

RESTORING TRUST: ENHANCING TRANSPARENCY AND OVERSIGHT AT EBSA

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR, AND PENSIONS

OF THE

COMMITTEE ON EDUCATION AND
WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

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RESTORING TRUST: ENHANCING TRANSPARENCY AND OVERSIGHT AT EBSA

Tuesday, July 22, 2025

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND
PENSIONS,
COMMITTEE ON EDUCATION AND WORKFORCE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:15 a.m., in Room 2175, Rayburn House Office Building, Hon. Rick Allen (Chairman of the Subcommittee) presiding.

Present: Representatives Allen, Onder, Foxx, Walberg, McClain, Rulli, Mackenzie, Fine, DeSaulnier, Courtney, Norcross, McBath, Hayes, Lee, Mannion, Takano, and Scott.

Staff present: Vlad Cerga, Director of Information Technology; Maren Emmerson, Staff Assistant; Libby Kearns, Press Assistant; Katerina Kerska, Legislative Assistant; Trey Kovacs, Director of Workforce Policy; Campbell Ladd, Clerk; R.J. Laukitis, Staff Director; Danny Marca, Director of Information Technology; Brad Mannion, Professional Staff Member; John Martin, Deputy Director of Workforce Policy/Counsel; Audra McGeorge, Communications Director; Alexis Morgan, Intern; Daniel Nadel, Legislative Assistant; Ethan Pann, Deputy Press Secretary and Digital Director; Ellison Powell, Intern; Kane Riddell, Staff Assistant; Carl Rifino, Intern; Sara Robertson, Press Secretary; Heidi Schneider, Professional Staff Member; Ambrose Tierney, Intern; Ann Vogel, Director of Operations; Ali Watson, Director of Member Services; Joe Wheeler, Professional Staff Member; James Whittaker, General Counsel; Jeanne Klinefelter Wilson, ERISA Counsel; Samantha Wright, Intern; Sayda Bir, Minority Intern; Ilana Brunner, Minority General Counsel; Daniel Foster, Minority Senior Health and Labor Counsel; Caroline Guo, Minority Intern; Patrick Jo, Minority Intern; Alexandra Walker, Minority Intern; Vivian Wiggins, Minority Intern; Jessica Schieder, Minority Economic Policy Advisor; Raiyana Malone, Minority Press Secretary; Brian Marshall, Minority Legal Intern; Kevin McDermott, Minority Director of Labor Policy; Marie McGrew, Minority Press Assistant; Eleazer Padilla, Minority Staff Assistant; Véronique Pluviose, Minority Staff Director; Banyon Vassar, Minority Director of IT.

Chairman ALLEN. The Subcommittee on Health, Employment, Labor and Pensions will come to order. I note that a quorum is present. Without objection, the Chair is authorized to call a recess at any time.

Today's hearing is about protecting the retirement savings of American workers and shielding the employers who voluntarily maintain retirement savings plans from abusive governmental overreach. Employers sponsored retirement plans are the backbone of the American retirement.

Private employers voluntarily sponsor more than 800,000 ERISA covered retirement plans holding more than 9 trillion in assets. More than 70 million workers and millions of former employees and retirees are covered by these plans. Savings rolled over from employer sponsored retirement plans also total more than half of the 15 trillion in IRAs.

Employers should be encouraged to maintain these plans. Due to the Biden-Harris policies, inflation and the cost of living rose dramatically, throwing many Americans into financial jeopardy. Few people are more vulnerable to this kind of financial instability than retirees.

Americans are working later in life without a chance to enjoy retirement. The Biden-Harris administration punished employers for maintaining these plans, specifically the Employee Benefit Security Administration, also known as EBSA, ran burdensome and inefficient employee benefit plan investigations that lasted for years with repetitive document requests, staff turnover, and delayed findings.

The Biden-Harris playbook wasted the taxpayer's money and the money of the employers under investigation. Endless and aimless investigations conducted by EBSA wasted precious time and resources and ultimately hurt the American savers. We will hear testimony today that EBSA has also abused the legal system, and aided Plaintiff's attorneys.

The Department of Labor's Office of Inspector General announced in June that it will investigate EBSA's secret sharing agreements with lawyers, such as class action Plaintiff's law firms. EBSA's mission is to ensure the security of retirement, health and other workplace benefits of America's workforce, and their families.

Instead of upholding this mission, the Biden-Harris administration used EBSA to deliberately attack the voluntary employee benefit system with endless and aimless investigations. Today, we will learn more about those practices, and their efforts on workers and the employers to provide benefits to those workers.

Members of our Committee have proposed legislative solutions for the problems we will hear about today. Representative Lisa McClain has introduced the EBSA Investigations Transparency Act, and Representative Mike Rulli has introduced the Balance the Scales Act.

I look forward to discussing these bills and other efforts to protect ERISA plan participants, and their benefit plan. With that, I yield to the Ranking Member for an opening statement.

[The statement of Chairman Allen follows:]



Opening Statement of Rep. Rick Allen (R-GA), Chairman
Subcommittee on Health, Employment, Labor, and Pensions
“Restoring Trust: Enhancing Transparency and Oversight at EBSA”
July 22, 2025

(As prepared for delivery)

Today’s hearing is about protecting the retirement savings of American workers and shielding the employers who voluntarily maintain retirement savings plans from abusive governmental overreach. Employer-sponsored retirement plans are the backbone of American retirement. Private employers voluntarily sponsor more than 800,000 ERISA-covered retirement plans holding more than \$9 trillion in assets. More than 70 million workers and millions of former employees and retirees are covered by these plans. Savings rolled over from employer-sponsored retirement plans also total more than half of the \$15 trillion in IRAs.

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With that, I yield to the Ranking Member for an opening statement.

Mr. DESAULNIER. Thank you, Mr. Chairman, and thank you to the witnesses for being here. I also want to welcome one of the witnesses, Mr. Banducci, for coming back to the Committee. I know he served for many years on the Republican Committee staff, so I will be interested to see what it is like on the other side.

The Department of Labor's Employee Benefits Security Administration, or EBSA for short, is a vital agency charged with protecting workers' hard-earned health and retirement benefits. EBSA oversees approximately 800,000 private retirement plans covering over 153 million people, 2.6 million health plans, and 514,000 other benefit plans.

Many significant laws are within EBSA's jurisdiction, and several more have been added in recent years. Despite EBSA's critical mission and growing responsibilities, its funding and staffing have not kept pace. EBSA has been essentially flat funded for years, and the Trump administration's Fiscal Year 2026 budget only makes things worse by requesting \$10 million less than last year's level.

The administration is effectively proposing a further cut of \$20 million by failing to extend bipartisan No Surprises funding. Inadequate funding has resulted in steep declines in full-time employees at EBSA.

We are incredibly fortunate to have Mr. Ali Khawar as one of our witnesses, welcome Mr. Khawar this morning. He has worked at EBSA in various capacities for nearly 20 years. His testimony details how EBSA's budget once supported over 960 employees, and how the Trump administration's recent budget would support just over 600.

Clearly, EBSA is being asked to do far more with much less, but it is still delivering for workers and their families, protecting their benefits, and putting money back in their pockets, and is a good return on investment to high road employers, and the taxpayers.

In fact, in Fiscal Year 2024, EBSA recovered almost 1 and a half billion dollars in payments. In a time when Federal workers are being unfairly targeted and fired by the Trump administration, it is even more important to recognize the value they provide to American taxpayers and our constituents.

Everyday Americans get assistance from EBSA's Benefit Advisors, who help workers navigate the complex issues with their plans. They, and all of EBSA's staff in D.C. and its regional and field offices, deserve our respect and appreciation during what I am sure has been an incredibly challenging year for them and their families.

I understand that today's hearing will focus on two bills that harm EBSA's ability to do its job. Last year Committee Republicans opposed the Department of Labor's legally permissible, yet, rarely used common interest agreements in litigation. I say rare, because as Mr. Khawar notes in his testimony over the past 15 years there were only 12 such agreements. Let me repeat that. Over 15 years, 12 such agreements out of over 31,000 investigations.

Nevertheless, Committee Republicans demanded that the Department's Inspector General look into these rare agreements and the IG agreed. Rather than waiting for the results of the IG investigation, they requested Committee Republicans, the request today in this hearing is rushing to judgment, seemingly intent on advancing a one-sided-bill that goes way beyond common interest agreements and severely limits EBSA's ability to communicate with attorneys representing participants.

We all believe in efficiency and would be happy to work with the majority to look at objective analysis of how we make the program more efficient for everyone, particularly employees. The other bill relates to EBSA's enforcement activities. We all share an interest in seeing the enforcement by Federal agencies are completed in a timely, and as I said, efficient manner.

That is in the best interest of all parties involved. It should be nonpartisan, bipartisan. If that is our shared goal, then the best way to achieve it is to ensure EBSA has the funding resources and personnel necessary to do its job, and to wait for the IG's investigation.

What does not accomplish that goal is a bill to add to EBSA administration burden and require them to produce a biased report

that does not provide a complete picture of the agency's work. These bills do not solve problems; they create new ones and strike at the heart of EBSA's mission.

As we have seen from the devastating wrought in recent months by the so-called Department of Government Efficiency, DOGE, and the catastrophic One Big, Ugly Law, our language, which will leave at least 10 million Americans without health insurance and cut over a trillion from Medicaid. Undermining core government functions does a disservice for the American people.

We can and should do better, and are willing to work in a bipartisan way if we really want to improve oversight. Thank you, and I yield back.

[The statement of Ranking Member DeSaulnier follows:]



OPENING STATEMENT

House Committee on Education and Workforce
Ranking Member Robert C. "Bobby" Scott

Opening Statement of Ranking Member Mark DeSaulnier (CA-10)

Subcommittee on Health, Employment, Labor, and Pensions

"Investing for the Future: Honoring ERISA's Promise to Participants"

Tuesday, July 22, 2025 | 10:15 a.m.

Thank you, Mr. Chairman— and thank you to all the witnesses for being here. I also want to welcome one of the witnesses, Mr. Banducci, for coming back to the Committee. I know he served for many years on the Republican Committee staff, so I'll be interested in knowing what it's like on the other side.

The Department of Labor's Employee Benefits Security Administration—or EBSA, for short—is a vital agency charged with protecting workers' hard-earned health and retirement benefits. EBSA oversees approximately 801,000 private retirement plans covering over 153 million people, 2.6 million health plans, and 514,000 other benefit plans. Many significant laws are within EBSA's jurisdiction, and several more have been added in recent years.

Yet, despite EBSA's critical mission and growing responsibilities, its funding and staffing have not kept pace. EBSA has been essentially flat-funded for years, and the Trump Administration's Fiscal Year 2026 budget only makes things worse by requesting \$10 million less than last year's level. The Administration is effectively proposing a further cut of \$20 million by failing to extend bipartisan *No Surprises Act* funding. Inadequate funding has resulted in steep declines in full-time employees at EBSA. We are incredibly fortunate to have Mr. Ali Khawar as one of our witnesses – welcome, Mr. Khawar – this morning. Mr. Khawar worked at EBSA in various capacities for nearly 20 years. His testimony details how EBSA's budget once supported over 960 employees, and how the Trump Administration's recent budget would support just 640.

Clearly, EBSA is being asked to do far more with much less – but it is still delivering for workers and their families, protecting their benefits, and putting money back in their pockets, and is a good return on investment to high-road employers and taxpayers. In fact, in Fiscal Year 2024, EBSA recovered almost \$1.4 billion in payments. At a time when federal workers are being unfairly targeted and fired by the Trump Administration, it is even more important to recognize the value they provide to American taxpayers and our constituents. Every day, Americans get assistance from EBSA's benefit advisors, who help workers navigate the complex issues with their plans. They – and all of EBSA's staff in DC and its regional and field offices – deserve our respect and appreciation during what I'm sure has been an incredibly challenging year for them and their families.

I understand that today's hearing will focus on two bills that harm EBSA's ability to do its job.

Last year, Committee Republicans opposed the Department of Labor's legally permissible yet rarely used "common interest agreements" in litigation. I say rare because – as Mr. Khawar notes in his testimony – over the past 15 years, there were only twelve such agreements. Let me repeat that – over fifteen years, twelve such agreements out of over 31,000 investigations. Nevertheless, Committee Republicans demanded that the Department's Inspector General (IG) look into these rare agreements, and the IG agreed. Rather than waiting for the results of the IG investigation they requested, Committee Republicans' request today in this hearing is rushing

to judgment and seemingly intent on advancing a one-sided bill that goes way beyond common interest agreements and severely limits EBSA's ability to communicate with attorneys representing participants. We all believe in efficiency, and we'd be happy to work with the majority to look at objective analysis of how we make the program more efficient for everyone, particularly employees.

The other bill relates to EBSA's enforcement activities. We all share an interest in seeing that enforcement by the federal agencies is completed in a timely, and as I said, efficient manner. That's in the best interest of all parties involved. It should be bipartisan. If that's our shared goal, then the best way to achieve it is to ensure EBSA has the funding, resources, and personnel necessary to do its job and to wait for the IG's investigation. What doesn't accomplish that goal is a bill to add to EBSA's administrative burden and require them to produce a biased report that doesn't provide a complete picture of the agency's work.

These bills don't solve problems. They create new ones and strike at the heart of EBSA's mission.

As we've seen from the devastation wrought in recent months by the so-called Department of Government Efficiency (DOGE) and the catastrophic "One Big, Ugly Law," which will leave 10 million Americans without health insurance and cut over \$1 trillion from Medicaid, undermining core government functions does a disservice to the American people.

We can and should do better and are willing to work in a bipartisan way if we really want to improve oversight.

Thank you. I yield back.

Chairman ALLEN. I thank the Ranking Member. Pursuant to Committee Rule 8(c), all members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m., 14 days after this hearing.

Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material noted during the hearing to be submitted for the official record.

I will now turn to the introduction of our four distinguished witnesses. Our first witness is Mr. Golumbic, a Principal at Groom Law Group in Washington, DC. Our second witness is Mr. Andy

Banducci, a Senior Vice President for Retirement and Compensation Policy at the ERISA Industry Committee in Washington, DC.

Our third witness is Mr. Khawar, the Founder and President of FCP, LLC in Washington, DC. Our last witness is Mr. Jim Bonham, the President and CEO for the ESOP Association in Washington, DC. We thank the witnesses for being here today, and we look forward to your testimony.

