

United States Senate  
OFFICE OF THE REPUBLICAN LEADER

July 25, 2013

The Honorable Thomas Perez  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue  
Washington, DC 20210

Dear Secretary Perez:

Thank you for the opportunity to provide input on the Department of Labor's plan to revisit a 2010 proposed rule to amend the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974 (ERISA). The consequences of this proposal are far reaching and, as currently drafted, will harm a variety of industries that are engaged in ensuring that Americans have access to a range of financial products and advice to ensure their retirement security. The Department of Labor has received numerous submissions from the public and members of Congress in both parties outlining the damage that will come from this regulation, resulting in harm to investors as they work to save for retirement.

We share these myriad concerns over the proposed rule's negative impact on investors and do not want to see access to investment advice narrowed. Furthermore, we write today to also share our grave concern over the less often discussed harm it poses to our nation's employee stock ownership plan (ESOP) companies. ESOP companies not only provide jobs and economic security for people in larger cities; but many of these employers are based in rural America, and provide vital economic engines to the communities they serve. ESOP companies exist in a wide variety of sectors including grocers, construction companies, insurance companies, and highway contractors, which tend to employ lower-wage and middle class Americans.

National surveys and research have shown retirement savings through ESOPs are typically much more than what is provided by comparable non-employee owned companies—on average, two-and-a-half times more. In a day and age where pension plans and retirement funds are being drained in order to make up for losses during tough economic times, it is encouraging to hear stories of ESOP retirees who, upon retirement, have been able to live comfortably and securely throughout retirement.

We find it troubling that despite these statistics and what we have seen first-hand in our home states and throughout the nation, the success of ESOPs are seemingly ignored by this Administration's Department of Labor. The Department has taken a hostile position against ESOPs for the past three years, as demonstrated by its proposal to make all appraisers of ESOP stock ERISA fiduciaries. This position, if it became a final regulation, would reverse over 35

years of Executive Branch policy and is uncalled for as the Administration has not sufficiently made the case that changing the definition of “fiduciary” for purposes of ERISA is necessary to protect participants in retirement plans.

Section 401(a)(28) of the Internal Revenue Code states that ESOPs must have an independent valuation of company stock annually for purposes of valuing employee accounts. Should the Department continue to pursue this proposed rule, independent appraisers will leave this market due to increased liability making it difficult, if not impossible, for ESOPs to comply with ERISA requirements. Furthermore, should this proposed regulation be revisited and implemented, a boon of trial lawyers would follow opening up private ESOP companies to unlimited class action lawsuits.

We cannot overstate the detrimental effect the 2010 proposed regulation would have on private ESOP companies that have a successful record of maintaining much needed jobs and providing generous retirement benefits for part-time, low-wage, and middle class workers. The Labor Department’s efforts to expand the definition of fiduciary to include independent ESOP appraisers will only hurt the very employees it seeks to protect.

Given the extraordinary success of the current fiduciary rules for ESOPs and the ability today of Americans from all backgrounds to find low-cost investment advisors as they plan for retirement, we encourage you to withdraw this proposal and coordinate with other federal agencies before proceeding with this potentially very damaging rulemaking. Thank you for your consideration of these concerns.

Sincerely,



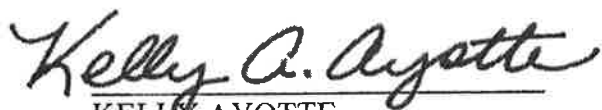
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MITCH McCONNELL  
REPUBLICAN LEADER



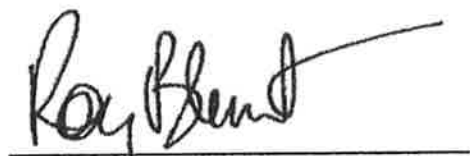
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JOHN THUNE  
UNITED STATES SENATOR



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KELLY AYOTTE  
UNITED STATES SENATOR



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ROY BLUNT  
UNITED STATES SENATOR

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