United States Senate

WASHINGTON, DC 20510

August 5, 2024

The Honorable Julie Su
Acting Secretary, U.S. Department of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Acting Secretary Su,

Thank you for your Department's continued work and attention on developing appropriate regulations governing the "adequate consideration" exemption for employee stock ownership plan (ESOP) transactions pursuant to Section 408(e) of the Employee Retirement Income Security Act (ERISA) of 1974[1] and Section 346 of the SECURE 2.0 Act of 2022.[2] We appreciate the need for this regulation to finally provide the necessary clarity to promote ESOPs nationwide.

Employee ownership, and specifically ESOPs, is a proven way to benefit businesses, workers, and local economies. Studies confirm that employee-owned firms experience stronger overall business performance and resilience during economic downturns. Employee owners at these firms see greater wealth-building opportunities and increased job security and satisfaction compared to their counterparts at conventional businesses. Employee ownership can also be a powerful wealth-building opportunity for traditionally disadvantaged workers.

From their inception in ERISA in 1974, through tax and statutory changes in the decades since, and up to and including recent legislation passed as part of the SECURE 2.0 Act in 2022, Congress has consistently maintained bipartisan support for ESOPs. Therefore, we urge the Department of Labor to respect this longstanding commitment and produce a regulation on the adequate consideration exemption that promotes the growth and adoption of ESOPs rather than discouraging them.

As you know, Section 346 prescribes participation by the U.S. Department of the Treasury in the rulemaking effort associated with the adequate consideration exemption. Congress' clear intent when it included this provision was that Treasury's longtime experience regulating the valuation of complex assets brings significant value to the Department of Labor's efforts. The key intent of producing a regulation on this matter is to remove regulatory uncertainty for ESOPs, not to create new, competing, or conflicting standards for valuation. As such, we would suggest the

[1] 29 CFR § 2550.408e
[2] 29 U.S.C. 3228(c)(4)(B)

Department of Labor's rulemaking efforts incorporate longstanding practices and precedents already utilized by the Treasury Department.

Finally, we request a robust comment period when the proposed rule is promulgated. Despite the absence of clear regulatory guidance for decades, an entire community of employee-owned companies and advisory professionals has successfully emerged over the past 50 years. It would be a disservice to not take this community's input into account. Employee-owned companies will be directly affected by this rule, making it more than justified to provide an adequate length of time for these companies to provide feedback. Further, with the wealth of experience ESOPs have garnered over the last 50 years, their comments will surely be an asset that the DOL can use to make thoughtful, long-lasting changes to any finalized adequate consideration rule.

Given the success that ESOPs have seen without clear guidance, one can only imagine how successful they would be if there was a regulatory framework in place that could be used to satisfy the adequate consideration exemption. For these reasons, we respectfully believe the Department should prioritize the approach outlined above to complete a final regulation that encourages ESOP formation.

We thank you for your attention on this important issue. Please feel free to contact us with any concerns you might have.

Sincerely,

Roger W. Marshall

Roger Marshall, M.D.
United States Senator

Tim Kaine
United States Senator

Marco Rubio
United States Senator

Mazie K. Hirono

Mazie Hirono
United States Senator

Jeanne Shaheen
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