

Congress of the United States
Washington, DC 20515

October 1, 2018

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Trump:

We write today to express our concern regarding the Department of Labor's investigatory and enforcement policies toward Employee Stock Ownership Plans ("ESOPs"). Employee-owned companies are a vital piece of the American business fabric, and for decades, there has been bipartisan support for employee ownership through ESOPs. However, based on the feedback we have received, the Department's practice of "regulation through litigation" is harming small businesses and their employees. We respectfully request that you consider intervening in this issue to support over 7,000 American businesses and nearly 11 million American workers.

There is evidence from the past forty-one years demonstrating that employee ownership through ESOPs is an efficient and effective means of improving retirement security and building a stronger economy. For example, over the past decade, layoff rates from employee-owned companies in the United States were 4 to 8 times lower than layoff rates for conventionally owned companies.ⁱ Survival rates for ESOP companies are also higher than survival rates for their non-ESOP counterparts.ⁱⁱ Pre- and post-recession, ESOP-owned companies outperformed private employers.ⁱⁱⁱ What is more, based on Department filings, companies on average contribute 50 percent to 100 percent more to ESOPs than non-ESOP companies who contribute to 401(k) plans.^{iv} And whereas most of the money in a 401(k) plan comes from employee contributions, with few exceptions all the assets in an ESOP come from company contributions.^v Employee ownership is good for employees, companies, and the economy.

Unfortunately, the Department of Labor's enforcement policies are undermining ESOPs. We agree that bad actors in the marketplace should be scrutinized. However, the Department has released very little guidance on substantive issues including, for example, valuation. This makes it difficult for ESOP companies to make business decisions and to find someone willing to serve as a plan fiduciary. The Department also has employed counter-productive enforcement tactics, including taking inconsistent positions on legal issues. Ultimately, this investigatory approach is having a destabilizing effect on employee ownership, which ESOP companies fear will result in material losses for workers.

Our constituents have made us aware of numerous cases that illustrate these enforcement issues. We are told that in one dispute with an ESOP company, the Department agreed to retain an independent valuation expert to try to help resolve the outstanding valuation issues. However,

the Department disregarded the findings and filed a lawsuit against the company anyway. In another case, we understand that a Department official told an ESOP company to "terminate" its ESOP or risk being sued over the share valuation. The company, which was a small business, had no choice but to terminate because it could not afford to pay for a lawsuit. We also have heard many examples of investigations that drag on for many years. In at least one instance, a company faced immense difficulty in securing new financing for over three years because of the risk associated with an open investigation.

These tactics began under the prior Administration, but unfortunately have continued under this Administration. We fear that under the Department's current approach to regulating ESOPs, the system Congress carefully crafted to encourage employee ownership could be in jeopardy. Moreover, the Department's policies are putting workers' savings at risk as the excessive costs of responding to the Department ultimately reduce the value of ESOP companies.

We request your assistance in protecting ESOPs and employee ownership. Specifically, we believe the Department could immediately eliminate some of the regulatory uncertainty by collaborating with the ESOP community to develop clear guidance with respect to valuation and other important issues. Furthermore, the Department should consider immediately halting controversial oversight practices currently in use while the agency develops more efficient investigatory mechanisms that limit the burdens and costs on small businesses.

We appreciate your attention to this issue and would welcome the opportunity to discuss any of these issues further or answer any questions.

Sincerely,



Brett Guthrie
Member of Congress



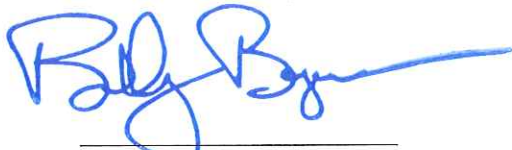
Tim Walberg
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David P. Roe, M.D.
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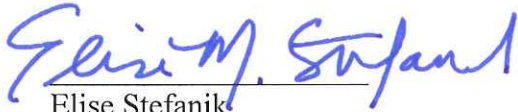
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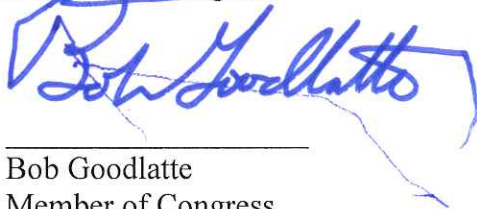
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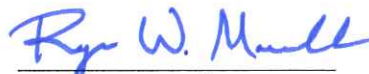
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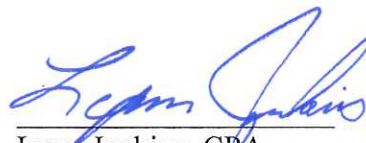
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Steve Knight
Member of Congress


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Randy Hultgren
Member of Congress

cc: The Honorable Alexander Acosta, Secretary of Labor
The Honorable Preston Rutledge, Assistant Secretary of Labor
The Honorable Kate O'Scannlain, Solicitor of Labor

ⁱ Fidan Ana Kurtulus & Douglas L. Kruse, How Did Employee Ownership Firms Weather the Last Two Recessions? : Employee Ownership, Employment Stability, and Firm Survival: 1999-2011 12-14 (Upjohn Institute Press, 2017).

ⁱⁱ Joseph Blasi, Douglas Kruse & Dan Altmann, Firm Survival and Performance in Privately Held ESOP Companies 109-124 (Emerald Group Publishing Limited, 2013), <http://www.emeraldinsight.com/doi/pdfplus/10.1108/S0885-3339%282013%290000014006> ("The higher survival may . . . be tied to complementary policies adopted along with ESOPs to create a more committed and engaged workforce that contributes ideas to enhance survival and is more flexible when economic difficulties arise.").

ⁱⁱⁱ Alex Brill, An Analysis of the Benefits S ESOPs Provide the U.S. Economy and Workforce (Matrix Global Advisors, 2012) ("S ESOPs showed more employment growth in the pre-recession period of the previous decade than private U.S. firms generally"; "in 2007, when the recession hit, private U.S. employment took a dramatic downward turn while active participants among this subset of S ESOPs actually increased.").

^{iv} National Center for Employee Ownership, *Are ESOPs Good Retirement Plans?*
<http://www.nceo.org/articles/esops-too-risky-be-good-retirement-plans>

^v Blasi, Kruse & Altmann, *supra* note iii.