



May 5, 2025

Representative Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Dear Representative Rulli,

The ESOP Association is proud to endorse the Balance the Scales Act (HR 2958), legislation that would require the Employee Benefits Security Administration (EBSA) to report to Congress annually on adverse interest agreements. This important bill helps ensure transparency and oversight of EBSA's current investigatory tactics and supports Congress's longstanding and bipartisan intent to promote and expand employee ownership in the United States.

The ESOP Association is the largest organization in the world supporting employee-owned companies, the nearly 11 million U.S. employee owners who participate in employee stock ownership plans (ESOPs), and the professionals who serve them. We conduct and fund academic research, provide comprehensive services to employee-owned businesses, and represent employee owners and their companies to federal and state lawmakers.

The reporting requirement included in HR 2958 would curtail the use of common interest agreements by EBSA. In these legal agreements, the taxpayer-funded investigatory efforts and information from the government is shared with private plaintiff law firms in pursuit of claims. In some instances, the Department of Labor (DOL) is not even a party to these lawsuits, meaning its time and resources are directing and assisting private lawsuits. Both the prior and current chairs of the House Education and the Workforce Committee have rightly expressed serious concerns to the DOL Inspector General about this potentially abusive taxpayer-funded support for private plaintiffs' attorneys. While The ESOP Association prefers that this practice end entirely, reporting and transparency would help shed light on this highly concerning practice.

That EBSA used this questionable tactic in ESOP cases is not theoretical – this issue, in part, came to light because of the use of a secret common interest agreement in an ERISA case against Envision Management Holding Inc. After being informed of the nature of the extensive cooperation between the DOL and a private plaintiffs' firm, Magistrate Judge Maritza Dominguez Braswell (U.S. District Court for the District of Colorado) stated that such an agreement "*could set a dangerous precedent.*" Judge Braswell further stated "*It would allow a government agency to weaponize private litigation against some target before confirming the target should be a target. Moreover, the government could litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself.*" While common interest agreements are between two parties in active litigation, the DOL was not even party to that lawsuit.

The International Employee Ownership Center

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In February of 2025, in response to Freedom of Information Act (FOIA) requests, DOL reported more than a dozen instances of secret common interest agreements between it and private plaintiff's firms.

If the voluntary cooperation by ESOP trustees at EBSA's request is weaponized against their clients, a strong disincentive is created for voluntary cooperation. The annual reporting required by HR 2958 and continued congressional oversight of this matter would help limit these potential abuses.

Congress has consistently demonstrated bipartisan support for ESOPs and employee ownership due to their broad societal benefits. Research consistently shows employee-owned companies exhibit higher productivity and stronger resilience during economic downturns. Employees at these companies enjoy enhanced financial security, with substantially higher retirement savings compared to their peers at non-employee-owned companies. Furthermore, employee-owned companies anchor jobs within local communities, preventing job losses from closures or foreign acquisitions and preserving the legacy of family-owned businesses. Yet the investigatory tactics of EBSA, including secret common interest agreements between the DOL and plaintiffs' firms, have caused a distinct chilling effect on ESOPs and their formation, denying millions of workers these potential benefits.

For these reasons, The ESOP Association appreciates continual congressional oversight of EBSA, strongly supports the Balance the Scales Act (HR 2958), and urges swift action by Congress to enact this legislation.

We appreciate your leadership on this important issue. If you have any questions, contact Greg Facchiano at 202-293-2971 or via email at gfacchiano@esopassociation.org. Thank you for your continued support of ESOPs and employee ownership.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. Bonham". The signature is fluid and cursive, written over a light gray rectangular background.

James J. Bonham
President & CEO
The ESOP Association