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Retire Through Ownership Act Becomes Law, Creates a Valuation Safe Harbor for ESOP Fiduciaries

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On October 15, 2026, the Retire Through Ownership Act (S. 2403) ("the Act") was signed into law. The Act amends the Employee Retirement Income Security Act of 1974 (ERISA) to clarify the definition of "adequate consideration" when an employee stock ownership plan (ESOP) buys or sells privately held company stock. Under the Act, an ESOP fiduciary may rely in good faith on a valuation by an independent appraiser who follows the principles and methodologies set forth in IRS Revenue Ruling 59-60. The Act passed the Senate unanimously in October 2025 and the House in September 2026 by a vote of 401–14, reflecting rare bipartisan consensus in favor of promoting employee ownership. For ESOP trustees, plan sponsors, and business owners weighing an ESOP transition, the Act provides long-sought statutory clarity on one of the most litigated issues in employee ownership.

Historical Legal Uncertainty Chilled ESOP Formations

ERISA generally permits an ESOP to transact in company stock only for "adequate consideration." For stock without a generally recognized public market, ERISA defined adequate consideration as fair market value as determined in good faith by the trustee or named fiduciary under the plan's terms and Department of Labor (DOL) regulations. For decades, however, the DOL never issued final regulations defining adequate consideration for privately held ESOP stock.

The uncertainty created by that gap chilled ESOP formations by creating significant risk of post-formation litigation. Trustees faced liability exposure, DOL investigations, and private litigation even when they acted prudently and retained qualified, independent valuation professionals. The resulting costs burdened existing ESOPs and discouraged the formation of new ones. In late 2024, the DOL proposed its own valuation guidelines, which would have been considerably stricter, but the new administration withdrew them. That episode underscored that durable clarity would have to come from Congress.

The Act's Safe Harbor Provision

The Act adds a new subparagraph (B) to ERISA Section 3(18), providing that a fiduciary of an ESOP "may make a good faith reliance" on a valuation provided by an independent valuation expert or business appraiser who relies on the principles and methodologies of IRS Revenue Ruling 59-60 (as amplified and modified by the IRS) in determining fair market value. The adoption of Revenue Ruling 59-60 is significant because it provides a long-standing and well-understood basis for valuing assets that do not trade regularly on a public exchange.

The IRS issued Revenue Ruling 59-60 in 1959 to guide the valuation of closely held stock for estate and gift tax purposes. It defines fair market value as the price at which property would change hands between a willing buyer and a willing seller, where neither party is under compulsion and both parties are reasonably informed of the relevant facts. The ruling stresses that valuation is a question of fact, that no formula applies in every case, and that common sense, informed judgment, and reasonableness must guide the analysis.

The ruling identifies eight fundamental factors an appraiser must analyze: the nature and history of the business; the general economic outlook and the condition of the specific industry; book value and financial condition; earning capacity; dividend-paying capacity; goodwill and other intangible value; prior sales of the stock and the size of the block being valued; and the market prices of comparable publicly traded companies. It directs appraisers to weigh these factors according to the company's circumstances. The ruling also explains that capitalization rates must reflect the nature of the business, the risk involved, and the stability of earnings, and it cautions against simply averaging the results of different methods.

In ESOP practice, appraisers apply these principles by weighing earnings-, asset-, and comparable-company-based approaches; using discounted or capitalized earnings to estimate enterprise value; and deriving discount rates from the weighted average cost of capital. Government officials and private-sector appraisers have relied on this framework for more than 60 years.

Added Clarity for ESOP Valuations

For employee owners, the Act reinforces utilization of a disciplined, well-understood valuation process to help protect participants from the plan overpaying for stock when an ESOP is formed and against undervaluation of their accounts when they retire or separate from service. For business owners considering a sale to an ESOP, the Act provides added clarity in an area of longstanding ambiguity that has chilled ESOP formation. Owners and trustees now have reassurance that their transactions will be evaluated against a defined valuation benchmark rather than an undefined regulatory standard. For the broader ESOP community, clearer rules have the potential to reduce litigation, investigations, and compliance costs,

allowing more resources to flow to participants.

Practical Considerations for ESOP Fiduciaries

The safe harbor is significant, but it is not automatic. Fiduciaries should confirm that appraiser engagement letters expressly require adherence to Revenue Ruling 59-60 and that the appraiser is both qualified and independent. Because the Act preserves Section 404 duties, trustees should continue to critically review valuation reports, question assumptions and projections, and document their deliberations. Fiduciaries should also note that the Act applies only to determinations made on or after October 15, 2026, so earlier transactions remain subject to prior law. Finally, plan sponsors and trustees should monitor the DOL for any interpretive rulemaking under the new provision.

Additional Information

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