Pursuant to Committee Rules, I would ask that you each limit your oral presentation to a 3-minute summary of your written statement, as Committee members have many questions for you the clock will countdown from 3 minutes.

Pursuant to Committee Rule 8(d), and Committee practice, however, we will not cutoff your testimony until you reach the 5-minute mark. I would also like to remind witnesses to be aware of their responsibility to provide accurate information to the Subcommittee. I will first recognize Mr. Golumbic for your testimony. Mr. Golumbic.

**STATEMENT OF MR. LARS GOLUMBIC, PRINCIPAL, GROOM
LAW GROUP, WASHINGTON, D.C.**

Mr. GOLUMBIC. Chairman Allen, Ranking Member DeSaulnier, and members of the Subcommittee, thank you for the opportunity to testify today about the Balance the Scales Act, which will compel the U.S. Department of Labor to do what it should have done for years, and for American citizens and businesses when it shares their confidential information with others.

My name is Lars Golumbic, and I am a Principal at Groom Law Group Chartered, a law firm specializing in employee benefits. I am Cochair of our ERISA litigation group, and I have been practicing in this area for nearly 25 years.

Last year in an ongoing lawsuit, my law firm uncovered concrete proof, what many have all suspected, that the DOL uses its authority to collect confidential information from American businesses, and surreptitiously supplies it to private Plaintiff's attorneys under the guise of so-called common interest agreements.

The Federal District Court in that lawsuit rightfully chastised the DOL, and the Plaintiff's firm were involved, Cohen Milstein for their cozy relationship that enabled DOL to, as the Court put it, litigate in the shadows. Unfortunately, we have since learned that this was not just a one-time occurrence.

Documents produced in response to at least one FOIA request show that the DOL's secret arrangements have infected many of the class action lawsuits over the years. These documents show the DOL providing information to class action lawyers, coordinating on discovery and legal strategy and much more.

The DOL's actions circumvent important legal protections, including FOIA's confidentiality and notice provisions, the rules governing litigation in Federal Court, and the enforcement scheme Congress created within ERISA.

The DOL stomps on the scales of justice when it sidesteps these protections, handicapping plan sponsors, fiduciaries, and service providers trying to defend themselves in class actions, while gifting lucrative information to favored Plaintiff's attorneys.

It was not always this way. Earlier in my career, the DOL was viewed as a welcome partner in a collaborative regulatory process. Now, the sentiment that the DOL is on the same team as the ERISA plaintiff's bar, with the regulated community on the other side, seems to have metastasized within the DOL.

Common interest agreements are but one symptom of this broader problem. The revolving door between the DOL and the ERISA Plaintiff's bar is one driver of this unwelcome development.

Frequently, attorneys in the Department of DOL slide directly into private practice, with the very Plaintiffs' firms to which the DOL back channeled information during their tenures.

This incestuous relationship creates an alarming conflict. The Balance the Scales Act represents a crucial step to restoring public faith in the regulatory by bringing their activities out in the light of the public eye, as they should have been from the very beginning. Thank you, and I look forward to your questions.

[The prepared statement of Mr. Golumbic follows:]

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**U.S. House of Representatives
Committee on Education and Workforce
Subcommittee on Health, Employment, Labor, and Pensions**

**“Restoring Trust: Enhancing Transparency and Oversight at EBSA”
Tuesday, July 22, 2025, 10:15 a.m.**

**Testimony of Lars C. Golumbic
Principal, Groom Law Group, Chartered**

Good morning, Chairman Allen, Ranking Member DeSaulnier, and members of the Subcommittee on Health, Employment, Labor, and Pensions (“Subcommittee”). Thank you for the opportunity to testify today about the issues surrounding common interest agreements between the U.S. Department of Labor (the “DOL”) and private plaintiffs’ attorneys, and the proposed legislation requiring disclosure of such agreements to ERISA plan sponsors, employers, and fiduciaries.

My name is Lars Golumbic. I am a Principal at Groom Law Group, Chartered (“Groom”), a law firm that has specialized in employee benefits (advising plan sponsors, fiduciaries, and service providers) since it was founded 50 years ago by Theodore R. Groom, who was instrumental in developing ERISA’s landmark fiduciary responsibility provisions and later the Multiemployer Pension Plan Amendments of 1980. I am Co-Chair of Groom’s ERISA Litigation Group and have been practicing in this area for nearly 25 years, representing plan sponsors, fiduciaries, and service providers in virtually every type of ERISA class action litigation and in DOL investigations and enforcement actions.

The ERISA defense bar has long suspected that the DOL had been supplying private plaintiffs’ attorneys information it collected during investigations. It has been common in my experience for a frenetic DOL investigation to suddenly stagnate after the target produces documents or sits for interviews, only for a plaintiffs’ law firm that specializes in ERISA class action lawsuits to

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file a complaint against the fiduciaries or company sponsor of the same retirement plan concerning the very issues at the center of the DOL's investigation.

It was not until last year that my law firm uncovered concrete proof that the DOL has been working hand-in-glove with the plaintiffs' bar. My firm represents Defendant-fiduciaries accused of causing an employee stock ownership plan to overpay for employer stock in a class action lawsuit filed in the Federal District Court for the District of Colorado. Plaintiffs—represented by Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”), a plaintiffs' firm that specializes in bringing ERISA class action lawsuits—were forced to produce in discovery an agreement formally memorializing the supposed common interest relationship between the DOL and Plaintiffs' counsel. This “common interest agreement” outlined the terms governing the manner in which the DOL would spoon-feed Plaintiffs' counsel information designated as confidential under the Freedom of Information Act (“FOIA”) that the DOL collected during its investigation to help Plaintiffs' counsel prosecute its case.

In a series of rulings, the District Court rightly lambasted Cohen Milstein and the DOL for this insidious practice, holding that they did not, in fact, share a common interest. “To hold otherwise in a case like this,” the Court held, “could set a dangerous precedent”:

It would allow a government agency to weaponize private litigation against some target *before* confirming the target should be a target. Moreover, the government could litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself. The inverse is also true. A private litigant could leverage government powers for its own use in private litigation—*before* the government has sufficient grounds to leverage those powers itself. . . . The Plaintiffs' arrangement with the DOL has given Plaintiffs' access to information they can leverage, use to take shortcuts, and rely upon to circumvent ordinary discovery protocols. The Court cannot allow that to continue.

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We had uncovered proof positive that the DOL has been secretly feeding confidential information and documents that plan sponsors, fiduciaries, and service providers had provided during investigations and audits to private plaintiffs' attorneys.

Since this initial discovery last year, my firm and others have uncovered even more evidence of this secret partnership between the plaintiffs' bar and the government. For example, just one recent, targeted FOIA request revealed that the DOL has shared information with plaintiffs' counsel in many other class action lawsuits in the past few years alone, providing information and documents, coordinating on discovery, recommending favorable mediators, discussing legal strategy, and much more. Our understanding is that the DOL has done so in some matters even without the existence of a written common interest agreement. To be sure, the Office of the Inspector General's investigation into the DOL's historical practices that is currently underway may reveal many more examples of the cozy relationship between the DOL and the ERISA class action plaintiffs' bar.

The DOL's actions are not only distastefully underhanded, but they also run afoul of a number of legal protections to which plan sponsors, fiduciaries, and service providers are entitled under the law.

For example, FOIA exempts from public disclosure documents a producing party marks "confidential" or "exempt from disclosure under FOIA" because they are "trade secrets and commercial or financial information," and other provisions of federal law penalize the unauthorized disclosure of such confidential information by federal employees. Though FOIA allows the government to disclose confidential material under certain circumstances, the producing party must be notified beforehand so that it may act to protect its confidential material. Consistent with these protections, the DOL's enforcement manual for its employee benefits investigators prohibits

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disclosing confidential material to third parties without first adhering to the procedural protections afforded by FOIA and other federal statutes. Yet, in my experience, the DOL regularly circumvents these safeguards when it shares such information with the plaintiffs' bar.

If that were not enough, these secret arrangements also subvert the enforcement scheme Congress created within ERISA by allowing plaintiffs to circumvent the rules of discovery in federal court. Congress created two avenues for enforcing ERISA's provisions: first, the DOL may open investigations and issue findings; and, second, private litigants or the DOL may file suit in federal court. ERISA section 504(a) grants the Secretary of Labor broad authority to open investigations, subpoena documents, and interview individuals "as he may deem necessary to enable him to determine the facts":

(a) Investigation and submission of reports, books, etc. The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this subchapter or any regulation or order thereunder—

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this subchapter, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this subchapter or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

But ERISA does not bestow this same authority on private litigants, like plaintiffs' firms that specialize in finding plan participants to sign onto ERISA class actions. Instead, a private litigant must file a complaint containing sufficient factual details about their claims to make out a viable legal claim before obtaining any information from a counterparty. If after hearing the defendant's objections in a motion to dismiss, the federal judge assigned to the case finds that the

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plaintiff satisfied that legal standard, then the plaintiff may request certain documents and depositions from the defendant, subject to the protections afforded by the Federal Rules of Civil Procedure as interpreted and applied by the federal court in which he or she have sued.

The DOL stomps on the scales of justice when it circumvents these litigation guardrails, creating an uneven playing field for plan sponsors, fiduciaries, and service providers—not to mention potentially significant pay days for the ERISA plaintiffs’ bar. Armed with key information and documents that they otherwise would not have access to, private plaintiffs’ attorneys have far better odds of surviving a motion to dismiss, unlocking the gates to costly discovery and, by extension, obtaining leverage to extort favorable settlements—even for defendants who have fully complied with ERISA’s standards but, in the absence of a settlement, would need to endure onerous discovery to get to trial and prove it. As the Supreme Court recently put it:

[I]n modern civil litigation, getting by a motion to dismiss is often the whole ball game because of the cost of discovery. Defendants facing those costs often calculate that it is efficient to settle a case even though they are convinced that they would win if the litigation continued.

This continues to be true in the ERISA class action space, even as defendants in such lawsuits have largely prevailed on summary judgment and at trial, i.e., once the case actually reaches the merits.

The DOL’s apparent practice of using common interest agreements is a disappointing development. Earlier in my career, the DOL was viewed as a welcome partner in a collaborative regulatory process. While the DOL and private sector did not always see eye-to-eye, the relationship was not antagonistic; reasonable minds were able to come together to reach commonsense agreements that worked for all stakeholders. Now, the notion that the DOL is on the same “team” as the ERISA plaintiffs’ bar, with the regulated community on “the other side,” seems to have metastasized within the DOL—despite the fact that all are aligned in furthering ERISA’s goal of

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encouraging employers to create and maintain benefit plans for their employees. Common interest agreements are but one symptom of this broader problem.

One reason for this unwelcome development seems to be the revolving door between the DOL and the ERISA plaintiffs' bar: frequently, attorneys departing the DOL slide directly into private practice with the very plaintiffs' firms to which the DOL attorneys backchanneled confidential information during their tenures. This incestuous relationship creates an alarming conflict for DOL personnel: use the DOL's subpoena power to force businesses to produce valuable confidential information, enrich plaintiffs' firms by providing it to them under the guise of a common interest, and get rewarded with a lucrative landing spot after leaving your government post.

Given the current state of affairs, the "Balance the Scales Act" is a much needed and welcome reform that will help to bring the DOL's underhanded activities out into the light of the public eye—as they should have been from the very beginning. Likewise, the "EBSA Investigations Transparency Act" will help hold the DOL accountable and provide essential oversight that has been lacking for far too long.

The importance of protecting the retirement assets of American workers cannot be understated. It is equally as essential to encourage employers to sponsor retirement plans in the first place. Fewer will do so if they feel that the playing field is tilted against them, even where they and fiduciaries unquestionably meet their obligations under ERISA. Together, these laws are an important first step in remedying the broken system that has, unsurprisingly, disrupted the careful balance that Congress struck when it enacted ERISA's regulatory and enforcement scheme.

Mr. MACKENZIE [presiding]. Thank you. Next, I will recognize Mr. Banducci for your testimony.

STATEMENT OF MR. ANDY BANDUCCI, SENIOR VICE PRESIDENT, RETIREMENT AND COMPENSATION POLICY, THE ERISA INDUSTRY COMMITTEE, WASHINGTON, D.C.

Mr. BANDUCCI. Thank you, Mr. Chairman, Ranking Member DeSaulnier, and members of the Subcommittee. Thank you for the opportunity to testify today. My name is Andy Banducci. I am the Senior Vice President for Retirement and Compensation Policy at the ERISA Industry Committee, or ERIC.

We are a national organization, an advocacy organization, representing the largest employee benefit plan sponsors in the United States. More than 150 million Americans have employer provided health coverage. Nearly 100 million private sector workers have access to workplace retirement plans like 401K's.

To start, it is a real honor to be a witness today. I had the privilege of staffing this Committee on benefits issues for several years, ending in 2017. During that time, I saw serious legislators advance creative, bipartisan solutions that have helped the benefits community.

The Committee deserves credit for its leadership, and similarly today's hearing is very important. Benefits are protected by Federal, including the Employee Retirement Income Security Act of 1974, and other laws and regulations overseen by the Employee Benefits Security Administration at the DOL. At its best, EBSA is an agency that protects workers and retirees from bad actors, assists employers with legal compliance, helps correct problems with benefit design and administration, and reduces red tape.

Sadly, despite the key role that EBSA plays, ERIC members have reported for years that enforcement has been unbalanced. First, EBSA's investigations are taking too long. Among our membership we have heard stories of plan audits taking five, six, seven, even 8 years.

Second, internal DOL hand-offs, either between offices or personnel, slow things down, resulting in years and thousands of dollars wasted. Third, ERIC members also complain about a double standard in these investigations. DOL expects the timely production of requested documents in interviews with plan officials. The DOL officials too often go radio silent for months, or even in some cases years on end.

Fourth, too often the investigations appear to be fishing expeditions without a detailed focus, and fifth, there is just not enough transparency about DOL's coordination, and in some cases even collusion with class action Plaintiff's attorneys. EBSA does very important work. We are hopeful DOL leadership will address these outstanding issues.

The recently announced emphasis on compliance assistance is a positive first step. In the interim, policymakers should consider reforms to ensure that EBSA officials act with transparency and accountability. For example, ERIC supports the EBSA Investigations Transparency Act, which would impose modest annual reporting requirements, such as disclosure about the nature and number of active investigations.

