

Certificate Program for Non-Professional ESOP Fiduciaries
October 25th – 27th, 2021, Kent State University

Agenda

(All Agenda times below EDT)

MONDAY, OCTOBER 25th: LAYING THE GROUNDWORK

- 10:30-11:00 **Part 1. Welcome and Introductions**
- The fiduciary roundtable
 - Collecting the grails (What did you come for?)
- 11:00-12:15 **Part 2. Standards of Fiduciary Responsibility**
- Defining “fiduciary”
 - Who may be an ESOP fiduciary
 - Settlor vs. fiduciary functions
 - General standards of fiduciary responsibility
 - The nature of fiduciary liability
- 12:15-1:15 Lunch Break**
- 1:15-2:15 **Part 3. Relevant Legal Cases and Findings**
- Study of cases that define fiduciary responsibilities
 - Recent cases of note
- 2:15-2:25 Break**
- 2:25-3:45 **Part 4. Who Runs an ESOP Company? Trustee’s Role**
- Classic corporate governance and role of the ESOP trustee
 - ESOP company corporate governance
 - Corporate governance in action
 - Executive compensation fiduciary concerns
 - Dealing with offers to buy the company
 - Acquisitions of other companies
- 3:35-4:30 Questions so Far?
Gathering Issues: Questions for Future Exploration
- 4:30 **Adjourn**

TUESDAY OCTOBER 26th: SKILLS TRAINING

10:30-10:45 **Review of Day 1 – Reset the Sails**

10:45-12:45 **Part 5. The ESOP as the “Shareholder of Record”**

- **ESOP as Shareholder of Record** (5 minutes)
 - Intro - concept and issues
 - IRC section 401(a)(28)
- **Annual Valuation** (60 min)
 - Selection of the appraiser
 - The appraisal process
 - Review of the appraisal; setting the value
- **ESOP Purchases of Stock** (20 min)
 - Evaluating the ESOP’s decision to purchase stock
 - Negotiating the terms of the sale
 - Responsibilities for approving transaction
- **ESOP Sale of Stock** (10 minutes)
 - Fairness issues
 - Responsibility for approving transaction
- **Voting the Shares Owned by the ESOP** (25 min)
 - The nature of “pass-through” voting
 - Voting unallocated and undirected shares
 - Overriding duty to vote consistently with ERISA fiduciary standards

12:45-1:30 **Lunch**

1:30-2:30 **Part 6. Protecting Fiduciaries against Personal Liability**

- Measures that are available to limit the liability exposure of those serving as fiduciaries
- Indemnification by the sponsor
 - Fiduciary liability insurance coverage

2:30-3:10 **Part 7. Common Employee Ownership Governance Practices**

- A review of the results of the National Center for Employee Ownership governance survey of employee ownership companies:
- Who serves as fiduciary?
 - Who selects the fiduciaries?
 - Make-up of the board of directors
 - Employees’ role in corporate governance
 - Fiduciary as individual shareholder
 - Executive compensation survey review

3:10-3:20 **Break**

3:20-4:15 **Special Guest: Theresa Taulbee, U.S. Department of Labor**

4:15-4:30 Questions?

WEDNESDAY OCTOBER 27th: PRACTICAL ISSUES

10:30-11:30 **Part 8. Managing the Trust and Reporting to Participants**

- Record-keeping and administration
- Investment decisions
- Distribution calculations and implementation
- Operational issues (voting, responding to offers, collaborating with the board, etc.)
- Communicating with participants

11:30-12:30 **Part 9. Practical Matters: Meetings, Recordkeeping**

- Scheduling and conducting meetings
- Creating appropriate records
- Annual obligations of the fiduciary – creating a fiduciary action calendar
- Developing operational procedures
- Collaborating with the board of directors and management
- Proper use of advisors
- Resolving conflicts

12:30-1:30 Lunch

1:30-2:30 **Part 10. Group Issue Resolutions**

Specific recurring operational matters:

- Selection/election of directors
- Voting ESOP shares on other matters
- Participant pass-through
- Board of directors oversight
- Responding to offers
- Interacting with participants, management, board, auditors, regulators, others

2:30-3:00 **Part 11. Breakout Rooms**

Small group discussion with individual instructors

3:00-3:30 **Part 12. Final Review/Preparation for Mastery Exam**

CERTIFICATION OF MASTERY – Online/Open Book

Exam made available online starting at 4 p.m., October 27th, 2021, and open to enrolled students until November 17th at 11:59 pm. Certificates of mastery will be mailed to successful fiduciaries upon completion of evaluation.