



**STATEMENT OF JAMES J. BONHAM,  
PRESIDENT AND CEO OF THE ESOP ASSOCIATION,  
TO THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON EDUCATION AND WORKFORCE  
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS**

**July 22, 2025**

**Introduction**

Thank you, Chairman Allen, Ranking Member DeSaulnier, and Subcommittee members for this hearing and the opportunity to testify.

I am Jim Bonham, the President and CEO of The ESOP Association. Our Association is the largest employee-owner organization in the world. We enjoy an active membership of more than 3,400 ESOP companies and professional service providers such as lawyers, accountants, and plan fiduciaries.

The enforcement and investigative actions by the Employee Benefits Security Administration are broken, misaligned, and abusive, and have been for decades. Sadly, the chilling effect of this longstanding posture on plan formation has denied potentially millions of workers the chance for a better retirement and a better workplace.<sup>1</sup> EBSA needs substantial reforms.

Congress formalized employee stock ownership plans (ESOPs) as a Qualified Retirement Program (QRP) in ERISA in 1974, making the DOL our chief regulator. Today, ESOPs include nearly 11 million workers across every state, with more than 6,700 companies representing about \$2 trillion in wealth. That presence would definitively be greater but for the severe “chilling effect” of heavy-handed EBSA tactics targeting ESOPs.

Our members have been investigated arbitrarily and relentlessly by EBSA for decades – indeed it is difficult to find an ESOP that has NOT been investigated by EBSA in some form. It is so bad that when a new ESOP is formed, the professionals feel it is their obligation to warn the ESOP founder to expect and budget for the near inevitability that EBSA and the DOL will investigate them. It is the expectation that they will be investigated, not the exception.

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<sup>1</sup> [https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-03/10%20Best%20Things%20About%20ESOPs\\_The%20ESOP%20Association.pdf](https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-03/10%20Best%20Things%20About%20ESOPs_The%20ESOP%20Association.pdf)

## **EBSA Investigative Abuses**

I want to share with you four specific areas of serious concern and, in our view, abuse, of EBSA's authorities:

- 1) Never-ending, multi-year investigations that often result in companies, directors, and fiduciaries agreeing to tolling agreements under the threat of lawsuit, which effectively waives ERISA's six-year statute of limitations. These multi-year investigations regularly involve multiple changes to EBSA personnel who often "start over." The result often is the plan and its insurer simply throwing in the towel and agreeing to some form of settlement – typically the insured amount under their policy – just to finally bring an end to the process. Evidence of EBSA's lengthy investigatory tactics is not speculation or simply anecdotal. Reports from a May 2021 Government Accountability Office (GAO) report show that EBSA is failing to conduct enforcement in a timely fashion, with 16% of all investigations opened in 2017 still open four years later.<sup>2</sup>
- 2) Secret so-called "common interest" agreements where EBSA investigators use taxpayer resources and extra-judicial governmental investigatory powers to subsidize private plaintiff class action lawsuits. We have long suspected these secret arrangements existed, and that suspicion has recently been confirmed through discovery in an ESOP case in litigation. In that case Magistrate Judge Maritza Dominguez Braswell in the U.S. District Court for the District of Colorado said these secret common interest agreements would *"allow a government agency to weaponize private litigation against some target before confirming the target should be a target."*<sup>3</sup> While we do not yet know the full extent of these secret arrangements, it is clear that EBSA is using its investigatory authority to support private law firms and plaintiff litigants, thereby violating plan sponsor due process and fairness.
- 3) Taxpayer funded government "expert" witnesses who have poor knowledge and little background in ESOP plan formation. These so-called experts have been paid millions in fees, yet often fail to meet the very standards to which EBSA desires to hold plan fiduciaries. An excellent example lies in the failed and blatantly incorrect valuation put forward as expert testimony in the Bowers & Kubota Consulting case, where EBSA lost every single point in its complaint against the plan sponsor after a 5-day trial in June of 2021. The judge cited the government for lack of evidence, saying *"that the Government failed... not for want of effort but for what appears to be a want of evidence."*<sup>4</sup> After a 7-

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<sup>2</sup> <https://www.gao.gov/assets/gao-21-376.pdf>