We see this as just good government 101. EBSA also supports the Balance the Scales Act, which would bring transparency to EBSA's coordination with the Plaintiff's bar. If EBSA is determined

to provide information to attorneys suing benefit plans, then surely, it is reasonable that the scope of this cooperation should be documented and transparent to the employers and to Congress.

Members of the Committee, large plan sponsors provide health and retirement benefits to tens of millions of their employees and their families. On their behalf, we look forward to working with members of this Committee on both sides to improve the benefits landscape.

Again, thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Banducci follows:]



TESTIMONY OF ANDY BANDUCCI
SENIOR VICE PRESIDENT, RETIREMENT AND COMPENSATION POLICY
THE ERISA INDUSTRY COMMITTEE
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS

HEARING ON

“RESTORING TRUST: ENHANCING TRANSPARENCY AND OVERSIGHT AT EBSA”

Chairman Allen, Ranking Member DeSaulnier, and Members of the Subcommittee:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to testify today. A well-functioning relationship between employee benefit plan sponsors and their regulators, including the U.S. Department of Labor, is critical for the benefits community, including workers, retirees, and plan sponsors. Today’s hearing is a crucial step in improving that relationship. ERIC appreciates the opportunity to contribute to this discussion.

ERIC is a national advocacy organization exclusively representing the largest employers in the United States as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to millions of employees and their families, and are located in every state, city, and Congressional district.

The Committee on Education and Workforce has long been a place where serious legislators have been able to advance solutions to some of the most challenging questions facing the tens of millions of Americans that receive health and retirement benefits at work. Oftentimes, those solutions have been creative and bipartisan, and this Committee deserves credit for its leadership over the decades. The most recent example of this bipartisan work, of course, was the SECURE 2.0 Act that was enacted at the end of 2022.

Today’s hearing should be another positive step in strengthening the bipartisan consensus that our private-sector system, while certainly not perfect, is largely successful. Removing impediments, reducing red tape, and recognizing the valuable role that plan sponsors play can help strengthen financial security for American workers and retirees at essentially no cost.

The private sector's delivery of employee benefits is the backbone of health care coverage and retirement savings. More than 150 million Americans get health insurance through employer-provided health coverage, and nearly 100 million private sector workers have access to retirement savings plans such as 401(k) retirement plans.¹ Large employers, including our members, are at the forefront of delivering high quality, high value, and innovative benefits to tens of millions of Americans.

ERIC member companies sponsor health and retirement plans governed by the Employee Retirement Income Security Act (ERISA) and other laws and regulations overseen by the Employee Benefits Security Administration (EBSA), a subagency of the Department of Labor. EBSA has significant enforcement responsibilities on behalf of the workers, retirees, and their families that rely on these plans. We appreciate the role the agency is intended to play. At its best, EBSA is an agency that protects workers and retirees from unscrupulous bad actors, assists employers with legal compliance, helps correct problems with benefits plan design and administration, and identifies regulatory impediments to providing efficient, cost-effective and valuable health and retirement benefits.

ERISA envisions a balanced approach toward enforcement, recognizing that employers seeking to do the right thing are the lynchpin of our system. Rather than reflexively viewing plan sponsors as adversaries, the Labor Department should see plan sponsors as key partners in enhancing health care and retirement security. Instead, our member companies – who invest millions of dollars in compliance and take pride in their benefits programs – too often are the subject of “gotcha” enforcement. Rebuilding this balance will take time and leadership, but we have some good recent developments. For example, the Department of Labor's recently modernized opinion letter initiative is a positive first step toward emphasizing compliance assistance.²

Unfortunately, too many employers report audits and investigations relating to their benefit plans that have shifting scope and burdensome demands for irrelevant information. These investigations often stretch on for many years without clear purpose or a timely ending. And at the end, after thousands of dollars and countless hours of compliance and negotiation with enforcement personnel, these burdensome investigations often unveil no wrongdoing, though they may morph into new, tangentially-related inquiries. ERIC member companies report the following troubling, long-term trends:

- **Investigations are taking too long.** Among our membership, we have heard numerous stories of plan audits taking more than five years, and some almost ten years. There is empirical evidence that EBSA is certainly closing fewer investigations. Since at least 2010, the Labor Department

¹ According to the latest available Federal Reserve data, there are about 136 million private sector workers, on a seasonally-adjusted basis. <https://fred.stlouisfed.org/series/USPRIV> (updated July 3, 2025). According to Bureau of Labor Statistics Data, approximately 70 percent of private sector workers have access to a defined contribution retirement plan, including 86 percent of employees of companies with more than 500 employees. “Employee Benefits in the United States, March 2024” available at <https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2024.htm> (updated September 2024).

² <https://www.dol.gov/newsroom/releases/oscc/oscc20250602>.

publicly reports data regarding the number of civil investigations that it has closed. For example, last year, in Fiscal Year 2024, EBSA closed 729 civil investigations. In FY 2010, EBSA closed 3,112 civil investigations.³ There may well be several reasons for this: a focus on larger cases, for example. But we simply do not know, as EBSA does not report on the number of its ongoing investigations.

- **DOL turnover and handoffs drag out investigations.** Employee turnover and shifting responsibility are realities for all employers. Smoothing the transition to between employees so that key operational responsibilities are seamlessly executed should be a key management goal, whether in government service or the private sector. That is particularly important when there is an ongoing investigation that could affect countless employees and involve potentially millions of dollars. Unfortunately, several members report that after DOL enforcement officials left government service, there were inadequate transitions to new investigators. Similarly, audit responsibilities have been transitioned to different regional offices. When this happens, it is as though the audit begins all over again, with additional costs and more uncertainty for the employer. This management failure certainly contributes to the length of investigations.
- **Lack of responsiveness.** ERIC members also complain that despite the expectation for timely production of requested documents and interviews with plan officials, DOL enforcement officials too often go “radio silent” for months (and in some cases years) on end. This is often accompanied by the refusal to identify with any specificity the alleged area of noncompliance under investigation, any information about acceptable remedies to perceived flaws in plan administration, or any information about when the audit might conclude.
- **Shifting areas of focus.** Too often, these investigations appear to be fishing expeditions without detailed focus. That manifests in overly broad document requests, far beyond those necessary for the purported reason for the investigation. For example, an audit that initially examines whether missing participants are receiving their benefits can morph into a cybersecurity audit. Targeted and focused enforcement should not, as a matter of course, expand into unrelated areas without end in sight.
- **Unpredictable regional office variation.** Many investigations are started by EBSA’s regional offices throughout the country. Our members report that there is variation among the different offices in terms of responsiveness and modes of operation. For nationwide employers, this introduces complexity and additional costs.
- **Lack of transparency about DOL collusion with class action plaintiffs’ attorneys.** It is clear that ERISA class action litigation is a serious concern for plan sponsors. The past decade has seen an explosion in the number and types of these cases. Too often, they are wholly without merit and are merely brought primarily to extract settlements. However, ultimately, workers and

³ EBSA publishes its annual enforcement fact sheets. See, e.g., <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/fact-sheets/ebbsa-monetary-results-2024.pdf>; <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/fact-sheets/ebbsa-monetary-results-2010.pdf> (last accessed July 9, 2025).

plan participants bear the costs of these settlements in the form of higher administrative costs and disincentives to providing benefits in the first place. In this context, DOL's admission that it provides information to class action plaintiffs attorneys is very troubling. DOL may conduct interviews and gather documents from a plan, not take any action, and still "outsource" enforcement to the plaintiffs' bar.

Potential Solutions

After reviewing the DOL data that exists and comparing it with the experiences of large employers, it is clear policymakers need better information. Policymakers should consider the following reforms to ensure that EBSA officials act with transparency, accountability, and appropriately execute their enforcement responsibilities:

- **ERIC supports the *Employee Benefit Security Administration (EBSA) Investigations Transparency Act (H.R. 2869)*.** The bill would impose modest annual reporting requirements on EBSA, such as by requiring disclosure about the number of active investigations. The law would also assist policymakers – especially authorizers and appropriators – by highlighting which regional offices are opening investigations. Importantly, the bill would also track the length of the investigations. If an investigation has not concluded after three years, EBSA would be required to explain why. Finally, the bill specifies that the investigation would be considered closed only when there is a closing letter issued to the employer. It also clarifies that an investigation does not start anew just because the topics under investigation shift.

This is basic, Good Government 101. The *EBSA Investigations Transparency Act* would aid Congress in fulfilling its critical oversight responsibilities, helping to ensure that EBSA's enforcement activities and priorities are transparent and efficient.

- **ERIC supports the *Balance the Scales Act (H.R. 2958)*.** This legislation would bring transparency to the coordination between EBSA and the plaintiffs' bar. Since it came to light last year that the DOL collaborates with plaintiffs' attorneys through the use of "common interest agreements," employee benefit plan sponsors have sought to better understand the prevalence and scope of these agreements. In these agreements, the Department of Labor shares information with class action plaintiffs' lawyers, including information about its investigations of the plans. The Department of Labor's Office of the Inspector General has recently announced that it is examining how this information was shared with non-governmental entities.⁴

Unfortunately, the specter of frivolous and voluminous litigation poses a significant threat to the health of the employee benefits system. Too often, plan sponsors face expensive lawsuits no matter what reasonable course of action they take. These lawsuits can cost hundreds of thousands, even millions of dollars to defend, even if the claim ultimately is dismissed. Plan participants ultimately bear those costs. If EBSA is determined to provide information to

⁴https://www.oig.dol.gov/public/oaprojects/DOL%20Common%20Interest%20Agreements_Engagement%20Letter.pdf.

attorneys suing benefits plans, then surely it is reasonable that the scope of this cooperation should be documented and transparent.

If DOL determines it is going to share information or assistance with non-government entities, the *Balance the Scales Act* would require a written agreement documenting the nature and scope of that assistance. DOL would be required to provide a copy of it to employers or plan officials that could be affected. It seems like a basic tenet of fairness to know whether a federal agency is assisting a plan's litigation adversary.

The bill would also require an annual report to Congress describing these agreements and their scope while protecting identifying information. In keeping with the theme of transparency, this report would make clear the extent to which DOL officials are working with non-governmental actors. Absent this kind of transparency – including the use of a formal agreement that must be disclosed – neither Congress nor the benefits community will really understand how prevalent these practices are.

Finally, ERIC wholeheartedly endorses the “finding” in Section 3 of this bill, articulating that ERISA is designed to “promote, encourage, and facilitate the voluntary establishment and maintenance of, and contribution to” retirement plans. EBSA's activities should always be consistent with this framework.

- **ERIC supports longer-term reforms that emphasize benefits delivery instead of administrative burden and litigation risk.** Ultimately, clarity and simplification of the rules surrounding benefits plans will help both regulators and the regulated community. That may take many forms, including ERISA litigation reform, clarifying the pleading standards applicable to ERISA claims, ensuring ERISA preemption is protected, and streamlining notice and disclosure requirements, including by encouraging electronic delivery of both retirement and health and welfare plan notices. ERIC has a comprehensive policy agenda that can help encourage plan creation and maintenance, reduce administrative costs, and improve benefits.⁵

Conclusion

Large plan sponsors provide health and retirement benefits to tens of millions of their employees and their families. It's vital that these benefits are protected, and the Department of Labor plays a crucial role in helping plan sponsors comply with the complicated regime of laws and regulations governing those benefits. Enforcement and oversight are important components of securing those benefits, and policymakers should demand transparency and accountability from the regulatory agencies charged with administering those laws. We look forward to working with members of this Committee, other members of Congress, and the administration to improve the benefits landscape.

⁵ ERIC's policy agenda is available at <https://www.eric.org/wp-content/uploads/2025/03/2025-ERIC-Policy-Priorities-PDF-compressed-compressed.pdf>.

Mr. MACKENZIE. Thank you. Next, I will recognize Mr. Khawar for your testimony.

**STATEMENT OF ALI KHAWAR, FOUNDER AND PRESIDENT,
FCP, LLC, WASHINGTON, D.C.**

Mr. KHAWAR. Thank you, Mr. Chairman, Ranking Member DeSaulnier, and Ranking Member Scott, thank you for the invitation, along with members of the Subcommittee. I really appreciate being here. I want to start with maybe a moment of personal privilege. It is a pleasure to be here with Mr. Banducci.

I always knew that 1 day we would end up on the same side, I did not anticipate it would be here, but I am looking forward to today's conversation with you.

I left EBSA in January after spending almost 20 years at the agency. In my time, there I served in a variety of roles, in the enforcement, policy and leadership capacities. I am appearing in my personal capacity today. EBSA is an agency with vast responsibilities. It is responsible for millions of private sectors, employment-based retirement, health, welfare and benefits plans.

Those plans cover over 153 million people and collectively hold about 14 trillion in assets. In addition, EBSA has responsibilities over the IRA market, which holds about 17 trillion dollars in assets, and for the Federal Thrift Savings Plan, which is approaching a trillion dollars in and of itself.

In my testimony today I want to highlight several significant challenges that EBSA faces. First, we have a base budget that has not kept pace with increases in costs, things like salary, travel, building maintenance, security, those costs have all gone up as EBSA's budget at a base level has remained relatively static.

Second, we have DOGE driven activity that has led to the loss of about a third of EBSA investigative staff. Third, a Trump budget request in the Fiscal Year 2026 that not only drops the Biden administration's request to replenish the bipartisan No Surprises Act fund but also cuts the base budget by 10 million dollars.

Fourth, is the simple reality that you have an agency that is very small relative to its responsibilities. This disparity is even more stark when you compare it to peer agencies, the SEC, the ratio of investigators or auditors to the regulated entities is about—it varies, but you could say 1 to about a dozen.

For EBSA, the number right now is 1 to 17,000.

You are going to hear a lot today about reported widespread problems with EBSA's enforcement program, but the statistics tell a very different story. Just last Fiscal Year the agency recovered 1.4 billion dollars, that is direct payments to participants and beneficiaries.

Almost 742 million dollars of that was from the civil enforcement program. That program also got over 320 non-monetary corrections. These are really important corrections, things like removing bad fiduciaries, or improving plan practices. In addition, in the criminal program there were 161 guilty pleas or convictions. The bottom line is simple, EBSA's enforcement matters.

There are two specific topics of today's hearing that I want to share some thoughts on. First, is the timeliness of EBSA's investigations. As of November 11th, November 7th, 2023, only about 3

percent of EBSA's investigations were still being actively investigated 48 months later. Two thirds of those had taken so long because in the intervening period, Congress had passed a law in the No Surprises Act. There was another provision related to Mental Health Parity that required a written comparative analysis from a peer benefits, and so EBSA began to request and analyze those written and comparative analyses.

