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United States Senate

WASHINGTON, DC 20510

May 19, 2011

The Honorable Hilda L. Solis
Secretary
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Dear Secretary Solis:

We are writing to express our concern regarding the Department of Labor's proposed rule to expand the term "fiduciary" to include Employee Stock Ownership Plan (ESOP) annual appraisers. *See* 75 Fed. Reg. 65263 (Oct. 22, 2010). We represent states whose economies are dependent upon the strength of our small businesses, and as such we have a strong interest in the continued vitality of ESOPs. There are over 260 ESOPs in our states, and according to the ESOP Association, there are approximately 11,500 ESOPs in the U.S. employing 10 million workers. More than twenty percent of ESOPs nationwide are in the manufacturing sector. The majority of ESOP companies also have defined benefit pension plans or 401(k) plans as supplemental retirement options.

ESOPs are subject to annual valuations by appraisers. The DOL's proposed rule would expand the definition of fiduciaries to include these appraisers, on the rationale that they are "rendering" financial advice. We have met with ESOP small business representatives from our states, who tell us that if this proposed rule were implemented, it would increase the current average cost of valuations from the $6,000 - $10,000 range to $25,000 - $40,000, as well as significantly increase the appraisers' liability. In light of the myriad of regulations small businesses already face, and given our challenging economic climate, we should avoid taking any action which could discourage private sector job growth. The current rule has existed for 35 years, and we see no compelling reason to change it now.

Furthermore, Americans are feeling increasingly uncertain about their retirement security. With fewer and fewer businesses providing pensions, the continued success of ESOPs as another retirement option is essential. Businesses that utilize ESOPs engage in profit sharing by annually contributing to trusts, and then granting employees shares of those trusts. These shares accumulate throughout the course of the employees' careers and provide a significant benefit to employees when they retire or change jobs.

ESOPs play an important role in providing retirement security for millions of Americans, and should not be burdened with unnecessary regulations. If the DOL finds that a company's ESOP shares are incorrectly valued, the Department should use its enforcement powers to address that situation. We believe it is unnecessary to impose new regulations on all ESOPs in order to rectify errors that the DOL could instead handle on a case by case basis.

We thank you in advance for your consideration of the concerns we have raised in this letter.

Sincerely,

SUSAN M. COLLINS
United States Senator

SCOTT P. BROWN
United States Senator

KELLY AYOTTE
United States Senator