



February 22, 2024

The Honorable Lisa M. Gomez  
Assistant Secretary, EBSA  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 20210

The Honorable Lael Brainard  
Director, National Economic Council  
The White House  
1600 Pennsylvania Ave., NW  
Washington, D.C. 20500

Aviva Aron-Dine  
Acting Assistant Secretary, Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

RE: Regulatory Proposal For Adequate Consideration Exemption Under the Employee Retirement Income Security Act of 1974 ("ERISA")

Dear Assistant Secretary Gomez, Director Brainard, and Assistant Secretary Aron-Dine:

Thank you for your Administration's recent work to move forward on implementation of regulations governing the "adequate consideration" exemption for employee stock ownership plan ("ESOP") transactions as Congress required in the Consolidated Appropriations Act of 2023. Attached and enclosed, please find a draft proposal of a regulatory framework for the exemption, prepared and proposed by The ESOP Association on behalf of its membership. The ESOP Association is the largest and most longstanding association representing the companies that maintain ESOPs and the professionals that support their operation.

As you know, the Employee Retirement Income Security Act (ERISA) of 1974 allows ESOPs to buy employer stock using funds borrowed from the ESOP's sponsoring company itself so long as the ESOP pays no more than "adequate consideration" to ensure a fair market valuation of the company. Virtually all ESOPs are established via this standard known as the "Adequate Consideration Exemption." However, many decades later, ESOPs, their Trustees, and potential ESOP founders remain deeply confounded in properly meeting the standard because the U.S. Department of Labor has yet to implement. Despite nearly fifty years having passed since ERISA was signed into law, a clear regulatory framework outlining how companies and ESOP trustees could satisfy the Adequate Consideration Exemption does not exist. This regulatory vacuum has created significant uncertainty for prospective employee owners, countless lawsuits and audits, and a general chilling effect on ESOP formation, contrary to the congressional intent of ERISA and subsequent legislation.

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**The International Employee Ownership Center**

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One such piece of recent legislation was the SECURE 2.0 Act of 2022, enacted as Division T of Public Law 117-328. Section 346(c)(4)(B) of that Act required the Department of Labor, in consultation with the Department of the Treasury, to issue formal guidance on acceptable standards and procedures to establish good faith, fair market value for purposes of the adequate consideration exemption. This provision reflects continued bipartisan and bicameral Congressional interest in enabling businesses to explore the use of ESOPs. The ESOP Association is grateful for Administration and the Department's ongoing efforts in soliciting stakeholder input in responding to Section 346, including direct engagement with The ESOP Association.

The attached and enclosed proposal reflects a continuation of that dialogue and incorporates significant input from the full spectrum of the ESOP community and a significant commitment of time, resources, and expertise from interested stakeholders. We respectfully urge the Department of Labor and the Department of the Treasury to seriously consider these ideas and concepts as your regulatory efforts here continue to move forward. We would welcome the opportunity to discuss these ideas, their application, relevance and importance.

With appreciation and thanks for your consideration,

A handwritten signature in black ink, appearing to read "James J. Bonham". The signature is fluid and cursive, with a long horizontal stroke at the end.

James J. Bonham  
President & CEO  
The ESOP Association

Cc: The Honorable Sen. Bernie Sanders, Chairman, Senate HELP Committee  
The Honorable Sen. Bill Cassidy, Ranking Member, Senate HELP Committee  
The Honorable Sen. Ron Wyden, Chairman, Senate Finance Committee  
The Honorable Sen. Mike Crapo, Ranking Member, Senate Finance Committee  
The Honorable Rep. Virginia Foxx, Chairman, House Committee on Education & Workforce  
The Honorable Rep. Bobby Scott, Ranking Member, House Committee on Education & Workforce  
The Honorable Rep. Jason Smith, Chairman, House Committee on Ways & Means  
The Honorable Rep. Richard Neal, Ranking Member, House Committee on Ways & Means