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Congress of the United States
Washington, DC 20515

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

June 17, 2011

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

Dear Secretary Solis:

We write to raise our concerns with the regulation proposed by the Department of Labor ("DOL") (75 Fed. Reg. 65263 (Oct. 22, 2010)) amending the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"). In particular, we have serious concerns with the DOL's proposal to include, within the definition of fiduciary, appraisers of securities purchased or sold by Employee Stock Ownership Plans ("ESOPs").

The substantial benefits of employee ownership for small businesses and their employees have been well-documented. ESOPs allow employees to share in the growth of their company and help build employee loyalty and dedication. We have serious concerns that the DOL's proposed rule will undercut these direct benefits to small businesses by raising the operating costs of existing ESOPs and deterring the formation of new ESOPs.

In this regard, the public comments indicate that the costs of the proposed rule on ESOP-related services would be significant. It is clear that the proposed rule would increase the appraiser's insurance costs, which would be passed on directly to ESOPs. The proposed rule would also lead to a substantial increase in litigation costs to appraisers, and those increased costs would translate into higher fees for ESOPs. While the DOL has asserted that making ESOP appraisers fiduciaries would solve the "common problem" of subpar valuations, there is little or no evidence in the record that substandard valuations are a "common problem," or that labeling an ESOP appraiser a "fiduciary" would solve that problem by turning careless work into careful work.

As you know, President Obama recently issued an Executive Order directing agencies to use "the least burdensome tools for achieving regulatory ends," and to "select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits." Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011).

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The administrative record indicates that the executive branch's economic analysis directive to federal agencies has not been satisfied in this case.

We are concerned that the DOL's proposed rule would upset the delicate balance observed when appraisers value private ESOP securities. The Internal Revenue Code requires that an "independent appraiser" be used to value ESOPs due to the often conflicting interests between exiting ESOP employees and remaining plan participants. *See* IRC section 401(a)(28)(C). If DOL insists that the appraisers become fiduciaries, their independence would necessarily be lost.

Thank you for your consideration of our request. We look forward to hearing back from you.

Sincerely,

Todd Young
Member of Congress

Brett Guthrie
Member of Congress

Larry Bucshon
Member of Congress

David McKinley
Member of Congress

Alan Nunnelee
Member of Congress