The primary driver of delay is underfunding. Second, are the claims of widespread collusion between EBSA and the plaintiff's bar. Congress, in passing ERISA, gave the Department explicit authority to share information with a variety of interested parties.

Again, the statistics tell a different story. Over a 15-year span, there were only 12 investigations that had a common interest agreement, out of over, as the Ranking Member mentioned, 31,000 investigations, that is a ratio of .04 percent. Make no mistake, today's hearing is really a conversation about whether participants and beneficiaries across the country, workers, retirees, and their family members should have any recourse at all when they're wronged.

In Fiscal Year 2022, EBSA's investigators recovered \$16,776 per investigator per day. I should repeat that, that almost \$17,000 per investigator per day. I urge this Committee to focus on the real issue at hand. Do not invest in red tape. Invest in EBSA. Thank you again for the opportunity to testify today, and I am happy to answer any of your questions.

[The prepared statement of Mr. Khawar follows:]

**STATEMENT OF ALI KHAWAR BEFORE THE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
COMMITTEE ON EDUCATION & WORKFORCE
U.S. HOUSE OF REPRESENTATIVES**

July 22, 2025

Introduction

Chairman Allen, Ranking Member DeSaulnier, and Members of the Subcommittee, thank you for the opportunity to testify today about the United States Department of Labor's Employee Benefits Security Administration (EBSA). EBSA is a critically important federal agency that protects and aids the millions of stakeholders who rely on the nation's employee benefits system, and I was proud to spend almost twenty years as a member of the EBSA team in both Democratic and Republican Administrations. During my time at the agency, I had a variety of roles, including as an Investigator in one of its field offices, and as an Enforcement Advisor in the Office of Enforcement. Most recently, I became a political appointee and was the agency's Acting Assistant Secretary and then Principal Deputy Assistant Secretary during the Biden Administration.

EBSA protects the benefits of America's workers and retirees by ensuring the integrity of private-sector employment-based retirement plans in the United States through its interpretation and enforcement of the Employee Retirement Income Security Act (ERISA). The agency oversees approximately 801,000 private retirement plans that cover over 153 million people and hold about \$14 trillion in assets. It also has regulatory and interpretive responsibilities related to individual retirement accounts (IRAs) covering roughly \$17 trillion in assets. In addition, EBSA has audit authority over the Federal Thrift Savings Plan, which is the world's largest retirement savings plan with 7.25 million participants and over \$938 billion in assets.

EBSA is also charged with overseeing private-sector employment-based group health plans. The agency oversees approximately 2.6 million health plans and 514,000 other welfare benefit plans through its authority under ERISA, the Affordable Care Act, the Health Insurance Portability and Accountability Act (HIPAA), the Mental Health Parity and Addiction Equity Act (MHPAEA), the Genetic Information Nondiscrimination Act (GINA), the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, the COBRA continuation health coverage provisions, and the No Surprises Act. The vast majority of Americans under age 65 who have health insurance are covered by a health plan that EBSA oversees.

EBSA accomplishes its important mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries, and service providers; and vigorously enforcing the law. Along with the essential private right of action under ERISA, EBSA's enforcement program plays a critical role in upholding ERISA's fundamental promise that when an individual retires, their savings will be there. For example, EBSA has played significant roles in addressing complex financial misconduct, such as its work dealing with the Enron collapse, or its involvement in the Madoff investigations.

EBSA's approach balances enforcement and compliance assistance. EBSA employees provide important compliance and benefit assistance to employers, service providers, retirees, workers, and their dependents. EBSA Benefits Advisors answer queries from the public on a daily basis and work to informally resolve disputes. In fiscal year (FY) 2024, they answered almost 200,000 inquiries and conducted over 2,000 outreach events across the country. Beyond the numbers, the stories behind these metrics are incredibly impactful. One person who called EBSA was told he only had 6 months to live without a heart transplant, but his employer-sponsored health plan denied pre-certification for the transplant as not medically necessary and experimental. His doctors tried to help him appeal, but the transplant was still denied. Without the plan's approval, he could not be placed on the organ donor waiting list.

After reviewing his plan documents and determining he was seeking benefits for a covered service to treat a condition that met the plan's definition of life-threatening, EBSA reached out to the employer to help determine the reason the third-party claims administrator denied the transplant, despite it being a covered service. As a result of EBSA's intervention and within one week of the initial call, the employer reviewed the inquiry and consulted with the health plan. The health plan agreed to approve the heart transplant and placed the participant on a waiting list for an organ.

Another example illustrates how life-changing EBSA's work to reunite missing participants with their retirement savings can be. EBSA located one individual by sending him a letter to his last address – a homeless shelter – and when he first spoke to EBSA after receiving the letter, he had no ID or email. Due to EBSA's diligence and hard work, this individual received a lump sum of \$82,000 and a monthly payment of over \$750 for the rest of his life.

In FY 2024, EBSA recovered almost \$1.4 billion in direct payments to plans, participants, and beneficiaries. \$544.1 million was from the work of the Benefits Advisors and \$741.9 million was the result of EBSA's civil enforcement program. EBSA's voluntary fiduciary correction program and its abandoned plan program resulted in almost \$100 million in additional payments.

The enforcement program closed 729 civil investigations and 177 criminal investigations in FY 2024. Over 70% of the civil investigations were closed with results, and the criminal enforcement program recorded 161 guilty pleas or convictions. Importantly, EBSA also obtained 324 non-monetary civil corrections related to retirement, health and other welfare plans, including removing 12 fiduciaries, barring 27 individuals from serving as fiduciaries, appointing 23 independent fiduciaries, improving missing participant procedures for 48 plans, and requiring 59 global corrections involving service providers for numerous ERISA-covered health plans.

Enforcement actions make a real difference in people's lives, and EBSA's enforcement can also help plan sponsors trying to navigate compliance issues. One investigation found that a service provider was improperly denying claims for emergency room treatment and urinalysis. Thanks to EBSA's involvement, at least \$20,250,000 will be paid to plan participants as claims are reprocessed. In another case, a service provider was impermissibly excluding treatment for Applied Behavioral Analysis (ABA), a therapy often used to treat children with autism. EBSA's efforts resulted in the removal of the exclusion across 1,000 plan clients, providing access to ABA therapy over a million plan participants and their children.

EBSA also reaches workers, retirees, employers, plan service providers, and the public through its printed materials and website. EBSA website visitors can view consumer information, relevant laws and regulations, technical guidance, seminar and webcast schedules, and other valuable resources. In FY 2024, EBSA distributed almost 200,000 publications and had nearly three million visitors to its website.

Underfunding

EBSA's success is built upon the dedication, professionalism, and expertise of its workforce – employees located in offices across the country who, on a daily basis, are working to protect the retirement, health, and welfare benefits of more than 153 million people. Their work can seem abstract, but these employees are investigating complex crimes, recovering lost benefits, assisting members of the public in navigating denied claims, producing essential employee benefit plan data, writing regulations and exemptions, improving employee benefit plan audit quality, and providing vital education to workers, employers, and service providers alike.

However, the effectiveness of this mission-driven workforce is increasingly under threat by a persistent and serious challenge: chronic underfunding.

EBSA's base appropriation has remained essentially flat for over a decade. Adjusting for cost increases, the agency's base budget has shrunk, even as its statutory responsibilities have expanded, most recently through legislation such as the SECURE Act, SECURE 2.0, and the No Surprises Act. In real terms, EBSA keeps being asked to do significantly more with significantly less.

The disparity is particularly stark when viewed in historical context. In FY 2015, EBSA's budget supported over 960 full-time equivalents (employees). The proposed budget for FY 2026, as outlined in the Trump administration's Department of Labor (DOL) Congressional Budget Justification (CBJ), would support just 640 employees. This CBJ comes after the Trump Administration's Department of Government Efficiency has already wreaked havoc across the government, including at the Department of Labor and EBSA. The CBJ also makes clear that the Trump Administration is not pursuing a renewal of the special funding made available – on a bipartisan basis – to implement the No Surprises Act. If budget requests are statements of values, then we should all be concerned about values underpinning the FY 2026 CBJ. It represents a funding reduction of nearly \$30 million and 150 employees from what EBSA could afford in FY 2025.

These reductions are not just numbers on a page – they impact operations. They do not increase efficiency, they reduce it. Fewer investigators mean fewer cases pursued, on longer timelines, and more civil and criminal violations unaddressed. To make matters worse, EBSA is facing these cuts during a time of heightened economic volatility when more, not less, vigilance is needed.

Fewer benefits advisors mean longer wait times for the public when they call, more unresolved participant complaints, and diminished public education on issues like retirement, mental health,

and COBRA. The Trump Administration itself recognizes the impacts of its cuts. Its FY 2026 Annual Performance Plan states that FY 2026 performance indicators “reflect anticipated reductions in staffing.” The document then shows lowered targets for three key performance metrics in the enforcement program.

Recent problematic legislative proposals claim to enhance ERISA enforcement and address perceived shortcomings in the agency’s transparency, but have significant design flaws. However, these bills overlook the more fundamental issue: the need to properly fund the agency charged with implementation and enforcement. Without sufficient resources, even the strongest laws cannot be effectively administered in a timely manner.

Two of the proposed bills being considered by this Committee would place additional burdens and obstacles on the Secretary’s appropriate exercise of enforcement authority, without evidence that there are significant problems that need to be addressed. One, H.R. 2869, comes after inquiries from the Committee about the timeliness of EBSA investigations. Everyone should agree that it is important to move cases as swiftly as possible within existing resource constraints, and that it is also important to avoid closing cases before documents have been received, violations have been properly investigated, and any issues uncovered have been resolved. EBSA imposes timeliness measures on its staff and monitors the progress on an ongoing basis – this is part of why in November 2023, as EBSA wrote to the Committee, only about 3% of EBSA’s cases open for more than 48 months were in a state of ongoing investigation. Although it is focused on timeliness, the bill ignores EBSA’s staggering resource constraints and the turnover driven by the Trump Administration’s Department of Government Efficiency, which are far more important causes of investigations taking too long.

The second bill, H.R. 2958, is focused on interactions between the Department of Labor and plaintiff’s attorneys and comes after defense attorneys raised complaints about EBSA’s use of Common Interest Agreements. ERISA itself has always recognized that the Secretary of Labor would never have sufficient resources to police employee benefit plans. Thus, in addition to giving the Secretary enforcement authority, Congress wisely created a private right of action to enforce ERISA for fiduciaries, participants and beneficiaries, and it specifically authorized the Secretary of Labor to share information. The reality is that over a 15-year period, EBSA only found 12 investigations where it entered into a common interest agreement. In that time period, EBSA opened over 31,000 investigations. Yet on that record – and while still awaiting the results of a DOL Office of Inspector General audit on EBSA’s information sharing practices that this Committee requested – this bill would impose severe burdens on the Department.

These bills, unfortunately, do not grapple with the reality of EBSA’s fiscal condition and the impact of lost personnel. The right question is not whether EBSA is capable. It has consistently proven that it is by returning thousands of dollars for plan participants and beneficiaries *per investigator per day*. In fiscal years 2021-2024 alone, this agency, with a fraction of the resources it deserves, recovered over \$6.6 billion for plans, participants, and beneficiaries, in addition to essential nonmonetary results that dramatically improved peoples’ lives, particularly for those with health needs. Especially given EBSA’s responsibilities, a more important question that these bills leave unaddressed is this: how long can an agency be starved of resources – and how much more can we ask of it – before its ability to deliver begins to falter?

Conclusion: Investing in Impact

EBSA has shown time and again that it can deliver high-impact results on a lean budget. But continued erosion of its funding base risks undermining the very protections Congress sought to guarantee through ERISA and related legislation.

An investment in EBSA is an investment in the financial security of America's workers – and one with exceptional yield. For every dollar that Congress invests in EBSA, the agency has consistently returned many multiples of that amount in direct payments to plans, participants, and beneficiaries. To maintain this nation's commitment to fair and secure employee benefits, Congress should provide EBSA with the resources it needs so that it can meet both today's demands and tomorrow's challenges.

Thank you again for the opportunity to appear before you today, and I look forward to your questions.

Mr. MACKENZIE. Thank you. Last, I will recognize Mr. Bonham for your testimony.

**STATEMENT OF MR. JIM BONHAM, PRESIDENT AND CEO, THE
ESOP ASSOCIATION, WASHINGTON, D.C.**

Mr. BONHAM. Thank you to Chairman Allen, Ranking Member DeSaulnier, and the Subcommittee members for this hearing, and the opportunity to testify on behalf of our membership. I am Jim Bonham, the President and CEO of the ESOP Association. Our Association is the largest employee owner organization in the world.

We enjoy an active membership of over 3,400 ESOP companies and professional service providers, such as lawyers, accountants and plan fiduciaries. I have a reputation for being very direct, and I'm going to serve you the courtesy of being so today.

The enforcement and investigative actions by the Employee Benefits Security Administration are broken, they are misaligned and they are abusive and have been for decades. Sadly, the chilling effect of this long-standing posture on plan formation has denied potentially millions of workers the chance for a better retirement, and a better workplace.

When people ask me why there are not more ESOPs, the answer is this, the subject of this hearing. This is why. EBSA needs substantial reforms. Our members have been investigated arbitrarily and relentlessly by EBSA for decades. Indeed, it is difficult to find an ESOP that has not been investigated by EBSA in some form.

The environment EBSA has created is so bad that when a new ESOP is formed, the professionals feel it is their obligation to warn the ESOP founder to expect and budget for the near inevitability that EBSA and the DOL will investigate them. It is the expectation they will be investigated, not the exception.

I want to share with you four specific areas of serious concern, and in our view, abuse of EBSA's authorities. One, never ending stop and start multiyear investigations that often result in companies, directors and fiduciaries, agreeing to tolling agreements under the threat of lawsuit or even criminal penalty, which effectively waives ERISA's 6-year statute of limitations.

These multi-year investigations regularly involve multiple changes to EBSA personnel, who often just start over. The result often is the plan and its insurers simply throwing in the towel, and agreeing to some form of settlement, typically the insured amount under their policy, just to finally bring an end to the process.

