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ERISA Advisory Group

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THE INDEPENDENT FIDUCIARY

TRUSTEE INSIGHT & ESOP EDUCATION

The Promise Behind The Balance

What Plan Sponsors & Fiduciaries Need to Watch This Quarter

The court decisions, regulatory shifts, and compliance deadlines shaping ESOP fiduciary responsibility in 2026 - and what to do about them

FROM THE TRUSTEE

What This Quarter Means for Sponsors and Fiduciaries

Valuations are done and statements have gone out. The harder questions now belong to the sponsors and fiduciaries behind those numbers: is our process defensible, are our filings clean, and can we fund what we've promised?

This issue is written for you: it covers what affects your fiduciary exposure and compliance calendar this year-recent court decisions, the DOL's shifting posture, the repurchase obligation as a governance duty, and the Form 5500 deadline now just weeks away.

We're also watching four significant developments from the first half of 2026, including two court decisions that sharpened what courts actually expect from fiduciaries, and a meaningful shift in how the DOL approaches ESOP oversight.

Our role as independent fiduciary is to serve the plan and its participants, not the company, not the sellers. That independence is the foundation of every decision we make.

William J. Kropkof, CEBS, *Independent Fiduciary, ERISA Advisory Group*

> *"For most ESOP participants, the account balance on their annual statement represents years of work, and an expectation of retirement income. The process that converts that balance into a check is not automatic. It is governed by federal law, your plan document, and the fiduciary oversight of your trustee."*

WHAT WE'RE WATCHING

Federal Signals & *Recent Developments*

Four developments from the first half of 2026 point toward a more predictable regulatory environment, while the courts continue to raise the bar on what genuine fiduciary oversight looks like.

JAN 2026
EBSA / DOL

EBSA Removes ESOPs from National Enforcement Priority List
The Employee Benefits Security Administration removed ESOPs from its national enforcement priority list, ending years of heightened initiative-driven scrutiny. Fiduciary duties and fair market value requirements remain fully intact, but companies can expect fewer investigation triggers based solely on ESOP status.

MAR 3, 2026
FEDERAL COURT

North Carolina: Active Oversight Required, Process Alone Not Enough
A North Carolina district court allowed fiduciary breach claims to proceed, rejecting the argument that completing standard process steps is sufficient. Trustees must actively investigate red flags and advocate for participants, passive reliance on advisors or documentation formalities does not meet the standard.

Fiduciary action: *Document your active investigation of red flags-not just the completion of process steps. Passive reliance on advisors or paperwork will not satisfy thestandard.*

MAR 30, 2026
FEDERAL COURT

Arkansas: Rigorous, Documented Process Defeats Novel Breach Theory
An Arkansas federal court granted summary judgment to an ESOP trustee where the trustee had engaged independent advisors, reviewed their work critically, negotiated on the plan's behalf, and documented every step. The court dismissed the breach theory as "borderline frivolous", a well-executed process is the strongest defense.

Fiduciary action: *A rigorously documented, independent process is your strongest defense. Engage advisors, challenge their work, negotiate on the plan's behalf, and record every step.*

MAR 31, 2026
DOL

DOL Proposes Safe Harbor for Fiduciary Investment Selection
The DOL proposed a process-based safe harbor: fiduciaries who follow a structured, documented investment evaluation process will be presumed to have met the duty of prudence. The comment period closed June 1, 2026. Fiduciaries should begin aligning documentation practices with the proposed standards now.

Fiduciary action: *Begin aligning your investment-selection documentation with the proposed safe harbor now, ahead of any final rule.*

WHY IT MATTERS TO SPONSORS

The Repurchase Obligation: *How the Company Funds Your Payout*

When you receive your ESOP distribution, the company doesn't simply write a check from existing cash. A formal legal obligation, called the repurchase obligation, governs how and when you get paid. How well the company plans for it directly affects your ability to be paid on time and at fair value.

What the Repurchase Obligation Is

Under IRC Section 409(h), participants in a closely held ESOP have the right to require the employer to repurchase their distributed shares at fair market value. This is a statutory obligation, not discretionary, triggered whenever shares are distributed or a diversification election is made.

The trustee has a fiduciary duty to ensure repurchases comply with plan terms and ERISA, and that repurchase activity doesn't threaten company stability, since a healthy company is also in participants' long-term interest.

Participant Retires or Separates → **Vested Shares Distributed** → **Company Repurchases Shares at FMV** → **Participant Receives Cash**

How Companies Fund It

No single method is required. Common approaches:

•Annual employer contributions to the ESOP trust, which the trust then uses to repurchase shares from departing participants.

•Direct share redemptions by the company, bypassing the ESOP trust entirely.
•Recycling shares back into the ESOP suspense account for reallocation to active participants, which reduces the cash needed for repurchase.

•In some cases, external financing, though this introduces complexity and the trustee must independently evaluate whether the terms are prudent for the plan.

For mature ESOPs with large, aging participant bases, repurchase obligations can rank among the company's largest annual cash demands. Advance planning is a governance responsibility, not an afterthought.

Why It Is in the Courts Right Now

A 2026 California case allowed a prudence claim to proceed where participants alleged the ESOP's cash buffer, held to cover future repurchase obligations, had grown far beyond what was needed, leaving assets underperforming. The court held that the ERISA diversification exemption doesn't shield non-stock asset management from fiduciary scrutiny. Adequate liquidity is a fiduciary duty. So is making sure that cash doesn't sit idle at participants' expense.

