

ISSUE HIGHLIGHTS

- Main Street Employee Ownership Act Passes House: The Main Street Employee Ownership Act would direct the Small Business Administration (SBA) to do outreach on employee ownership and change its loan guarantee program to make it easier to make loans to ESOPs. It now moves to the Senate, where, if it can get scheduled, it is likely to become law. ([See page 11.](#))
- First Person: Gellert Dornay and Holly Saltzman share their stories about why they sold to an ESOP. Both focus on why the values of ownership came first. ([See pages 4-5.](#))
- What Is Adequate Security for ESOP Distributions? Larry Goldberg of the ESOP Law Group provides the answer. ([See page 3.](#))
- You Can Get There From Here: It may seem intimidating to compare your company to other ESOPs with super high engagement culture, but every company can take measures to improve its culture step by step. ([See page 8.](#))
- ESOP Q&A: Find answers to how the new tax law will affect valuations and the role the board should take in overseeing valuations. ([See page 9.](#))



The NCEO's annual conference drew over 1800 people—a new record. See the photo gallery at <https://www.nceo.org/r/gallery>.

EMPLOYEE OWNERSHIP REPORT

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JUST HOW AGGRESSIVE IS THE DOL?

Previewing New Data on the Department of Labor's ESOP Investigations

Every year, some number of ESOPs are investigated by the Department of Labor. These investigations are an ongoing concern for the ESOP community, but until now there has been no data available to answer key questions about what the risk of an investigation really means for companies—such as what issues ESOPs are most commonly investigated for, how often an investigation results in a monetary recovery by the DOL, or how much money is involved.

The NCEO filed a Freedom of Information Act request to the DOL in 2013 in an attempt to shed light on these questions. After nearly five years of follow-up requests and conversations with the DOL, we received a comprehensive dataset on all ESOP investigations that closed with results from late 2006 to late 2017. We are pleased to be able to share some initial findings from that data here.

From October 2006 through September 2017, there were 1,140 cases closed “with results,” or an average of 103 cases per year. The data we received does not include the unknown number of other cases that were closed with no result. Of the 1,140 cases in the data, slightly over two-thirds resulted in a monetary recovery. Many of the remaining cases appear to have resulted in a correction of a fiduciary-duty violation without a monetary settlement.

Most settlements were small. The median total amount recovered by the DOL (including recoveries paid to participants as well as payments to correct prohibited transactions) was just \$96,000. Nearly half of the cases (45%) resulted in total recoveries of less than \$50,000, and nearly a third (31%) resulted in zero monetary recoveries. Figure 1 [on page 10](#) illustrates the wide range of amounts recovered, with a large majority of cases resulting in six-figure settlements or less.

The total monetary recoveries across all 1,140 cases was \$3.91 billion, or an average of \$356 million per year over the 11-year period covered in the data. The average amount recovered was \$3.4 million. However, this average is skewed by a small number of very large settlements, such as the \$250 million recovered in the widely publicized Tribune Company class action case in 2012. The largest 25 judgments accounted for \$2.09 billion in recoveries, or more than half of the total.

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The Fall
ESOP Forum
Best Practices in
Employee Ownership



October 3–4, 2018 | Albuquerque, NM
With Preconference on October 2

See special
insert inside...

THE NCEO is a self-sustaining nonprofit membership organization that provides practical resources and objective, reliable information on employee stock ownership plans (ESOPs), equity compensation plans, and ownership culture. Our publications, meetings, webinars, and research are designed with you in mind.

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