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ESOPs and the Department of Labor

Monitoring ESOPs is one of the Department of Labor's top priorities. The DOL's focus flows from a perception that some ESOP transactions have not always been in the best interest of ESOP participants. Based on recent litigation, enforcement action, and stories from NCEO members, it is clear that the DOL believes some ESOP transactions are "bad apples."

Missing Data

As many critics have pointed out, however, neither the DOL nor anyone else has ever quantified the extent of undesirable ESOP transactions. Anecdotes are a weak basis for public policy, but to date no organization has attempted to explore the characteristics of ESOP transactions in a way that would allow an objective assessment of the DOL's perception.

Data that has long been available, however, does show that ESOP participants on average have accumulated substantially greater wealth through company-sponsored plans than employees in non-ESOP companies. This implies that ESOPs are good for participants, but it is not enough to satisfy the DOL, since data on average growth in participant balances does not necessarily answer the question whether the initial valuation of ESOP company stock may have been too high. The exceptionally low ESOP loan default rate (well under 1%, compared to several times that for private equity deals) strongly suggests that initial valuations generally are not too high. The situation appears to be, then, that the large majority of ESOP transactions is good for everyone, but a minority is problematic.

What Does the DOL See?

In a public letter to the Financial Accounting Standards Board (FASB) on May 30, 2013, Phyllis Borzi, Assistant Secretary of Labor of the Employee Benefits Security Administration (EBSA), wrote, "One of the most common fiduciary violations with respect to Employee Stock Ownership Plans (ESOPs) is the incorrect valuation of private company employer securities. This can occur when purchasing, selling, distributing, or otherwise valuing the employer's securities.

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2013 Excellence in Ownership Awards

On April 25, the NCEO and the Beyster Institute at UCSD's Rady School of Management announced the winners of the 2013 Excellence in Ownership Awards.

The Excellence in Ownership Award program consists of three awards: the **Working Better Award**, recognizing companies that develop high-engagement, employee-owned workplaces; the **Innovations Award**, which recognizes the innovative practices that result from having an engaged workforce of employee-owners; and the **Employee Ownership Champion Award**, honoring individuals who make an exceptional contribution to the field of employee ownership.

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