> *"For sponsors, the repurchase obligation is a forecastable liability, not a surprise. Building it into your capital planning-and documenting that you have-is core to your fiduciary and governance responsibility."*

Adequate Consideration Rule: Where Things Stand

The DOL's proposed rule on adequate consideration, which would establish formal written standards for determining fair market value in ESOP stock transactions, remains one of the most consequential open regulatory questions in the ESOP space. The original proposal was withdrawn under a regulatory freeze earlier in the administration. FAB 2026-01 directs that pending ESOP valuation matters be reviewed against the principle of fairness rather than paused outright, keeping enforcement tied to the unresolved rulemaking. For plan participants, the practical effect is that the rules governing how your share value is determined are still being written. In the meantime, the independent trustee's review of the annual appraisal remains the primary safeguard ensuring that the value assigned to your account reflects genuine fair market value, not a number chosen for convenience.

PLAN SPONSOR BRIEFING

Form 5500 Season: Key Dates & Common Traps

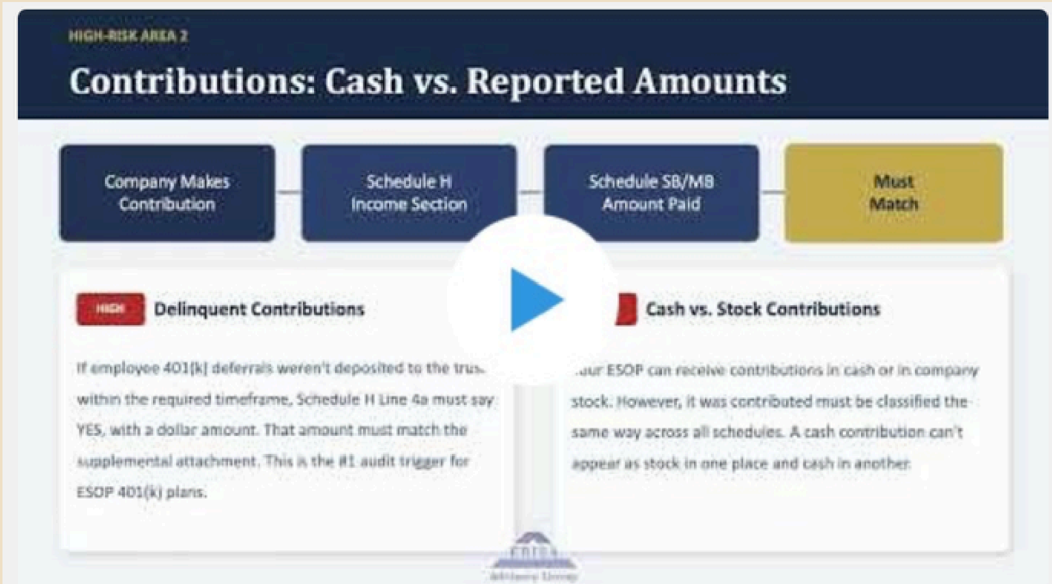
For calendar-year plans, the 2025 Form 5500 is due **July 31, 2026 -** the last day of the seventh month after the plan year ends. Need more time? Filing IRS Form 5558 on or before July 31 secures an automatic 2½-month extension to **October 15, 2026**, with no approval required; it can be filed electronically through EFAST2 or on paper. If your plan year matches your tax year and your corporate return is already on extension, that extension may cover the Form 5500 automatically.

Late or incomplete filings can draw penalties from two agencies at once: the DOL can assess up to **$2,739 per day with no cap** (an inflation-adjusted amount), and the IRS up to $250 perday, maxing at $150,000 per plan year. A sponsor who catches a late filing before the DOL makes contact can use the Delinquent Filer Voluntary Compliance Program (DFVCP) to file at a sharply reduced penalty.

Traps we see most often on ESOP filings:

•Inconsistent figures across the form's repetitive sections-the DOL cross-checks them on purpose.
•Incorrect participant counts, EIN, or plan number.
•A missing independent auditor's report, generally required once a plan reaches 100+ participants.
•Overlooking the Summary Annual Report (SAR) to participants, due within two months after the Form 5500 deadline.

For a plain-English walkthrough of the mistakes that most often trigger a DOL inquiry, watch our **Form 5500 Traps** video:



Want a second set of eyes before you file? EAG reviews Form 5500s using the same checklist the DOL uses-reach us at: **team@erisaadvisorygroup.com**

FOR YOUR PARTICIPANTS

Hand Your People a Plain-Enlgish ESOP Guide

We've prepared a one-page participant guide, **"Your ESOP, In Plain Terms,"** written specifically for plan participants-what their account means, how distributions work, and their diversification and NUA rights, in language anyone can follow. Include it with statements or enrollment materials, or hand it out at meetings. Available in English and Spanish; reach us at **team@erisaadvisorygroup.com** to request copies.

Have Questions About Your ESOP?

Questions about your repurchase strategy, your Form 5500, or your fiduciary process? Contact ERISA Advisory Group. William Kropkof spent seven years as a DOL investigator and now reviews plans using the same checklist the DOL uses-before the DOL does.

Reach us at **erisaadvisorygroup.com** or contact us directly at **team@erisaadvisorygroup.com**, (925) 250-4030. No question is too basic, and no situation is too complex.

Was This Newsletter Useful?

We read every response. If you found this issue helpful, or wish we had covered something differently, please take two minutes to share your thoughts at: Newsletter Survey Vol. 1, Issue 2 –Fill out form. Your feedback directly shapes what we cover next quarter.

Meet your Author

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Independent Fiduciary

William Kropkof is the founder of ERISA Advisory Group, established in 1995 to help businesses build ERISA-compliant Employee Benefit and Retirement Plans. Before entering the private sector, he spent seven years as an Investigator with the US Department of Labor, auditing employers and enforcing ERISA compliance. That hands-on regulatory experience now informs his work as an Independent Fiduciary, serving clients across industries including Trade Associations, PEOs, and Taft-Hartley Unions.

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