Two, secret so-called common interest agreements where EBSA investigators use taxpayer resources, and extra judicial governmental investigatory powers to subsidize private law firm's class action lawsuits. We have long suspected these secret agreements existed, and that suspicion has recently been confirmed through discovery in the ESOP case and litigation.

While we do not yet know the full extent of these secret arrangements, both formal and informal arrangements, it is clear that EBSA is using its investigatory authority to support private law firms and their litigants, thereby violating plan sponsored due process and fairness.

Three, taxpayer funded government expert witnesses who have poor knowledge and little background in ESOP plan formation. These so-called experts have been paid millions of dollars in fees yet often fail to meet the very standards to which EBSA desires to hold plan fiduciaries.

An excellent example lies in the failed and blatantly incorrect valuation put forward as expert testimony in the Bowers and Kubota consulting case where EBSA lost every single point in its complaint against the plan sponsor, and the solicitors were even fined and sanctioned by the Judge during the proceedings for their behavior.

Four, indiscriminate fishing expedition style investigations designed to dragnet the ESOP community and impose EBSA's views. Notably, views that have never been published as regulations, or subjected to notice and comment public input as required by law.

Following heated criticism from the Congress for the volume of direct plan investigations, EBSA changed tactics to create the appearance of reduced plan investigations, rather than looking at specific ESOP transactions, EBSA instead began issuing dragnet style letters to professional fiduciary firms that represent multiple ESOP plans. These investigatory letters indiscriminately seek information on all plans under the fiduciary's purview, thereby capturing information on multiple plans simultaneously, all the while telling Congress that the number of plan specific investigations are dropping.

I once again thank you for the opportunity for testifying and would be pleased to elaborate on any or all of these main points.

[The prepared statement of Mr. Bonham follows:]



**STATEMENT OF JAMES J. BONHAM,
PRESIDENT AND CEO OF THE ESOP ASSOCIATION,
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS**

July 22, 2025

Introduction

Thank you, Chairman Allen, Ranking Member DeSaulnier, and Subcommittee members for this hearing and the opportunity to testify.

I am Jim Bonham, the President and CEO of The ESOP Association. Our Association is the largest employee-owner organization in the world. We enjoy an active membership of more than 3,400 ESOP companies and professional service providers such as lawyers, accountants, and plan fiduciaries.

The enforcement and investigative actions by the Employee Benefits Security Administration are broken, misaligned, and abusive, and have been for decades. Sadly, the chilling effect of this longstanding posture on plan formation has denied potentially millions of workers the chance for a better retirement and a better workplace.¹ EBSA needs substantial reforms.

Congress formalized employee stock ownership plans (ESOPs) as a Qualified Retirement Program (QRP) in ERISA in 1974, making the DOL our chief regulator. Today, ESOPs include nearly 11 million workers across every state, with more than 6,700 companies representing about \$2 trillion in wealth. That presence would definitively be greater but for the severe “chilling effect” of heavy-handed EBSA tactics targeting ESOPs.

Our members have been investigated arbitrarily and relentlessly by EBSA for decades – indeed it is difficult to find an ESOP that has NOT been investigated by EBSA in some form. It is so bad that when a new ESOP is formed, the professionals feel it is their obligation to warn the ESOP founder to expect and budget for the near inevitability that EBSA and the DOL will investigate them. It is the expectation that they will be investigated, not the exception.

¹ https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-03/10%20Best%20Things%20About%20ESOPs_The%20ESOP%20Association.pdf

EBSA Investigative Abuses

I want to share with you four specific areas of serious concern and, in our view, abuse, of EBSA's authorities:

- 1) Never-ending, multi-year investigations that often result in companies, directors, and fiduciaries agreeing to tolling agreements under the threat of lawsuit, which effectively waives ERISA's six-year statute of limitations. These multi-year investigations regularly involve multiple changes to EBSA personnel who often "start over." The result often is the plan and its insurer simply throwing in the towel and agreeing to some form of settlement – typically the insured amount under their policy – just to finally bring an end to the process. Evidence of EBSA's lengthy investigatory tactics is not speculation or simply anecdotal. Reports from a May 2021 Government Accountability Office (GAO) report show that EBSA is failing to conduct enforcement in a timely fashion, with 16% of all investigations opened in 2017 still open four years later.²
- 2) Secret so-called "common interest" agreements where EBSA investigators use taxpayer resources and extra-judicial governmental investigatory powers to subsidize private plaintiff class action lawsuits. We have long suspected these secret arrangements existed, and that suspicion has recently been confirmed through discovery in an ESOP case in litigation. In that case Magistrate Judge Maritza Dominguez Braswell in the U.S. District Court for the District of Colorado said these secret common interest agreements would *"allow a government agency to weaponize private litigation against some target before confirming the target should be a target."*³ While we do not yet know the full extent of these secret arrangements, it is clear that EBSA is using its investigatory authority to support private law firms and plaintiff litigants, thereby violating plan sponsor due process and fairness.
- 3) Taxpayer funded government "expert" witnesses who have poor knowledge and little background in ESOP plan formation. These so-called experts have been paid millions in fees, yet often fail to meet the very standards to which EBSA desires to hold plan fiduciaries. An excellent example lies in the failed and blatantly incorrect valuation put forward as expert testimony in the Bowers & Kubota Consulting case, where EBSA lost every single point in its complaint against the plan sponsor after a 5-day trial in June of 2021. The judge cited the government for lack of evidence, saying *"that the Government failed... not for want of effort but for what appears to be a want of evidence."*⁴ After a 7-

² <https://www.gao.gov/assets/gao-21-376.pdf>

³ https://www.bloomberglaw.com/public/desktop/document/HarrisonvEnvisionManagementHoldingIncBoardofDirectorsetalDocketNo/3?doc_id=X3MGLIRGHK89PH88SST0DELG7MF

⁴ [https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2021-09-17%20\(675\)%20Post-Trial%20Findings%20of%20Fact%20and%20Conclusions%20of%20Law%20-%20Order%20Directing%20Entry%20of%20Judgment%20in%20Favor%20of%20Remaining%20Defendants.pdf](https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2021-09-17%20(675)%20Post-Trial%20Findings%20of%20Fact%20and%20Conclusions%20of%20Law%20-%20Order%20Directing%20Entry%20of%20Judgment%20in%20Favor%20of%20Remaining%20Defendants.pdf)

year investigation, with 3 years of discovery – no evidence. Why was this successful and well-regarded company investigated? In court deposition, the EBSA investigator said “...my supervisor, he gave me an assignment to find some ESOP cases in Hawaii” and again later “My understanding is the department need[ed] to have some exposure in Hawaii.”⁵ Bowers & Kubota spent millions to defend itself. And a dissenting Judge on the Ninth Circuit Court of Appeals would have imposed an award of attorneys’ fees against EBSA for its litigation conduct.

- 4) Indiscriminate, fishing-expedition investigations designed to dragnet the ESOP community and impose EBSA’s views on the ESOP community. Following heated criticism from the Congress for the volume of direct plan investigations, EBSA changed tactics to create the appearance of reduced plan investigations. Rather than looking at specific ESOP transactions, instead EBSA began issuing “dragnet” style letters to professional fiduciary firms that represented multiple ESOP plans. These investigatory letters indiscriminately seek information on ALL plans under the fiduciary’s purview, thereby capturing information on multiple plans simultaneously, while telling Congress that the number of plan-specific investigations was dropping. In 2013 EBSA focused “more investigative resources on professional fiduciaries and service providers with responsibility for large amounts of plan assets and the administration of large amounts of plan benefits.”⁶ That way one reported investigation could cover dozens, if not hundreds, of ESOP companies. Plan sponsors often share that investigations lack specificity or purpose and drag on for years at great cost, and that EBSA takes positions on key issues that find no support in ERISA or any properly promulgated regulations.

These sorts of investigative “fishing expeditions” by the DOL were predicted and actually a concern around the time of ERISA’s passage. In congressional hearings on legislation that was a precursor to ERISA, both union and industry witnesses expressed concerns that “*this authority is far too broad*” for the DOL in this regard, and they agreed that “*reasonable cause*” should be required for investigations, stating “...all that is intended is that the Secretary be precluded from conducting “fishing expeditions.”⁷

Later, following ERISA’s passage, congressional debate from the 1976 Tax Reform Act (P.L. 94-455) stated, “*The Congress is deeply concerned that the objectives sought by [the series of laws encouraging ESOPs] will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans.*”

⁵ <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/Michael%20Wen%20110320%20timed.pdf>

⁶ <https://www.dol.gov/node/63530>

⁷ <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/ERISA-LH%2018.pdf>

While I can assure you every practice cited has happened, nearly every member company or professional offered their experiences without attribution -- fearful of inviting more investigation by EBSA. These practices add up to a well-earned reputation of an anti-ESOP bias at EBSA.

EBSA's Anti-ESOP Bias

As further evidence of EBSA's bias that has been weaponized against plan sponsors and fiduciaries, its website cites a special "National Enforcement Project" against ESOPs⁸ purportedly to address some form of near-term crisis. Now, that special project that enables increased utilization of taxpayer resources still remains in place over two decades later. Past Office of the Inspector General (OIG) reports have shown that EBSA spent about 7% of its time on this effort, while the ESOP community represents less than 1% of qualified retirement plans.⁹ The 20-year targeting of ESOP companies and perpetual EBSA investigations should end. ESOPs deserve no more or less scrutiny than other plans regulated by EBSA.

EBSA's Regulation by Litigation

Perhaps most absurd and frustrating is that EBSA investigates issues like company valuations on which it has been required, but refused to, write regulations -- ignoring both the ESOP community's AND Congress's requests to do so. That's correct -- EBSA is actually enforcing unwritten rules, abusing the fact it has not done its job in a clear, transparent way since ERISA passed in 1974. This intentional regulatory vacuum allows EBSA to declare the rules to be whatever it deems at the time.

This is no incidental matter -- a good faith company valuation is central to the initial ESOP transaction, and ESOP companies are required to perform annual valuations.

Yet, for decades ESOP companies and professionals have been forced to interpret an inconsistent, confusing, and conflicting patchwork of "settlement agreements" and other regulatory tea leaves on this issue that includes: a number of process agreements; various court decisions; an unfinished 37-year-old draft regulation from 1988; and even comments from media interviews with EBSA staff. This overt "regulation by litigation" lends itself to arbitrary and capricious enforcement that amounts to abuse. Both the regulators and the regulated community should have clear, understandable, formal regulatory guidance along with proper, functional, standard investigatory practices.

EBSA Denies Congress' Intent and Requests

In fact, EBSA has shown a willingness to ignore multiple Congressional requests for clarity in this area.

- In 1988 a draft regulation was proposed, with public comments taken, but never finalized.

⁸ <https://www.dol.gov/node/63530>

⁹ <https://www.oig.dol.gov/public/reports/oa/2009/05-09-003-12-001.pdf>

- Starting in 2015 representatives from the ESOP community met with EBSA staff to request formal guidance in this matter, and while EBSA paid lip service to the need, it never took action.
- In 2018, 27 members of the House sent a letter to DOL requesting action on this regulation.¹⁰ No action was taken by EBSA.
- In 2022 EBSA resisted and later denied an Administrative Procedure Act petition requesting regulatory action from The ESOP Association on behalf of its membership.¹¹
- In 2023, EBSA and the DOL resisted ESOP Association FOIA requests about the nature of its enforcement practices, guidance, and policies.¹² It never produced any information in response.

EBSA only responded on this matter, and even then woefully inadequately, when the bipartisan SECURE 2.0 law once again mandated formal guidance on this issue. (P.L. 117-328, Division T, Section 346, 4(B)). EBSA then produced unworkable and arguably hostile draft regulation,¹³ despite bipartisan and bicameral Congressional correspondence¹⁴ in support of a regulatory framework that would promote ESOPs.¹⁵ This proposed regulation has been withdrawn by the current Administration, leaving the matter unresolved.

Conclusion

Unnecessarily lengthy investigations and taxpayer support for private plaintiff lawsuits – two issues where reform legislation has been introduced by members of this Committee – should end. Increased transparency required by congressional reporting is a reasonable and commonsense step forward.

EBSA's longstanding bias and approach robs millions of workers of the chance at shared ownership and, with it, greater retirement security, better jobs at more desirable workplaces, and healthier local economies.

Thank you again for the opportunity to testify, and I would be pleased to elaborate on any or all of these main points.

¹⁰ <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-02/Signed%2010.1.2018%20WH%20ESOP%20Letter.pdf>

¹¹ https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2022-09/DOL_Petition_cover_letter_and_petition_FINAL20220922.pdf

¹² <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-07/2023-F-12076%20Ack%20Letter.pdf>

¹³ <https://www.esopassociation.org/articles/us-department-labor-releases-proposed-regulatory-guidance-regarding-esop-stock-purchase>

¹⁴ <https://www.esopassociation.org/articles/senators-sanders-cassidy-urge-dept-labor-prioritize-work-act-implementation>

¹⁵ <https://assets-tea.s3.us-east-2.amazonaws.com/assets/public/2025-02/8.5.24%20Senate%20Adequate%20Consideration%20Letter.pdf>

Chairman ALLEN. Thank you, sir, and thank you to all our witnesses for your opening statements. Under Committee Rule 9, we will now question witnesses under the 5-minute rule. I will recognize myself for 5 minutes.

Mr. Golumbic, the Biden Harris administration's Assistant Secretary for EBSA stated that information sharing in the form of common interest agreements is a normal tool in litigation. In December 2024, a DOL spokesperson said that EBSA had entered into nine common interest agreements since 2022. What is a common interest agreement, and how does a common interest agreement differ from EBSA's assistance to Plaintiff's attorneys that you have observed?

Mr. GOLUMBIC. Thank you, Chairman Allen. A common interest agreement is used in the legal proceedings. It involves two parties who share a common interest in the outcome of the litigation, or a proceeding, or a dispute or controversy. In the case I was involved in, there was a common interest agreement that had been entered into between the Department of Labor and a Plaintiff's firm.

As we found out in the lawsuit, the Department had not yet reached a decision about whether there was merits to the underlying investigation, and whether it actually wanted to bring an action against the target in question. There was not a common interest in the outcome of the dispute, but the DOL nevertheless had entered into that common interest agreement at that time.

The Court found on that basis there was no common interest between the Department and the Plaintiff's law firm.

Chairman ALLEN. I understand that you were the attorney who first discovered that the Department of Labor was secretly sharing investigation information with the Plaintiff's law firm known for class action lawsuits against employee benefit plan sponsors. Can you share how you learned this?

