

Congress of the United States
Washington, DC 20515

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April 14, 2011

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

EXEC. SECRETARIAT
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DEPT. OF LABOR
WASH. D.C. 20210

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Dear Secretary Solis:

In our Congressional Districts there are private companies that sponsor an employee stock ownership plan, or ESOP. They have a proven track record of providing good-paying local jobs, while providing employees' retirement savings.

Our constituent companies are concerned about the potential negative impact if DOL implements its proposed regulation defining valuers of these companies' ESOPs as ERISA fiduciaries. (U.S. Department of Labor, Employee Benefits Security Administration, Definition of the Term fiduciary, Federal Register, October 22, 2010, page 65263.)

We have serious concerns about this regulatory proposal. We believe it will significantly increase the cost of operating and/or establishing an ESOP by forcing valuers to obtain special ERISA fiduciary insurance, and in fact, many competent valuers will drop ESOP valuation work, leaving less competition for companies to review before hiring a valuator.

In addition, an ESOP company's expansion plans compared to non-ESOP companies would be stymied as they would pay valuation costs in a due diligence process greater than non-ESOP companies. The role of existing trustees and the "new" valuation fiduciaries will also be needlessly blurred and confused.

We believe your Department - if it has found evidence of an incompetent valuation - has ample authority to bring enforcement action against the ESOP plan trustees and fiduciaries under current law.

The Labor Department's proposal to treat persons making ESOP valuations as fiduciaries also appears to conflict with current tax law. In the case of privately held securities, IRC section 401(a)(28)(C) requires the ESOP to engage an "independent appraiser" to value those shares in order to be a qualified plan. By imposing a fiduciary duty on the valuator, their independence and impartiality is lost as they are bound to act solely in the best interest of plan participants and beneficiaries.

We support President Obama's call to reduce onerous government regulations that stifle private sector job growth. We believe the proposed DOL regulation runs afoul of the President's Directive and respectfully ask that you work with lawmakers and employers before moving forward to ensure U.S. job creators are not negatively impacted by the Department's actions.

Thank you for your consideration of this important issue and we look forward to your timely response.

Sincerely,



CHARLES BOUSTANY, JR (LA-07)
Member of Congress



GEOFF DAVIS (KY-04)
Member of Congress