Valuation Terms
- ‘ Fundamental Business Valuation Concepts
- ‘ Comparison of Business Valuation Credentials
- ‘ Business Valuation Reporting Standards, per NACVA
- ‘ Business Valuation Reporting Standards, per USPAP
- ‘ IRS Revenue Ruling 59-60
- ‘ Department of Labor Regulation - 29 CFR Part 2510.3-18
- ‘ IRS Business Valuation Guidelines
- ‘ Sample Valuation Engagement Letter
- ‘ Valuation Report Review Checklist
- ‘ Table of Matching The Valuation Purpose With The Standard of Value
- ‘ Business Valuation Information and Initial Document Request Forms



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PROVIDENT VALUATION PROFESSIONALS, INC.

CREDENTIALLED BUSINESS VALUATION, FORENSIC ACCOUNTING AND LITIGATION SUPPORT SERVICES

How Thorough ESOP Valuations Protect Trustees Against Breach of Fiduciary Duty

Executive Summary

According to a senior Department of Labor source, the DOL is now more carefully reviewing ESOP business valuations and assessing penalties to trustees for substandard valuations (see *Eckelkamp v. Beste*). None of the ESOP valuations we were asked to review by trustees complied with both IRS and DOL requirements.

Most of the bargain-priced reports we reviewed contained approximately 50 pages. Many of these had disregarded IRS Revenue Ruling 59-60. Virtually all had ignored DOL Regulation 29 CFR Part 2510.3-18. Our full ESOP valuations range between 80 to 100 pages, or more if needed, and comply fully with agency specifications to protect trustees.

Our valuation reports protect trustees in 7 ways:

- 1. Credibility and Sustainability.** Our reports are designed to be accepted without question by both the IRS and the DOL. They include IRS and DOL cross-reference tables showing where to find the information to confirm regulatory compliance.

This strategy saves time and improves confidence that the report is prepared thoroughly. It also provides a basis for calibrating the credibility of our value conclusion. This is important because the ESOP trustee is responsible for both obtaining an appropriate appraisal amount and showing it was derived according to the required procedures.

- 2. Understandability and Explanations.** Reports are frequently read by non-valuation professionals, trustees, members of ESOP Advisory Committees, attorneys and potential litigants, who frequently do not have a background in valuation methodologies.

We include explanations of valuation concepts throughout the report. Whenever possible, we avoid the use of technical terms, unless we first introduce them with clear explanations in simple language. This places the reader at ease with what they are about to encounter. The reader better understands our thought process and the resultant conclusion. A report which is understood by everyone causes fewer problems for the ESOP trustee.

- 3. Litigation Deterrence.** A significant amount of ESOP litigation is originated by plan participants who have disagreements about the valuation of their retirement accounts

because they have *misunderstood* the valuation report. Most of this litigation could have been prevented with carefully prepared and clearly written valuations.

Our reports are written to include the non-appraisal reader in mind, using charts and graphs where concepts can be illustrated. We also include a glossary of valuation terms and the main IRS and DOL regulations for handy reference.

- 4. Comprehensive, Convincing and Secure.** Some practitioners in the valuation community flaunt brevity, density and economy as their only benefits under the misguided notion that these factors are in the trustee's best interest. Their appeal is to emphasize low price, not low risk. The main decision involves a risk assessment between a low-priced, substandard report with a higher risk of penalties for fiduciary breach under the dual agency scrutiny of both the IRS and the DOL.

Ultimately, the IRS and the DOL hold the *trustee* responsible for the value conclusion, not the valuator. The trustee pays DOL and IRS penalties for breach of fiduciary duty and cannot pass on the responsibility to bargain-priced valuers. We see our primary responsibility as protecting the trustee by providing careful, thorough work to predict questions and prevent problems.

- 5. Relevance of Research Data.** One of the frequent weakness of valuation reports is the absence of relating the economic or industry research to the valuation result. The relevance of research forms the line of reasoning to reach an opinion of value. If the conclusion is unsupported, it may subject the trustee to breach of fiduciary duty.

Our valuations explain the relevance of the research to the valuation conclusion, so the user is immediately brought to closure and connectivity. This fulfills the regulatory requirements for adhering to procedure.

- 6. Organized in Logical Sections.** Often, the users of reports must find specific information quickly in a report of many pages. If the report is not logically organized into topical sections, navigation through the report is difficult and frustrating for the reader.

We organize our reports into 15 sections, representing each step in sequence of the valuation procedure. This structure makes it fast and easy for readers to find the information they need and makes it clear to readers that the report is intended to impart important information in a transparent environment, enhancing confidence that nothing is left to chance or omitted. This reflects well on the trustee who relies on the valuation.

- 7. Reader-Friendly Page Layout.** Our reports are designed to be understood by a non-technical reader. Much of the ease and comfort in reading technical reports is determined by the layout and inviting appearance of the printed page.

- Readable Font Style and Size
- Wider Margins and Spacing for Shorter Pages
- Shorter Paragraphs, Sentences and Words
- Pleasing Graphic Design

Our Clients Speak About Their Results

“The purpose of this letter is to commend and praise you. I have worked with many professionals during my career and you stand out as a peerless example.”

SKK, CPA

“We would without a doubt recommend their services to anyone considering undertaking the setting up of an ESOP program.”

PD, ESOP Plan Trustee

“Not that you would do this, but your valuations could be 10 times worse, and still be 10 times better than anything else out there.”

RB, CPA, MIM, MBA

“The valuation that was prepared was very detailed, very logical, had great depth and was delivered in a professional like manner earlier than the agreed upon date. I would recommend Provident to anyone needing a business valuation.”

REC, CPA