Mr. GOLUMBIC. Yes. At one point in the proceeding we had produced in discovery a copy of a findings letter from the Department of Labor indicating their preliminary findings with respect to an investigation of the transaction that was the subject of that litigation.

The Department, in that same findings letter, issued preliminary findings with respect to other unrelated investigations, so we produced a copy to the Plaintiff's firm, we produce a redacted copy, redacting the names of these other investigations. The Plaintiff's firm pushed back for months, said that they needed an unredacted copy.

On the eve of key depositions, the Plaintiff's firm produced to us an unredacted copy of that findings letter. At that point I went to the DOL government lawyer in charge of underlying investigation. He confirmed he had provided an unredacted copy of that letter to the Plaintiff's firm, pursuant to a common interest agreement.

Chairman ALLEN. Yes, surprise, surprise. Were you surprised to learn of the secret sharing arrangement, and if so, when did it come as a surprise?

Mr. GOLUMBIC. Well, we always had a suspicion, Chairman Allen, that this practice was occurring because it was too coincidental. There would be an opening of an investigation, there would be documents exchanged, witness interviews, and then a year or

two later, a Plaintiff's firm is bringing a lawsuit with respect to the underlying investigation.

This was an instance where we had concrete proof that this type of sharing arrangement was occurring between the government and a class action law firm.

Chairman ALLEN. When you found out about this, you brought it to the Court's attention. As a result, the Magistrate Judge stated the Plaintiff's arrangement with the DOL has given Plaintiffs access to information they can leverage used to take shortcuts and rely upon to circumvent discovery protocols. Can you tell us more about how the Court viewed the arrangement?

Mr. GOLUMBIC. Yes. I think the Court was very disturbed that you had the litigation in the shadows, with the government supplying information to the Plaintiff's bar, and it really can create an uneven playing field. You have a Plaintiff's firm who is getting information they otherwise could not get at the outset of a lawsuit, and it maximizes their ability to get beyond what we would call a motion to dismiss, an early stage dismissal of a case.

As the Supreme Courts recognized, the decks then are stacked against Defendants, regardless of the underlying merits given the crushing burden and cost of discovery, and so it creates an uneven playing field, and the magistrate was concerned about that.

Chairman ALLEN. How could a Plaintiff's law firm circumvent discovery rules by using a secret sharing arrangement with DOL without consequences? I mean obviously lawyers have peer reviews, and that sort of thing. I mean this sounds like it is really outside the standard of practice. Could you comment on that?

Mr. GOLUMBIC. Yes. Well, it gets to the very heart of the bill that we are talking about today, transparency. In the lawsuit I was involved in we did not know that there was a common interest agreement between the government and the Plaintiff's firm. We did not know that the government was sharing key information with the Plaintiff's firm.

In the absence of that, we had no way of utilizing our own discovery tools to subpoena the government for emails, the information that they shared, all the things that we did when we found that out in the lawsuit that I was involved in.

Chairman ALLEN. All right. Thank you. All right. I will call on Mr. Takano from California for his questioning.

Mr. TAKANO. Two gentlemen from California, I was not sure which one. Thank you, Mr. Chairman. I want to thank the witnesses for being here today, and to thank you for scheduling—you, Mr. Chairman, for such an important hearing. Mr. Khawar, would you like to respond to any of the earlier statements that were made?

Mr. KHAWAR. Not so far. I mean there is a lot to unpack in it. There is a lot of I think problematic statements that were made, but I will probably reserve the right to do that.

Mr. TAKANO. Okay, thank you. In your testimony you spoke about an individual who was denied a lifesaving heart transplant by his employer-sponsored plan. EBSA intervened, and successfully appealed the denial, something that even this patient's doctors could not do. The doctors tried to get the plan to do this.

If an insurance company refuses to cover an essential treatment for one of the millions of people who have employer-sponsored health plan, which happens far too often, how does EBSA assist with like an appeal like this?

Mr. KHAWAR. Thank you for that question. I would love to tell you that this was the only time in my career at EBSA that we had a story like that. Unfortunately, that is not the truth. It is too frequent that in the context of employment-based health arrangements people's benefits are denied.

One of the things that they can do is contact the EBSA Benefit Advisors. We have a toll-free number, it is 866-444-3272, and when they contact that number what used to happen—I should caveat all of this with this is only up until January 20th because with staffing cuts, I really cannot give you any assurance about what kind of service people receive now.

What used to happen is that calls were answered live if they were made during business hours, and you would get someone that is very highly trained who would answer your questions if you had basic questions, and then act as an advocate, and trying to informally resolve that issue between you and your plan, the service provider, the doctor, the insurance company, and try to get them, if it was appropriate, to get that benefit approved.

You made the example of a heart transplant. There is another example I am thinking of right now, the young mother who had cancer and was being denied a liver transplant, and her insurance company essentially gave her a death sentence, and not but for EBSA's engagement, I am confident that she would have died.

Mr. TAKANO. EBSA is like this government agency that can help ordinary citizens who know about EBSA, to call that number, to get help when they have a dispute with their health plan. When that health plan may be refusing to pay on a claim. Even their doctors say that health insurance company should be looking at it. Is that right?

Mr. KHAWAR. That is correct. Unfortunately, not enough people know about this. I think of the BA program as a hidden jewel, frankly.

Mr. TAKANO. I did not know about this. I would have loved to have known about it so I can tell my constituents, this is where you can go when you have a problem with a claim with your insurance company they are refusing to pay, or they are refusing to cover a lifesaving, a vital, urgent lifesaving procedure. This is where you can go.

You are saying that EBSA had reduced staffing, and that you are not really sure that people can connect with a live technically trained person to provide them.

Mr. KHAWAR. Yes. Yes. Yes, Representative. It is truly unfortunate because you have situations like the one that you are describing, and it used to be a point of pride in the agency that calls were answered live, and then it was something like 95 percent of calls were returned within one business day if someone called after hours. That is not—

Mr. TAKANO. Okay. We just heard Mr. Golumbic describe this situation where EBSA, you know, has colluded with these with plaintiff's attorneys, and how unfair it is to these Defendants. The De-

fendants in this case are mostly these huge health plans, or huge pension plans. Go ahead.

Mr. KHAWAR. Well, in the health context it is very frequently I believe the bad actor is the health insurance company, even more than the health plan itself.

Mr. TAKANO. The health insurance company that is refusing and stopping the claims. Do we think of the little American citizens who is trying to get a heart transplant, or a liver, or a liver transplant approved against the big insurance company? Are they the ones that are such an unfair sort of claimant against this big insurance company? I mean do we think that—I mean I think of this EBSA as kind of a very important advocate for the ordinary consumer.

Mr. KHAWAR. I agree, Representative, and I think when you are talking about the people that are impacted, it is often in the health context, individuals with pretty significant health needs. I also believe that when we are talking about these common interest agreements, and what this bill would do, it is a bit more than transparency, but for example, there is a requirement in the bill that before sharing any information with an attorney, that that attorney might use in essentially bringing a lawsuit under ERISA, you have to enter into this agreement.

You have to share it with the relevant fiduciaries and all that kind of stuff. The problem is if you think about these benefit advisors, they are getting a phone call. They are getting a question. Now, we are telling them that no, you need to make sure that these things are done, here is some additional paperwork you need to do, you cannot help this individual.

Mr. TAKANO. Thank you, Mr. Khawar, I am sorry for going over, but it just seems like this bill is going to weaken the protections for the consumer, weaken the advocacy. That would be so costly. Thank you. I yield back.

Chairman ALLEN. The gentleman from California yields. Now, I recognize the gentleman from Ohio, Mr. Rulli, for 5 minutes of questioning.

Mr. RULLI. Thank you, Chairman. Employer-sponsored retirement plans are the backbone of American retirements. Over 70 million workers are covered by these very plans. Private employers voluntarily sponsor more than 800,000 ERISA covered plans holding more than 9 trillion dollars in assets. We are not talking millions, we are not talking billions, we are actually talking trillions, 9 trillion dollars in assets.

When I learned that the Biden Harris Department of Labor shared confidential employee benefit information with Plaintiffs law firms, I had to get involved immediately. It was shocking to understand that this was being shared. The DOL should never be sharing secret or sensitive information with anyone, unless the employer's consent to do this.

The question would go to Mr. Bonham. Can you speak on how the DOL's actions are hurting American workers and employers right now?

Mr. BONHAM. Where to start. The investigatory actions by EBSA, I would put it into two categories of how it is hurting American workers. First, are the millions of Americans who are never even

given the opportunity to benefit from a plan because of the chilling effect that EBSA has on plan formation.

We did a survey about a year ago of businesses who were looking at their succession plans, and whether or not they would be interested in forming an ESOP. Close to 80 percent of all business owners who were looking at retirement were highly interested in forming an ESOP. Once we introduced the idea of EBSA and their enforcement powers, it plummeted. They just do not want to deal with the risk that the introduction of EBSA's enforcement capabilities introduce.

The second, it introduces for plan sponsors significant cost, and that cost can range from as little as 80 to \$100,000 for a basic response to an investigatory letter, to literally millions of dollars. I was speaking to a CEO just yesterday, who was the subject of one of these investigations. Three years of discovery, \$3 million worth of legal fees, there were no findings at all.

Immediately after they received the conclusory letter from the Department of Labor, they were then slapped with a class action lawsuit that cost them another \$2 million. Was it a coincidence? We do not know. We hope that some of the investigations will find out.

Those are just a couple of examples of where the investigatory abuses at EBSA have had a dramatically chilling effect on plan formation, and that we should all remember that offering retirement plans and offering benefits are voluntary on the part of the employers. Unfortunately, employers are now going to the least common denominator so they can offer just the basic plan, but nothing more because it becomes too complicated.

Mr. RULLI. I really appreciate that answer. We introduced H.R. 2958, the Balance the Scales Act, requiring the DOL to enter into written agreements detailing what type of assistance will be given before sharing confidential information with the attorneys, and to share those agreements with the employer, or the plan sponsor, that could be negatively affected by this.

Could you perhaps speak on why this legislation is actually needed in the industry?

Mr. BONHAM. Thank you for that question as well. First, it is a basic matter of due process and the rights of the accused. You know, as the Magistrate Judge in Colorado said in the case that Lars was working on, she said that in her decision in the case exposing the practice, these secret, common interest agreements would, "allow a government agency to weaponize private litigation against some target before confirming the target should even be a target. Transparency helps build trust."

Second, EBSA has a history of ignoring both Congress and the industry. The ESOP community knows this well from our decadeslong struggle for proper regulation. Therefore, legislation is needed to force these needed, long-lasting reforms.

Mr. RULLI. Thank you very much for your work and your support. I really appreciate it, and we need to stop the madness and get back to protecting our American employers, and more importantly, the American workers, and with that, Mr. Chair, I yield back.

Chairman ALLEN. The gentleman from Ohio yields. Now I recognize for questioning for 5 minutes, the gentlelady from Georgia, Ms. McBath.

Mrs. MCBATH. Thank you, Chairman Allen, and Ranking Member DeSaulnier. The Employee Benefits Security Administration has the important responsibility of protecting the health benefits of over 150 million hard-working Americans on employer-sponsored health insurance, and unfortunately, a growing number of Americans who have put in their time at work, and paid into their health care plans are not receiving the health benefits that they are entitled to under the Federal law.

With the increasing complexity of the health care system, the Employee Benefits Security Administration's responsibilities have grown significantly over the years, yet the agency remains chronically underfunded and understaffed. The lack of resources at this agency means that employees continue to wait on their health care benefits, and investigations are delayed when trying to stop bad actors who take advantage of the patients.

Last session, Chairman Rick Allen and I, we sent a letter to the Employee Benefits Security Administration about our concern over alternative funding programs in health insurance. Under the guise of saving money, alternative funding programs are pushing health plans to exclude certain medications. They abandon patients, leaving them to seek out assistance programs that are already overloaded.

Ultimately, and far too often, these patients unexpectedly have to shoulder the full cost of oftentimes their lifesaving medications, or experience delays that can result in harmful complications. No one should ever have to wait for a lifesaving treatment. Trust me, I know. I am a two-time breast cancer survivor.

The reality is not everyone can actually wait for a lifesaving treatment. The cases that have been submitted to the Employee Benefits Security Administration, they tell the stories of people who are just basically at their wits end, needing help to fight an insurance denial for their lifesaving treatment, or begging for oversight to investigate alternative funding programs that have cutoff access to the care the patient thought that they had.

While the agency is tasked with this important role that has financial and profoundly personal impacts, for all those in our health care system, years of underfunding and budget cuts have threatened to undermine its original intent and mission. Just this year we have seen career Federal employees pushed out of their jobs, and an additional 10 million dollars in cuts that are still being proposed.

On behalf of the millions of Americans in this country who rely on health insurance through their jobs, it is our duty to support oversight, and to cut through the red tape, and to protect those patient's lives.

Mr. Khawar, if you will, what impact would strong investments in the Employee Benefits Security Administration have on its ability to better protect health coverage for the American people?

Mr. KHAWAR. Thank you for the question, and I agree with everything that you have said. I mean investing in this agency means investing in the Americans that are struggling with insurance com-

pany red tape today. It is investing in Americans who have done the right thing and saved through their job, in their retirement, and want to make sure that that retirement is there when they ultimately reach the right age.

Unfortunately, with the budget cuts it is hard to see how the agency is going to be able to continue to successfully achieve its mission. Things like the Benefit Advisor Program are going to be really heavily impacted. Investigations are going to be very heavily impacted. They are going to take longer.

The agency is going to be able to do fewer of them, and there are going to be people that are really in need of help, who deserve the government's help, that are not going to be able to get it. It is 100 percent going to be because of resource constraints.

Mrs. MCBATH. Why has the workforce at EBSA declined so dramatically, if you can tell us? What can just really be done about it?

Mr. KHAWAR. Yes. I mean there is a long-term problem of chronic underfunding. Costs increase, and when budgets do not then that means you have to find somewhere. I think it is something like 70–75 percent is about the percentage of EBSA's budget that is kind of taken up by just personnel costs. As very normal things and appropriate things, like increasing salaries to account for inflation, that money needs to come from somewhere.

When you do not have many other places to look, the place you end up having to look is by reducing your headcount, so there is a longer-term issue here. The proximate cause, however, is you know, since January there has been a pretty concerted effort to push Federal employees out of their jobs.

