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January 3, 2010

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Department of Labor Employee Benefits Security Administration
29 CFR Part 2510 RIN 1210-AB32

Dear Secretary Solis:

Americans across the country are feeling increasingly uncertain about their retirement security. With fewer and fewer businesses providing pensions to their employees, Americans are forced to put more of their income away for the future. One way the Congress and the Administration can work to ensure that retirement security does not continue to decline in this country is by encouraging businesses to utilize important programs like Employee Stock Ownership Plans (ESOPs).

Businesses that utilize ESOPs engage in profit sharing by annually contributing to a trust and then granting its employees shares of the trust. These shares accumulate throughout the course of the employees' careers and provide a significant benefit to the employee when cashed in upon retirement or when they leave their companies. Businesses that exercise an ESOP play a critical role in providing important retirement security for millions of Americans.

Historically, companies that engage in ESOPs provide more retirement benefits for their employees and have higher rates of retention than companies without ESOPs. In addition, Federal law mandates that ESOP sponsors have yearly independent stock valuations that reflect accuracy and integrity and these businesses should be commended for their dedication to their employees.

For these reasons, I do not believe the Department of Labor (DOL) should require that all ESOP's need to be assessed by an advisor with fiduciary responsibilities as now being considered in the reference above. Fiduciaries can be held liable for their yearly valuation of ESOP stock and as a result, services by fiduciaries would add considerable additional costs to these businesses. Subjecting businesses with ESOPs to an additional financial burden will likely result in fewer businesses opting into employee stock ownership plans in the future and may even result in businesses shedding their current employee stock ownership plan.

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If the Department of Labor finds that a company's ESOP shares are wrongly valued, I encourage the Department to use its enforcement power to address the particular ESOP at fault. The Department may also consider imposing a fiduciary valuation on only those who have previously overvalued their stock. Imposing new regulations on all ESOPs needlessly hurts the good actor and reduces the corresponding retirement of its employees. I strongly urge the Department of Labor to allow the good actors to maintain the current requirements regarding ESOP stock valuation -- for the last 34 years this program has successfully provided retirement benefits for millions of Americans and should be free to do so into the future.

Best regards.

Sincerely,

Maurice D. Hinchey