

Interim Valuations for ESOPs and Balance Forward Plans

ESOPs and balance forward plans with plan years ending on or after September 30, 2019 are being confronted with whether interim valuations are appropriate in response to the COVID-19 crisis and the resulting economic fallout. Typically, these plans value their assets at the end of each plan year. Distributions, or in the case of an ESOP, implementing a diversification election, are based on the prior year end valuation. The year end valuations may no longer reflect the current value of the plan assets.

The following steps are suggested in reviewing and evaluating a mid-plan year interim valuation.

1. Review the relevant plan language, policies and procedures. Confirm that the plan language provides for an interim valuation. If so, determine the relevant periods for action. Follow the procedures outlined in the plan or other relevant documents for implementing an interim valuation. This typically requires some written action by the governing body of the plan sponsor or the plan administrator. If the plan does not provide for an interim valuation, consultation with benefits counsel is necessary. Applying the anti-cutback rules and applicable court cases may prohibit the application of subsequently adopted amendments to terminated participants or beneficiaries who applied for distributions or, in the case of an ESOP, participants who elected diversification.
2. Consider the best interest of all of the participants and beneficiaries. The decision to implement an interim valuation is a fiduciary decision. The fiduciary should be acting in the best interest of all of the participants and beneficiaries, including participants that may no longer be employed by the plan sponsor. All of the relevant facts and circumstances should be considered, including any standards described in the plan document or related administrative documents, past practices, and the actual revaluation date selected (depending on the time frames, it may be prudent to delay selecting a date until market conditions have stabilized). Additionally, the decision to implement an interim valuation should be documented. This should be the case even if the decision is not to implement an interim valuation.
3. Develop a communication strategy for participants and beneficiaries. Impacted participants and beneficiaries will have concerns regarding their distributions. If an interim valuation is implemented, it could be many months before the final values are known. If participants and beneficiaries are left in the dark, their anxiety regarding their distribution will only grow over time. An effective communication program may alleviate their concerns, especially when facilities are shut down and key individuals necessary to make decisions and to communicate with the participants and beneficiaries are working remotely. Consideration should also be given to the varying degrees of access to plan information the participants and beneficiaries may have, particularly if they are limited in access to email or other electronic communications.
4. Communications between the relevant parties is critical. There should be discussions between the relevant parties (e.g., plan administrator, trustees, valuation counsel) regarding implementing an interim valuation. These discussions are likely to extend well beyond the initial determination that an interim valuation is necessary, selecting the date of the interim valuation and establishing the cost and scope of a subsequent valuation.

If you have questions please contact Bodman attorney Dave Walters at (248) 743-6052 or dwalters@bodmanlaw.com