EBSA has not been immune to that, and so there has been, as far as I can recall, pretty unprecedented attrition rate in the last few months.

Mrs. MCBATH. Well, thank you so very much, and I am out of time. Thank you each and every one of you for being with us today as our witnesses, and I yield.

Chairman ALLEN. I thank the gentlelady for yielding. Now I call on Mr. Mackenzie from Pennsylvania for 5 minutes of questioning.

Mr. MACKENZIE. Thank you, Mr. Chairman, and I want to thank all of our testifiers here today. It is an important conversation that we are having about EBSA, and the ability of a government agency to help in the marketplace where individuals are getting their health insurance all across the country, making sure that the benefits they are owed are being paid to them when necessary.

At the same time, also making sure that there is transparency and oversight going on at this agency to make sure that they are conducting themselves in a proper fashion. Pretty concerning, some of the testimony that we are hearing today, and my first question is going to be for Mr. Golumbic.

Regarding EBSA, and the secrecy of the information that was being shared with Plaintiff's attorneys. Obviously, confidentiality was breached there, and what does this do to the willingness of different stakeholders to actually cooperate in engage with the DOL.

If they have this concern as a Defendant or a potential Defendant, why would they even come forward and cooperate or engage with DOL. Ultimately, in the furtherance of benefits for the indi-

viduals, why would they participate in something like that if they are afraid their confidentiality might be breached.

Mr. GOLUMBIC. Thank you, that is a great question Representative Mackenzie, and just to put a finer point on it, in the matter that I was involved in that I testified to today, my client in response to requests for information from the government, designated documents as exempt under FOIA, meaning they deserve confidentiality designations.

To the extent the government was going to furnish it to any outside third parties, they need to give notice to my client, so we had an opportunity to object to it, given the confidential nature of the information.

That did not happen, so I think what we are finding as a consequence in light of this disclosure that these common interest agreements exist. I am finding that with my clients who are involved in active Department of Labor investigations were quite reluctant to turn over information because they are worried about the government maintaining the confidentiality of it, even if we designate it as exempt under FOIA.

The Department of Labor historically has been reluctant to enter into normal, routine confidentiality agreements, ensuring the safeguarding of information. It is a quandary, and we have clients who feel like they are between a rock and a hard place, trying to respond, you know, responsibly, you know, in responding to government subpoenas, and request for information.

Mr. MACKENZIE. Yes, I think it could have a chilling effect on the willingness of participants to participate and engage in DOL, again ultimately that would be a problem for the whole system. I would also ask this, are you aware, or do you know if this practice is still occurring at DOL with maybe career employees there.

Mr. GOLUMBIC. I do not know the current State of the practice of the government. I would though, add a note in response to other testimony today, what we are aware of are several instances, those type of agreements by the government and class action firms being reduced to writing, but they are I am sure, they are in the Office of Inspector General may get to the bottom of this, countless examples of the government picking up the phone, and contacting Plaintiff's counsel, talking about legal strategy, talking about underlying case supplying information that does not necessarily have to be reduced to writing in a formal common interest agreement.

Mr. MACKENZIE. As somebody who is not an attorney, I will ask your legal opinion on this, and just an opinion, but could this affect the outcomes of previous decisions that were rendered? If somebody entered into an agreement where they were not made aware of a confidential side deal with DOL and a Plaintiff, could that be revisited?

Mr. GOLUMBIC. I do not know. That is pretty speculative. I do know just in terms of matters we are involved in, and matters I know that other lawyers in this industry involved in, they are taking a closer look in active lawsuits to see if there is a connection between the government and the Plaintiff's firm, and seeking discovery to find out if any such agreements have existed.

Mr. MACKENZIE. Thank you. Just with the remaining time that I have, Mr. Banducci, can you elaborate on your statement about

providing suggestions for EBSA, and what they should do with the limited resources they may have and how they can conduct themselves more efficiently.

Mr. BANDUCCI. Thanks very much for the question, and Chairman Allen, I see I have got 8 seconds, so I will try to be quick. It really starts with the foundational premise, large employers in particular, are mostly doing the right thing. They are providing benefits to tens of millions of workers and their families, and EBSA ought to begin with that premise and that understanding.

Mr. MACKENZIE. Thank you, and I agree that should be the premise and understanding, and I think we can both do that, and make sure confidentiality is protected as well, thank you.

Chairman ALLEN. The gentleman yields. Now, I call on Mr. Courtney from Connecticut for his 5 minutes of questioning.

Mr. COURTNEY. Thank you, Mr. Chairman, and you know, just an observation before I get into the questions. Just that, you know, clearly there is a serious situation that is being described here, but I appreciate the fact that you know, Attorney Golumbic, you know said that it is speculative right now to determine whether that is a systemic phenomenon that is happening.

We have an Inspector General's report that is looking into this, and personally, I feel like this Committee should let that process take place before we start going in and changing statutes. I just think that, you know, that in my opinion, would be the normal process before we make a systemic change to find out whether there is a systemic problem.

On a more positive note, I would just say that you know my experience with EBSA, you know, particularly in terms of ESOPs has been pretty positive. We had Assistant Secretary Gomez in my district about a year or so ago. We visited an ESOP proponent, which is a great aerospace parts manufacturer, very active in the ESOP association.

At that point again, we were working on the WORK Act, which was legislation that I sponsored to again, get the Department of Labor to finally sort of officially designate an office that would really help promote, you know, the ESOP option that's out there for a lot of really good companies that you know, maybe again are hitting sort of generational sort of milestones, and want to, you know, maybe consider it, but really do not have the consultant bases, or the, you know, wherewithal to really understand it.

Again, it was adopted as part of the Omnibus in 2023. Again, very bipartisan effort, and something that, you know, that certainly the private sector advocates worked with Congress to get that through. I mean, so the authorities there for that office, unfortunately the funding has not been there to really sort of kicking in and get it into place.

Again, just to followup—Ms. McBath's question, Mr. Khawar, I mean again, if we really are serious about trying to promote ESOP ownership, and to expand it, which again, I think you have got people like Bernie Sanders and you know, conservative Republicans in agreement that that is really, you know, healthy for our private sector.

We need to again, really get that office stood up, and populated with people so that it can move forward, and maybe you can just respond to that.

Mr. KHAWAR. Yes, thank you for your question. I mean I completely agree that, and was very pleased when the Department got the authority under the WORK Act to do employee ownership promotion because I think it is incredibly important to have programs that can highlight best practices in the private sector, can really promote things like worker voice and the benefits of employee ownership.

We were able to, and because we believed in the importance of this program, divert money from other parts of our budget to kind of do the basics of standing up the program. To be very honest with you, it is not going to come close to achieving its potential in the current budget situation.

We were, you know, in the Biden administration, the leadership made a point of conducting visits to employee-owned companies, talking about the program in speeches, and really highlighting it. There are two really core functions of that office that I am pretty worried about.

The first is that, well, the head of the office got fired in the Trump administration and later rehired, but she is kind of the staffing, and it is not going to be sufficiently staffed. We are not going to really be able to do the level of outreach and education that we want to.

The second part of the bill though that is still unfunded was money that the Department could give to states to help them do worker ownership programs within the states, and that has never been funded, unfortunately.

Mr. COURTNEY. Thank you. Again, Mr. Bonham, another part of that bill was to get the Adequate Consideration Rule finished up, and again, that is obviously still an agency process. Again, maybe you can just talk about that quickly, because I know that was an important priority for your association.

Mr. BONHAM. Thank you, Mr. Courtney, and again, thank you for your questions. I want to answer in two parts. First, in relation to the Office of Employee Ownership, and we are very, very grateful for your work and others work to help create that office and strongly support its continuation.

It is noteworthy that one of the reasons that the ESOP community sought that office was so that there would be an internal alternative voice to the career employees at EBSA, who always had a very, very negative view of ESOPs, so we needed to have somebody inside the Department of Labor who thought that they were a good idea for a retirement plan for employees.

Second, in terms of the Adequate Consideration regulation, this is an area that we have been seeking for almost 50 years to have clarity on what rules a fiduciary should follow in order to fulfill their good faith effort in valuing the company's shares. The agency has steadfastly refused to issue those regulations.

It needs to be done, and it needs to be done with reasonable input from the community.

Chairman ALLEN. The gentleman yields, and now I call on Mr. Fine from Florida for his 5 minutes of questioning.

Mr. FINE. Thank you, Mr. Chairman. For 22 years I was an entrepreneur and started, built and grew companies, so I both created these plans, and as well as was in them, and so it is an important issue, and I think you have exposed a lot of real serious problems with how they are administered.

Frankly, I did not ever have any of these, so I am breathing a sigh of relief sitting over here. No one ever sued me, but my question is for Mr. Bonham. The Department of Labor investigated and then filed a lawsuit against an ESOP plan sponsor, its Board of Directors, and its selling shareholders in the Bowers case.

In 2021, the Court found no violations of ERISA for a transaction that took place 9 years earlier in 2012. I know a little bit about it, and it sounds like kind of a horror story, and shows, you know, government gone wild. Can you describe what happened in this case, and the costs of defending it?

Mr. BONHAM. This is perhaps one of the best examples of the abuse that we have been talking about in EBSA that one can give, and I could go on for much longer time than we have today.

Mr. FINE. We have 3 minutes and 56 seconds.

Mr. BONHAM. You bet. In this case, literally during the deposition the investigator was asked why did you go after Bowers and Kubota? I quote, "My supervisor, he gave me an assignment to find some ESOP cases in Hawaii." Again later, "My understanding is the Department needed to have some exposure in Hawaii."

Nine years later, and millions of dollars in legal fees, there were no findings. In fact, the so-called expert that was hired to provide the expert valuation on behalf of the Department of Labor was completely discredited because he made an arithmetic error, and had his error been corrected, and was known during discovery, had it been corrected, his valuation would have even been higher than what the ESOP actually paid for the value of the company.

Since that time, the value of the company since it was sold to the employees through an ESOP has gone up more than 1,700 percent. These employees have benefited greatly. During the Judge's ruling on this case, the Judge said that this was not decided against DOL for want of trying, it was decided because of a lack of evidence.

The Department of Labor pursued this case relentlessly. The trustee died, and rather than dropping the case against the trustee, they replaced the trustee with the widow. That is how relentless they were in pursuit of this case, and they lost on every single case.

Mr. FINE. Do you mind if I ask, and if you have got more context, you can share it, but does the government reimburse the company that has to spend the millions of dollars defending against what sounds like a spurious and kind of waste of time?

Mr. BONHAM. The company has to sue in order to recover some of those costs.

Mr. FINE. They have to go deeper into the hole, to pay more lawyers, to try to get paid for the lawyers they already had to pay for because the government came after them.

Mr. BONHAM. In this case in particular, Mr. Bowers, who is—was the wrong Army Ranger to pick a fight with, he tried taking this all the way to the Supreme Court, and it is almost impossible for a Defendant to recover their litigation expenses.

Mr. FINE. The government can make stuff up, or actually just sort of target you for no apparent reason it sounds like, because someone's boss needed somebody to have something to do, you can spend millions of dollars on lawyers. You win, you get—your name gets cleared after 9 years, and then you still lose.

Like he did not win. You know, if you have millions of dollars of legal fees, you still lost because you lost money that you had, and you had distractions from operating your actual business. Any other thoughts on this case that you would want to share?

Mr. BONHAM. There are lots of other thoughts that I would like to share, but unfortunately, we probably do not have the time to do it. You know, it is interesting. I have spoken at length with Mr. Bowers about this case, and when I asked him why he chose to fight, and he is a very rare example of this because in almost every example it is a more prudent decision to just exercise your insurance policy, settle it out, and move on with life.

He says, you know, EBSA made it so easy because they were so unreasonable in their approach. You know, the treatment of Bowers and Kubota in this case is no surprise to just about anyone on the ESOP community who has been investigated. It is the type of behavior that we saw from the EBSA attorneys and their approach.

You know, go find a case in Hawaii, and like I said, 9 years later and millions of dollars in defense, and this is where they are.

Mr. FINE. Thank you. Thanks for your context and thank you Mr. Chairman.

Chairman ALLEN. I thank the gentleman from Florida yielding. Now I call on Ms. Lee from Pennsylvania for your 5 minutes of questioning.

Ms. LEE. Thank you, Mr. Chair. Today's hearing is framed as a conversation about restoring trust and enhancing transparency at the Employee Benefits Security Administration, but what is really in question here is whose trust is being restored, and at whose expense?

Unfortunately, the majority seems to think that restoring trust means making life easier for employers under investigation. To them, balancing the scales means tipping them further toward corporations and away from the workers. EBSA, their core mission is to protect workers' retirement and health benefits, not to cater to employers.

Imagine working your entire career. You make it to retirement, but you find that all your savings are gone because your employers, or your benefits manager lied, misused your funds, or just outright stole from your plan. EBSA exists to put rules in place to help prevent this from happening.

When those rules are broken, EBSA has the authority and the responsibility to hold these employers or plan managers accountable. Over the years, EBSA's workforce has steadily declined, and its responsibilities have increased, all while its funding has remained flat.

Even so, EBSA is still taking meaningful enforcement actions to protect workers' benefits. Mr. Khawar, could you just discuss, very briefly because I also want to make sure that we can hit a couple things. Can you discuss some of the complexities in investigating

and concluding a case, particularly what factors might slow things down?

Mr. KHAWAR. Yes, thank you for your question. I will try to be brief, but it is—there is a lot.

Ms. LEE. I understand.

Mr. KHAWAR. The size and complexity of the entity being investigated, the volume of evidence that they produce, what that evidence shows, including, you know, there is not a practice that if you ask a question about X, and then you have evidence of wrongdoing somewhere else that we ignore it, so it may lead to additional document requests for questions, how cooperative the entity is.

It is not infrequent that EBSA starts with voluntary production of documents and then does not get the documents that it asked for, needs to move to a subpoena, needs to enforce that subpoena in Court. All of that is leading to delays between when the investigation opens, and when EBSA is kind of done with just the very first stage, which is they have a conclusion of what they think has happened.

They present that to the fiduciaries and say these are our findings, can we talk about how we proceed.

Ms. LEE. If I can add, just what impact will the agency's proposed budget cuts have on the Department's ability to close those cases quickly then?

Mr. KHAWAR. I mean I think given the severity of the cuts that we have seen just in this year, there is going to be a pretty unfortunate choice between do you allow these cases to drag on for longer because you need to reshuffle personnel, or do you just close them even though you are convinced that there is something there, and people have been harmed.