<sup>3</sup> [https://www.bloomberglaw.com/public/desktop/document/HarrisonvEnvisionManagementHoldingIncBoardofDirectorsetalDocketNo/3?doc\\_id=X3MGLIRGHK89PH88SST0DELG7MF](https://www.bloomberglaw.com/public/desktop/document/HarrisonvEnvisionManagementHoldingIncBoardofDirectorsetalDocketNo/3?doc_id=X3MGLIRGHK89PH88SST0DELG7MF)

<sup>4</sup> [https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2021-09-17%20\(675\)%20Post-Trial%20Findings%20of%20Fact%20and%20Conclusions%20of%20Law%20-%20Order%20Directing%20Entry%20of%20Judgment%20in%20Favor%20of%20Remaining%20Defendants.pdf](https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2021-09-17%20(675)%20Post-Trial%20Findings%20of%20Fact%20and%20Conclusions%20of%20Law%20-%20Order%20Directing%20Entry%20of%20Judgment%20in%20Favor%20of%20Remaining%20Defendants.pdf)

year investigation, with 3 years of discovery – no evidence. Why was this successful and well-regarded company investigated? In court deposition, the EBSA investigator said “...my supervisor, he gave me an assignment to find some ESOP cases in Hawaii” and again later “My understanding is the department need[ed] to have some exposure in Hawaii.”<sup>5</sup> Bowers & Kubota spent millions to defend itself. And a dissenting Judge on the Ninth Circuit Court of Appeals would have imposed an award of attorneys’ fees against EBSA for its litigation conduct.

- 4) Indiscriminate, fishing-expedition investigations designed to dragnet the ESOP community and impose EBSA’s views on the ESOP community. Following heated criticism from the Congress for the volume of direct plan investigations, EBSA changed tactics to create the appearance of reduced plan investigations. Rather than looking at specific ESOP transactions, instead EBSA began issuing “dragnet” style letters to professional fiduciary firms that represented multiple ESOP plans. These investigatory letters indiscriminately seek information on ALL plans under the fiduciary’s purview, thereby capturing information on multiple plans simultaneously, while telling Congress that the number of plan-specific investigations was dropping. In 2013 EBSA focused “more investigative resources on professional fiduciaries and service providers with responsibility for large amounts of plan assets and the administration of large amounts of plan benefits.”<sup>6</sup> That way one reported investigation could cover dozens, if not hundreds, of ESOP companies. Plan sponsors often share that investigations lack specificity or purpose and drag on for years at great cost, and that EBSA takes positions on key issues that find no support in ERISA or any properly promulgated regulations.

These sorts of investigative “fishing expeditions” by the DOL were predicted and actually a concern around the time of ERISA’s passage. In congressional hearings on legislation that was a precursor to ERISA, both union and industry witnesses expressed concerns that “this authority is far too broad” for the DOL in this regard, and they agreed that “reasonable cause” should be required for investigations, stating “...all that is intended is that the Secretary be precluded from conducting “fishing expeditions.”<sup>7</sup>

Later, following ERISA’s passage, congressional debate from the 1976 Tax Reform Act (P.L. 94-455) stated, “The Congress is deeply concerned that the objectives sought by [the series of laws encouraging ESOPs] will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans.”

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<sup>5</sup> <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/Michael%20Wen%20110320%20timed.pdf>

<sup>6</sup> <https://www.dol.gov/node/63530>

<sup>7</sup> <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/ERISA-LH%2018.pdf>

While I can assure you every practice cited has happened, nearly every member company or professional offered their experiences without attribution -- fearful of inviting more investigation by EBSA. These practices add up to a well-earned reputation of an anti-ESOP bias at EBSA.

### **EBSA's Anti-ESOP Bias**

As further evidence of EBSA's bias that has been weaponized against plan sponsors and fiduciaries, its website cites a special "National Enforcement Project" against ESOPs<sup>8</sup> purportedly to address some form of near-term crisis. Now, that special project that enables increased utilization of taxpayer resources still remains in place over two decades later. Past Office of the Inspector General (OIG) reports have shown that EBSA spent about 7% of its time on this effort, while the ESOP community represents less than 1% of qualified retirement plans.<sup>9</sup> The 20-year targeting of ESOP companies and perpetual EBSA investigations should end. ESOPs deserve no more or less scrutiny than other plans regulated by EBSA.

