



**Statement by The ESOP Association
to the
U.S. House of Representatives Committee on Education and Workforce’s
Subcommittee on Health, Employment, Labor, and Pensions
On “Examining the Policies and Priorities of the
Employee Benefits Security Administration”
April 16, 2026**

Introduction

The ESOP Association is the largest employee-owner organization in the world with an active membership of more than 3,400 ESOP companies and professional service providers such as lawyers, accountants, and plan fiduciaries. The ESOP Association conducts and funds academic research, provides more than 160 annual conferences and events attended by nearly 15,000 individuals, and advocates on behalf of employee owners and their businesses to federal and state lawmakers. More than 6,400 ESOP companies are found nationwide across numerous diverse economic sectors, representing more than \$2 trillion in wealth and nearly 15 million ESOP plan participants. ESOPs, as Qualified Retirement Plans under ERISA, excel at providing retirement security for American workers, along with numerous benefits for companies and communities.

The ESOP Association is pleased to submit this statement for the record today as the subcommittee examines the Employee Benefits Security Administration’s (EBSA) policies and priorities. There have been dramatic changes at the Department of Labor and EBSA since the start of this Congress and Administration; The ESOP Association applauds the work of this Committee and the Administration in taking positive steps to encourage and promote employee ownership.

Ending the War on ESOPs

The ESOP Association is wholly supportive of EBSA’s action at the beginning of the year to end the ESOP National Enforcement Project at the Department of Labor¹, which was a 20-year effort leading to increased scrutiny and suspicion of ESOPs that resulted in a distinct chilling effect on ESOP formation. EBSA’s new focus on providing compliance assistance rather than enforcement actions allows the DOL to shed its long-held anti-ESOP bias and now effectuate bipartisan Congressional intent to promote employee ownership. Notably, Congress recently directed DOL in the SECURE 2.0 Act of 2022 to establish an Employee Ownership Initiative to focus on promoting and expanding employee ownership models and included \$2 million in FY26 appropriations in February 2026 to fund the Employee Ownership Initiative². The first report

¹ <https://www.dol.gov/newsroom/releases/ebsa/ebsa20260115>

² <https://www.esopassociation.org/articles/president-trump-signs-legislation-including-2-million-employee-ownership-initiative>

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issued by the Employee Ownership Initiative in January of 2026 lays out basic facts about and discusses many of the positive aspects of employee ownership.³

Mitigation of Frivolous Litigation

The ESOP Association’s support for protecting retirement savings from predatory class action lawsuits is well established both in this Subcommittee and the DOL’s recent efforts. Protecting the integrity of employee benefit plans, especially ESOPs, is important and DOL’s changing posture, including the submission of amicus briefs in ERISA cases, will hopefully help curb frivolous litigation until legislation can be passed to make it more difficult for plaintiffs to proceed on meritless claims.⁴ Reforms the Committee supports for EBSA also include legislation providing greater transparency on lengthy EBSA investigations and also on the issue of common interest agreements⁵. Together, these actions promote clear, consistent legal standards and discourage frivolous claims that impose unnecessary and often huge costs on plan sponsors and ultimately participants. The ESOP Association supports balanced enforcement and practical interpretations of fiduciary responsibilities, which in turn, ensures employee ownership and other benefit structures remain viable and sustainable for American workers today and for generations to come.

The Need for an Adequate Consideration Regulation

More than any other issue, the lack of clarity around adequate consideration affects current ESOPs and the future growth of ESOPs. The ESOP Association strongly urges the Department and EBSA to prioritize issuing this long overdue and much-needed regulation.

Since ERISA’s passage in 1974, ESOPs have sought clear regulatory guidance from the DOL on the regulatory issue known as adequate consideration. This matter is relevant to every existing ESOP company and foundational to newly forming ESOPs seeking a fair purchase price. Section 3(18)(B) of ERISA provides a statutory definition of adequate consideration – “the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with the regulations promulgated by the Secretary.” It is important to note that the statutory definition gives the Secretary the authorization to promulgate regulations to provide clarity and certainty on such a definition. For more than 50 years, however, DOL has ignored ERISA’s requirement to issue any formal guidance, leading to inconsistent and conflicting enforcement, numerous multi-year DOL investigations and audits, and extensive nuisance lawsuits filed by plaintiffs’ firms seeking payouts.

The Department proposed a draft rule in May 1988, but that rule was never finalized. A series of inconsistent, confusing, and sometimes conflicting sub-regulatory guidance has been issued instead, leading to a costly “regulation by litigation” approach from EBSA and the Department. The Biden Administration, responding to the directive in section 346 of the SECURE 2.0 Act, issued an unworkable draft regulation two days before President Trump was inaugurated, which was then immediately withdrawn since it had not yet been published in the *Federal Register*. The mandate to produce this regulation and the need for clarity in the ESOP community both still exist. The Office of Management and Budget included this regulation on its Spring 2025 Unified

³ <https://beta.dol.gov/research-data/surveys-reports-publications/employee-ownership-initiative-report-congress>

⁴ <https://www.esopassociation.org/articles/house-education-and-workforce-subcommittee-holds-hearing-legislation-end-class-action>

⁵ <https://www.esopassociation.org/articles/key-esop-association-priorities-passed-house-education-workforce-committee>

Agenda of Regulatory and Deregulatory Actions.⁶ After more than 50 years, ESOPs remain in a regulatory vacuum of uncertainty, nuisance lawsuits, increased risk and costs, and an overall chilling effect on ESOP formation that denies potentially millions of American workers the benefits of employee ownership.

Moving forward, the DOL should officially withdraw the 1988 Proposed Draft Adequate Consideration Regulation, in order to help clarify the standards by which ESOP transactions should occur. Moreover, DOL should note that good faith compliance entails following existing IRS regulations defining a qualified appraiser and a qualified appraisal until DOL publishes its own regulations. This should also apply to “hard-to-value assets” held in ERISA plans. *See* Treasury/IRS (Revenue Ruling 59-60)⁷. Such action would constitute a reasonable, low cost, and commonsense approach that provides a workable solution instead of more uncertainty. Importantly, this approach is also consistent with the “Retire Through Ownership Act” (HR 5169/S 2403), which has unanimously passed the Senate HELP Committee, the full Senate, and this Committee during this Congress, showing its strong bipartisan support.

Conclusion

The ESOP Association strongly supports the work that this Administration and Committee has done so far to support employee ownership. American workers, businesses, and communities are the clear beneficiaries when true ownership is extended.⁸ The ESOP Association urges Congress to support EBSA so it can continue its important and vital work of promoting employee ownership, and The ESOP Association stands ready to assist the Committee, EBSA, and the Department in this vital goal.

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=1210-AC20>

⁷ [Rev. Rul. 59-60 | Tax Notes](#)

⁸ https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2026-02/ESOP%20Top%2010_Updated%2012.15.2025_0.pdf