

August 16, 2012

The Honorable Kirsten Gillibrand
United States Senate
Washington, DC 20510

Dear Senator Gillibrand:

I am writing on behalf of the 28,000 members of the New York State Society of Certified Public Accountants to encourage you to cosponsor S.1232, a bill that would modify the definition of fiduciary under the Employee Retirement Income Security Act (ERISA) to exclude appraisers of Employee Stock Ownership Plans (ESOPs).

In 2010, the Department of Labor (DOL) proposed a new definition of fiduciary, contradicting over 35 years of practice under ERISA, which would require those who perform valuation services to be considered ESOP fiduciaries. Because many CPAs regularly perform appraisal services of ESOP stocks, such CPAs would fall under this new definition. CPAs would be required to abandon the current purpose of their appraisal – attempting to find the most likely fair market value – and adopt a new purpose – determining the value that most favors beneficiaries of the plan. This change in approach would directly contradict the AICPA's Code of Professional Conduct, which requires CPAs to "be impartial, intellectually honest, disinterested, and free from conflicts of interest."

We believe that beneficiaries and sponsors of ESOPs would be better served if the DOL implemented rules to ensure that only qualified individuals prepare valuations for ESOPs and individuals follow recognized valuation standards. Specifically, we recommend rules to require plans to hire qualified valuation analysts with the requisite training and credentials, and also to require use of relevant professional standards. This would provide a far more cost effective approach to protecting ESOP participants and beneficiaries. The accounting profession has communicated its suggested proposals through comment letters to the DOL and through AICPA testimony at a DOL hearing on this issue.

I hope that you will give this issue serious consideration and cosponsor S.1232. If you have any questions, please contact NYSSCPA Counsel, Bradley Pryba at 212-719-8364.

Sincerely,



Gail M. Kinsella, CPA
President