### **EBSA's Regulation by Litigation**

Perhaps most absurd and frustrating is that EBSA investigates issues like company valuations on which it has been required, but refused to, write regulations – ignoring both the ESOP community's AND Congress's requests to do so. That's correct – EBSA is actually enforcing unwritten rules, abusing the fact it has not done its job in a clear, transparent way since ERISA passed in 1974. This intentional regulatory vacuum allows EBSA to declare the rules to be whatever it deems at the time.

This is no incidental matter – a good faith company valuation is central to the initial ESOP transaction, and ESOP companies are required to perform annual valuations.

Yet, for decades ESOP companies and professionals have been forced to interpret an inconsistent, confusing, and conflicting patchwork of "settlement agreements" and other regulatory tea leaves on this issue that includes: a number of process agreements; various court decisions; an unfinished 37-year-old draft regulation from 1988; and even comments from media interviews with EBSA staff. This overt "regulation by litigation" lends itself to arbitrary and capricious enforcement that amounts to abuse. Both the regulators and the regulated community should have clear, understandable, formal regulatory guidance along with proper, functional, standard investigatory practices.

### **EBSA Denies Congress' Intent and Requests**

In fact, EBSA has shown a willingness to ignore multiple Congressional requests for clarity in this area.

- In 1988 a draft regulation was proposed, with public comments taken, but never finalized.

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<sup>8</sup> <https://www.dol.gov/node/63530>

<sup>9</sup> <https://www.oig.dol.gov/public/reports/oa/2009/05-09-003-12-001.pdf>

- Starting in 2015 representatives from the ESOP community met with EBSA staff to request formal guidance in this matter, and while EBSA paid lip service to the need, it never took action.
- In 2018, 27 members of the House sent a letter to DOL requesting action on this regulation.<sup>10</sup> No action was taken by EBSA.
- In 2022 EBSA resisted and later denied an Administrative Procedure Act petition requesting regulatory action from The ESOP Association on behalf of its membership.<sup>11</sup>
- In 2023, EBSA and the DOL resisted ESOP Association FOIA requests about the nature of its enforcement practices, guidance, and policies.<sup>12</sup> It never produced any information in response.

EBSA only responded on this matter, and even then woefully inadequately, when the bipartisan SECURE 2.0 law once again mandated formal guidance on this issue. (P.L. 117-328, Division T, Section 346, 4(B)). EBSA then produced unworkable and arguably hostile draft regulation,<sup>13</sup> despite bipartisan and bicameral Congressional correspondence<sup>14</sup> in support of a regulatory framework that would promote ESOPs.<sup>15</sup> This proposed regulation has been withdrawn by the current Administration, leaving the matter unresolved.

## Conclusion

Unnecessarily lengthy investigations and taxpayer support for private plaintiff lawsuits – two issues where reform legislation has been introduced by members of this Committee – should end. Increased transparency required by congressional reporting is a reasonable and commonsense step forward.

EBSA's longstanding bias and approach robs millions of workers of the chance at shared ownership and, with it, greater retirement security, better jobs at more desirable workplaces, and healthier local economies.

Thank you again for the opportunity to testify, and I would be pleased to elaborate on any or all of these main points.

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<sup>10</sup> <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-02/Signed%2010.1.2018%20WH%20ESOP%20Letter.pdf>

<sup>11</sup> [https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2022-09/DOL\\_Petition\\_cover\\_letter\\_and\\_petition\\_FINAL20220922.pdf](https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2022-09/DOL_Petition_cover_letter_and_petition_FINAL20220922.pdf)

<sup>12</sup> <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2023-F-12076%20Ack%20Letter.pdf>

<sup>13</sup> <https://www.esopassociation.org/articles/us-department-labor-releases-proposed-regulatory-guidance-regarding-esop-stock-purchase>

<sup>14</sup> <https://www.esopassociation.org/articles/senators-sanders-cassidy-urge-dept-labor-prioritize-work-act-implementation>

<sup>15</sup> <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-02/8.5.24%20Senate%20Adequate%20Consideration%20Letter.pdf>