Data on EBSA’s Civil ESOP Investigations, FY 2007 - 2017

NCEO members’ summary
Find the full report at nceo.org/r/DOLguide
EBSA’s civil ESOP investigations

The Employee Benefits Security Administration (EBSA), the agency within the Department of Labor tasked with enforcing Title I of the Employee Retirement Income Security Act (ERISA), investigates dozens of ESOPs each year.

EBSA provided data on these investigations to the NCEO in 2018 in response to requests under the Freedom of Information Act. These slides present a summary of this data, which includes information about all of EBSA’s civil ESOP investigations that closed with results between fiscal year 2007 and 2017.
Number of investigations closed in FY 2007 - 2017

All ESOP cases closed:

2,069

With results:

1,237

With monetary results:

787

“With results”: An ERISA violation was found and corrected.

“With monetary results”: money was restored to the plan, participants, and/or beneficiaries as a result of the investigation.
Investigation length

- Mean: 2 years from open date to close date
- Median: 20 months
- 80% of cases last less than 3 years
Investigations over time

The number of ESOP cases closed each year is declining. This decline tracks with an overall decline in EBSA’s caseload (not unique to ESOPs).

Number of ESOP investigations closed with results, by FY

![Graph showing the number of ESOP investigations closed with results from 2007 to 2017. The number of investigations has declined from 150 in 2007 to 54 in 2017.]
Issues

Loan- and valuation-related cases are most common.

Investigations by lead issue among 1,237 ESOP cases closed with results, 2007-2017

- Loans: 38%
- Valuation: 29%
- Imprudence: 9%
- Benefit Payments: 4%
- All Other: 19%
Investigations by issue over time

Valuation cases are on the rise, consistent with EBSA’s stated focus on the ESOP valuation.

Lead issues as percentage of cases over time among 1,237 ESOP cases closed with results, 2007-2017
Characteristics of investigated plans

**S and C Corporations**
- Investigated ESOPs:
  - S Corps: 51%
  - C Corps: 49%
- All ESOPs:
  - S Corps: 50%
  - C Corps: 50%

**KSOPs/standalone ESOPs**
- Investigated ESOPs:
  - KSOP: 16%
  - Standalone: 84%
- All ESOPs:
  - KSOP: 17%
  - Standalone: 83%

**Leveraged/non-leveraged**
- Investigated ESOPs:
  - Leveraged: 72%
  - Non-lev: 28%
- All ESOPs:
  - Leveraged: 46%
  - Non-lev: 54%

**Large/small plans (large = 100+ participants)**
- Investigated ESOPs:
  - Large: 52%
  - Small: 48%
- All ESOPs:
  - Large: 45%
  - Small: 55%
Monetary recoveries

Out of 2,069 ESOP investigations closed in FY 2007-2017, 38% closed with non-zero monetary recoveries. Monetary recoveries do not include civil penalties, excise taxes, or other costs associated with investigations. EBSA’s method of tracking monetary recoveries has changed over time—when considering dollar amounts, we conservatively look only at 2015-2017.
Monetary recovery amounts

Most cases resulted in recoveries of less than $100k.

Amounts recovered
among 207 ESOP cases closed with results in FY 2015-2017

- $0: 51%
- $1 to $10k: 10%
- $10k to $100k: 12%
- $100k to $500k: 14%
- $500k to $1m: 4%
- $1m to $5m: 8%
- More than $5m: 1%
# Monetary recoveries by issue

<table>
<thead>
<tr>
<th>Lead Issue</th>
<th>Number of Cases Closed With Results, 2015–2017</th>
<th>Total Monetary Recoveries</th>
<th>Median Total Monetary Recoveries</th>
<th>Average Total Monetary Recoveries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loans</td>
<td>36</td>
<td>$7.0 million</td>
<td>$0</td>
<td>$195,697</td>
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<tr>
<td>Valuation</td>
<td>102</td>
<td>$50.9 million</td>
<td>$0</td>
<td>$499,616</td>
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<td>Imprudence</td>
<td>12</td>
<td>$10.3 million</td>
<td>$329</td>
<td>$856,456</td>
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<td>Benefit Payments</td>
<td>17</td>
<td>$6.7 million</td>
<td>$26,849</td>
<td>$399,650</td>
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<td>All Other</td>
<td>40</td>
<td>$6.4 million</td>
<td>$0</td>
<td>$159,307</td>
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<tr>
<td>Total</td>
<td>202</td>
<td>$81.4 million</td>
<td>$105,424</td>
<td>$393,477</td>
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Learn more

Full report: *A Guide to DOL ESOP Investigations*

- Detailed breakdowns of investigation outcomes by plan characteristics, EBSA regional field office, issue, and more
- Includes commentary, case study, and best practices for handling the risk of an EBSA investigation

Related NCEO publications:

- *ESOP Regulatory Rulings 1990-2019*
- *ESOP and 401(k) Plan Employer Stock Litigation Review 1990-2019*