Financial Accounting Standards Board  
c/o Technical Director  
File Reference No. 2013-260  
401 Merritt 7  
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update – *Deferral of the Effective Date of Certain Disclosures for Nonpublic Employee Benefit Plans in Update No. 2011-04*


The Employee Benefits Security Administration (EBSA) is the agency within the Department responsible for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I of ERISA establishes standards governing the operation of employee pension and welfare benefit plans. An integral component of ERISA’s annual reporting and disclosure provisions is the requirement that large employee benefit plans – plans with 100 or more participants – generally must obtain an annual financial audit by an independent qualified public accountant (IQPA) and file a copy of the auditor’s report with the plan’s Annual Return/Report of Employee Benefit Plan (Form 5500). The audit must be conducted in accordance with generally accepted auditing standards (GAAS), and the accountant must render an opinion on whether the plan’s financial statements are presented fairly and in accordance with generally accepted accounting principles (GAAP). The annual reporting provisions in ERISA expressly state that the contents of the Form 5500 report “shall be public information,” and require the Department to make the information available to the public. Thus, the financial statements of employee benefit plans are posted on the Department’s website and are publicly available.

One of the most common fiduciary violations with respect to Employee Stock Ownership Plans (ESOPs) is the incorrect valuation of private company employer securities. This can occur when purchasing, selling, distributing, or otherwise valuing the employer’s securities. EBSA has uncovered abuses reflecting flawed valuation methodologies, internally inconsistent valuation reports, the use of unreliable and outdated financial data, and even apparent manipulation of data and valuation methodologies. These problems are particularly serious in ESOPs because they are designed to invest primarily in employer stock.

FASB issued Accounting Standards Update 2011-04 in May 2011 (ASU 2011-04) to achieve common fair value measurement and disclosure requirements in U.S. GAAP and International Financial Reporting Standards (IFRS). The fair value hierarchy in ASU 2011-04 divides the fair value measurements and disclosure requirements into three broad levels based on valuation techniques used to measure the fair value of the asset or liability: Levels 1, 2 and 3. Level 3 assets include non-publicly traded private company employer stock held by employee benefit plans.
plans that are not subject to the Securities and Exchange Commission's requirement to file Form 11-K. The higher the level, the more complicated the valuation process. The ASU is based on the premise that the more complicated the valuation process, the greater the need for disclosure about the process. In an attempt to provide greater disclosure and transparency in the process, ASU 2011-04 requires entities to provide descriptions of the valuation techniques and the inputs used in fair value measurements.

In the Department's view, the required valuation information regarding private company stock held by employee benefit plans is highly relevant to plan participants and regulators who are the primary users of the plan financial statements. The deferral of the disclosure requirements would deprive the plan's participants and beneficiaries of important information directly linked to the value of the stock of their private company sponsors. The financial disclosures currently required in ASU 2011-04 are also useful to EBSA in its role of overseeing and protecting participants and beneficiaries from fiduciary abuses, especially as they relate to ESOPs where the value of the plan's investment is often based solely on an appraiser's subjective judgment about the value of the private company employer.

The FASB's proposal to indefinitely defer these highly relevant disclosure requirements appears to be based on generalized and undocumented concerns raised by ESOP advocates about public dissemination of Form 5500 financial statements causing unintended consequences by providing insights into the private company's financial performance and financial condition. We question the merits of these concerns. Certainly, under the securities laws, publicly traded companies routinely reveal far more specific information to the investing public about their financial performance and current condition on an ongoing basis. Rather than undermine the interests of the companies' shareholders, these highly public and very detailed disclosures safeguard those interests by ensuring that public stock is accurately priced and fairly traded. The valuation information for private company stock at issue here is similarly critical to safeguarding the interests of the participants whose retirement security turns on the appraisals' accuracy. Without proper disclosure, participants cannot be confident that their retirement investments are properly valued and their benefits correctly determined. While a prospective outside buyer will always be able to insist on full disclosure of the company's financial condition and prospects as a condition of purchase, plan participants are seldom in the same position. In the absence of the required disclosures, the proposal's primary effect will be to deprive plan participants -- the company's owners -- of the ability to evaluate the fairness of critically important valuations that establish the value of their benefits. The disclosure requirements at issue were developed after years of careful consideration and are of unquestioned importance to the primary users of the employee benefit plan financial statements. At this point, there is no factual basis or evidence-based demonstration of harm that would serve as a legitimate justification for deferring the requirements.

We understand the proposed deferral may have been intended to allow the Department to devise a scheme to prevent public dissemination of the ASU 2011-04 valuation information. As noted above, ERISA commands that the Form 5500 annual report "shall be public information." The audit report of the plan's IQPA is part of the Form 5500 annual report, and we continue to believe that ERISA does not allow the Department to withhold the audit report or the ASU 2011-04 disclosures in the report from public availability.
Thank you for the opportunity to provide comments on your Proposed Accounting Standards Update. I would be happy to have my staff answer any questions you may have about this comment and meet with you if that would assist your efforts.

Sincerely,

Phyllis C. Borzi
Assistant Secretary