

Congress of the United States

Washington, DC 20515

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July 13, 2011

The Honorable Hilda L. Solis
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, D.C. 20210

EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH. D.C. 20210

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Dear Secretary Solis:

The Commonwealth of Massachusetts is home to over 125 companies, employing over 25,000 persons, participating in Employee Stock Ownership Plans or ESOPs, a form of defined contribution benefit plan regulated by the Department of Labor. Over the past several months, we have heard strong concerns from ESOP companies in our respective districts about the proposed regulation designed by the Employee Benefits Security Administration (EBSA) regarding the definition of the term fiduciary. We write to respectfully request a meeting with you and your colleagues at ESBA to discuss these concerns.

Some of the specific concerns we have heard that we would like to explore with you include the following:

Existing law and regulation requires ESOP firms to name an internal or external trustee to assume the legal role of a fiduciary acting on behalf of ESOP participants. There is strong concern that this proposed regulation's requirement that outside appraisers also serve as a fiduciary would create an untenable legal tension between two distinct parties, both named fiduciaries, with ongoing, overlapping legal responsibilities.

Some have indicated to us that, because appraisals of privately held companies can never be a precise science, participants who are unhappy with an employer for any number of reasons would be able to make ready use of the built-in ambiguity of the appraised value of company stock to advance their complaints, however legitimate. In their view, the proposed regulation could encourage what are perceived as spurious lawsuits.

It has been reported to us that a potential consequence of this regulation, if passed, would be a material increase in the cost of ESOP appraisals prompted by the need of ESOP appraisers to secure insurance coverage to protect them against likely legal challenges. Those cost increases would have two unfortunate effects, according those in the ESOP community. They would reportedly burden existing ESOP companies likely to be asked to assume much if not all of the incremental cost of insurance paid by their appraisers. It is feared that, for new or prospective ESOPs, this regulation and the additional costs it would produce would discourage business owners to ever consider the ESOP idea in the first place, thereby decreasing the number of ESOPs and ESOP participants.

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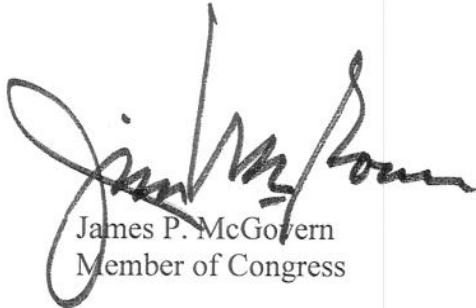
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The ESOP employers in our districts tell us they are not interested in protecting “bad” appraisals and “bad” appraisers. Citing the tangible and relatively recent example of how during the 2002-2004 time frame the ESOP community worked with regulators in the Department of Treasury to come up with IRC 409(p), an administrative “fix” of unanticipated abuses that cropped up after passage of the S Corporation amendment to ESOP law in 1997, they have expressed to disappointment that DOL has not encouraged a similar dialogue that could address the DOL’s legitimate concerns.

As supporters of the idea of broad based employee ownership through use of Employee Stock Ownership Plans or ESOPs, we look forward to discussing these matters with you and your colleagues at EBSA in the weeks ahead.

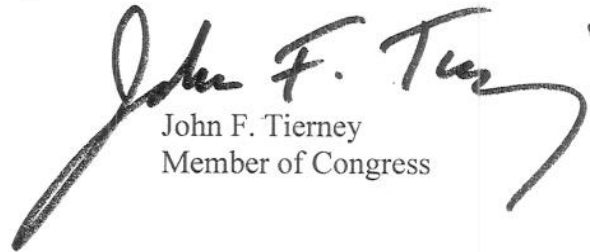
With respect to scheduling this meeting, please have your staff contact Daniel Holt in Congressman McGovern’s office at daniel.holt@mail.house.gov or 202-225-6101.

Thank you for considering our request.



James P. McGovern
Member of Congress

Sincerely,



John F. Tierney
Member of Congress