Ms. LEE. Instead of cutting funding, we should be strengthening the agency?

Mr. KHAWAR. Absolutely.

Ms. LEE. What is being presented as a push for transparency is in reality, just a set of proposals that risk bogging down the enforcement with additional red tape, slowing investigations, shielding employers, and draining resources that should be used to protect those workers.

Mr. Khawar, in your testimony you stated for every dollar that Congress invests in EBSA, the agency has consistently returned many multiples of that amount in direct payments to plans, participants, and beneficiaries, is that?

Mr. KHAWAR. Yes. I mean one figure is 17,000 approximately dollars per investigator per day. Another figure for one specific category of cases shifted to in light of budget cuts, trying to find more impactful cases that were going to impact more people. The number for that is about \$150,000 per investigator per day.

Ms. LEE. Mm-hmm. Thank you. In other words, cutting EBSA's funding actually costs taxpayers and workers more money, so why are we uplifting bills that would further drain EBSA's resources through burdensome reporting requirements, while doing nothing to help workers recover their stolen benefits?

I can speak to EBSA's importance firsthand. In my district, a Pittsburgh area administrator overseeing 240 or so retirement plans embezzled at least \$5.5 million from worker's accounts.

EBSA stepped in, and took swift action, freezing the assets, and securing Court orders, led to a 50-million-dollar settlement, and likely saved my constituents millions more.

Instead of supporting EBSA's critical work, such as this, the majority wants to undermine it. Today's bills do not restore trust or improve transparency, they shift EBSA's focus away from defending workers' benefits and toward easing the burdens on employers.

They frame investigations as too long, without regard for the complexity, or for the stakes, and they call for transparency measures that actually make it harder for EBSA to do its job, shielding employers from scrutiny while creating new hurdles for enforcement.

If this Committee is serious about restoring, improving the function of EBSA, the solution is clear, increasing the agency's funding, that is how you build trust, not just with employers, but with the workers whose futures are on the line. I thank you all so much for your time, and I yield back.

Chairman ALLEN. The gentlelady yields. I now call on our great Chairman Walberg from Michigan for his 5 minutes of questioning.

Mr. WALBERG. Thank you, Mr. Chairman, thanks for this hearing, and thanks Committee. Andy, it is great to see you back.

Mr. BANDUCCI. Thank you, Mr. Chairman.

Mr. WALBERG. It is always nice to know that people can be elevated, and they are stolen from our committee, some of the best people, so it is good to have you, back. Mr. Golumbic and Mr. Banducci, Mr. Bonham, employers voluntarily sponsor retirement plans and in doing so they employer commits to comply with the laws governing those plans.

EBSA investigations also rely on the voluntary cooperation of the employer, although voluntary cooperation is not necessary. Now that the public has learned, and this is my question, since the public has learned that EBSA has secretly shared information with Plaintiff's attorneys, stacking the deck, how will employer's willingness to cooperate with EBSA's investigations change, Mr. Golumbic?

Mr. GOLUMBIC. Thank you for that question. I think it is had a chilling effect. In the cases that I am involved in where we are representing plan sponsors and fiduciaries and active Department of Labor investigations, there is a natural reluctance to produce information and to cooperate, and in the absence of any assurance that information that has been produced, that is designated as exempt under FOIA, will be treated that way. That did not happen in the lawsuit that I was involved in.

Mr. WALBERG. Mr. Banducci.

Mr. BANDUCCI. I think from an employer's standpoint right, when we are on the other ends of these audits or investigations, there is a desire to get to a resolution. It is really hard to get to a resolution if you don't know exactly who is on the other side, right?

If it is a labor department that is one thing, but if it is the labor department and then other attorneys in other law firms, I think that is even more challenging.

Mr. WALBERG. Okay.

Mr. Bonham.

Mr. BONHAM. I hate to say this, but voluntary cooperation is imaginary. If you receive a letter from EBSA, you hire a lawyer and you respond. EBSA's breach of trust in these agreements is actually increasing costs, not just for plan sponsors, but it is actually increasing costs for EBSA, because everybody lawyers up immediately. If there is no trust, there is no voluntary cooperation.

Mr. WALBERG. Okay, thank you. Mr. Golumbic, Banducci and Bonham, a 2019 practical law publication titled, "Guide to Dealing with Department of Labor Investigations of Retirement Plans," gives tips to reduce administrative burden, cost and stress, associated with EBSA investigations.

In your experience, what is a ballpark range of the amount an employer spends when responding to, and potentially defending against an EBSA investigation? Mr. Bonham, we will start with you.

Mr. BONHAM. I would say the minimum expense is going to be in six figures. The high end of expense is going to be in multiple millions of dollars.

Mr. WALBERG. Wow, Mr. Banducci, save us, give us better news.

Mr. BANDUCCI. I do not have better news, unfortunately. Obviously, it depends on the complexity of the investigation, how long it goes on. If you are dealing with a very complex plan with very broad sort of fishing expedition type requests, and scope, it is going to be very, very, very expensive.

Mr. WALBERG. Mr. Golumbic.

Mr. GOLUMBIC. Yes. I think the potential expenses and costs can be astronomical. You are going to be producing documents to the government, collecting those documents that could be in the millions. Often you need to get an electronic or e-discovery vendor to assist you.

There is then going to be often interviews of key witnesses, as Mr. Bonham alluded to. Then often you are almost invariably going to be hiring outside legal counsel to assist you in preparing for those interviews, and then the Department may issue a preliminary findings letter that would result in putting together response back, negotiations over potential resolution, so the costs are going to be—they can be potentially catastrophic.

Mr. WALBERG. It is apparent in looking at, at least from my perspective, that something that is supposed to be a partnership to make sure that good is rewarded, and bad is disciplined through the process the government has in oversight has become one sided in many ways, and ultimately cost and distrust and automatic assumption of guilt, one sided, doesn't work.

I think that is because I addressed the concerns of my colleagues on the other side, that is our concern, that the system works, and choice is given, and opportunity is given, and ultimately costs are not escalating because of this wrongheaded, one sided, suspicious approach. Thank you, I yield back.

Chairman ALLEN. I thank the gentleman for yielding, and now I will call on Ms. Hayes from Connecticut, for her 5 minutes of questioning.

Mrs. HAYES. Thank you and thank you to the witnesses for testifying today. The work of EBSA is critical to protecting the health and retirement security of more than 156 million workers, retirees,

and their families. At its core, EBSA provides protection, education and oversight of retirement, health care, and other employee benefit plans.

In Fiscal Year 2024, EBSA Benefit Advisors helped recover more than 540 million in health and retirement benefits owed to workers and their families, after closing almost 200,000 inquiries. The 2024 figures represent an increase in inquiries and money recovered by EBSA compared to previous years, illustrating the importance of Benefit Advisors for workers and retirees.

The Benefit Advisors who work from the regional field office in Boston are invaluable to assisting constituents in my district in Connecticut. In a recent case, Benefit Advisors assisted a Connecticut retiree in assessing 2 million dollars in retirement benefits from a former employer.

Despite the tremendous return on investment, the Trump administration is proposing to cut the budget of EBSA by 10 million dollars in Fiscal Year 2026 and has laid off probationary and other employees through DOGE. As mentioned in the testimony by Mr. Khawar, the Trump administration recognizes the impacts of its proposed cuts to EBSA, providing lower enforcement targets in the 2026 annual performance plan to “reflect anticipated reductions in staffing.”

Today, my Republican colleagues are discussing bills that focus on the ability of EBSA to conduct enforcement, while ignoring the resources and staffing cuts that are the main barrier to completing those investigations. Mr. Khawar, can you share how the proposed budget cuts by the Trump administration would impact the services and work provided by EBSA Benefit Advisors?

Mr. KHAWAR. Thank you for your question. The benefits advisors are truly amazing individuals. They are very highly trained. You can call them on a variety of topics, anything that is covered by ERISA, and they will do their best to answer you, and the number of Benefit Advisors that the agency has, has already shrunk, and it is going to continue to shrink.

The volume of calls that they receive is not going to shrink, and so that is going to just mean delays. It is going to mean unanswered calls, it is going to mean that an agency that took pride, that we would get letters where constituents remarked, “I thought I was going to be calling the DMV, and I never imagined a government agency would be responsive like this.”

They are now going to get DMV level service, no offense to anyone that works in the DMV.

Mrs. HAYES. I think that leads me to my next question because I want to discuss the additional strain that may be placed on Benefit Advisors if Congress does not act to extend the Affordable Care Act to enhance subsidies before they expire at the end of the year, throwing the health care Marketplace into chaos.

Among its many important responsibilities, EBSA oversees more than 500,000 benefit plans through the Affordable Care Act and other legislation. Due to staffing and funding cuts, I am worried there may not be Benefit Advisors available to answer phones in regional field offices when people lose their ACA coverage and are looking for help to navigate the options available through their employer.

Do you anticipate any—Mr. Khawar, again for you, do you anticipate any increase in demand for services of EBSA Benefit Advisors to help employees navigate health care plans if Congress does not extend ACA subsidies?

Mr. KHAWAR. Yes, absolutely. I mean it is pretty simple. If your health care coverage is more expensive, then you are going to look at other options. That is absolutely going to mean that people are looking at their employer plans, they are thinking about these questions during open enrollment, they are contacting Benefit Advisors.

One of the ways in which in, I would say a normal budget environment, EBSA might manage that, is by conducting more outreach, going out into communities and doing events kind of proactively educate people, so that you do not get the calls on the back end.

I do not know what the status is of those, but I would imagine that that is one of the areas that will face pretty significant cuts because if you cannot afford people to just answer the phone, sending them out into communities and doing educational events on whether it is the ESOP-related stuff, or health-related stuff, it is hard to find the money for that.

Mrs. HAYES. A normal budget environment. What a novel concept. I yield back.

Chairman ALLEN. The gentlelady yields, and now I call on our Chairman Emeritus, Mrs. Foxx, North Carolina, for her 5 minutes of questioning.

Mrs. FOXX. Thank you very much, Mr. Chairman, and I appreciate that. Mr. Khawar, EBSA under the Biden Harris administration engaged in burdensome and inefficient investigations that lasted for years, and included repetitive document requests, staff turnover and delayed findings.

Endless and aimless investigations conducted by EBSA wasted precious time and resources, and they ultimately hurt American savers. The Committee took note, Mr. Khawar. In September and November 2023, the Committee requested a list of all open investigations, the duration of the investigation, the specific purpose of the investigation, and an explanation of all steps taken to close out persisting investigations.

In response to these inquiries, DOL provided only general explanations, but not underlying data. In response to the November 2023 request, you provided a briefing to Committee staff, but you did not provide any specific information on how long EBSA's stale investigations have been allowed to remain open. Your written testimony states there is a lack of significant evidence of problems that need to be addressed, which would justify the two EBSA reform bills that the Committee is considering.

EBSA has withheld the information that would allow us to gain a full picture of the problems that need to be addressed. In addition, we have proof that EBSA secretly shared information from an investigation under what you are calling a "common interest agreement," but which a Court had condemned.

Can you assure us that no one in the Biden Harris DOL, whether career or political appointee, has confidential information, or

provided assistance to outside attorneys when there was not a common interest agreement in place?

Mr. KHAWAR. Thank you for your question, Representative. I mean I believe this is exactly the subject of OIG inquiry right now, and I think importantly what the IG is looking at is also going to involve, hopefully the context of any information sharing.

There are times when the Department has had conversations with plaintiff's attorneys for example in the context of a common interest agreement, it is typically where the Department believes that it may be bringing a lawsuit itself, and wants to protect any evidentiary privileges, unlike in FOIA, where disclosure to one is disclosure to all.

The benefit of the common interest agreement is that it allows the government to kind of maintain the privilege over its materials.

Mrs. FOXX. Throughout my questioning you have appeared to be very uninterested in the questioning, so I hope that what you are saying to us is something you have carefully thought out. We received information from EBSA over a year after our initial inquiry that a total of 54 cases were still open, almost 8 years after they were opened.

Worse, only three of these cases were being actively investigated, meaning the rest were still being held open without resolution. You are not in a position to tell this Committee that there is no evidence to support additional transparency and oversight at EBSA.

Sunlight is the best disinfectant. I yield back, Mr. Chair.

Chairman ALLEN. The gentlelady yields back. I now call on Ranking Member Scott of Virginia, for his 5 minutes of questioning.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman. Mr. Khawar, we have been talking generally about investigations. Exactly what are you investigating? What violations or infractions are you investigating?

Mr. KHAWAR. Thank you for that question. I might note at the outset that I have yet to see anyone provide any evidence when they are talking about timeliness and delays that the agency is not actually trying to move these cases as quickly as possible.

To answer your question more directly, when we are talking about investigations, these are investigations into either civil or criminal violations. In the criminal context, the easy example I would give you because it tends to—you know, people remember it as the Madoff incidents, where there was Ponzi scheme, retirement savers, among others, lost a lot of money. EBSA was one of the agencies that was investigating that.

In the civil context, it could be issues around your health insurance premiums not getting paid. They were not transmitted to the health insurance company, and your insurance was canceled. It could be a claim that was denied.

In the retirement context, it could be something as simple as money not making it to your 401(k), or as complicated as we had issues for example, a number of years ago, where foreign exchange transactions that employee benefit plans were asking financial services industry to carry out were being carried out on very, very poor terms, so the bank would take advantage of whatever the best rate was of the day.

The customer would get the worst rate of the day, and that was not disclosed in any contracts, it was just kind of pure additional compensation that that financial entity was getting for itself. EBSA put a stop to that practice.

Mr. SCOTT. How do you select targets for investigation?

Mr. KHAWAR. There are a variety of different ways. One source, one very important source is actually the benefits advisor program. A lot of referrals come from the benefits advisors when they are not able to informally resolve a case, they—

Mr. SCOTT. This is where somebody is complaining to the benefit advisor?

Mr. KHAWAR. Exactly.

Mr. SCOTT. It is apparent that something is going wrong?

Mr. KHAWAR. Exactly. The benefits advisors will try to resolve that, but they are not always able to. We, or the agency has believed it is an important source because you have kind of you have this person calling you. They are telling you something, and so there is more than the level of suspicion or belief that you would have otherwise.

It is not the only source. There are reports that are filed with the government, and other data sources that the agency has that it kind of mines to figure out where it can devote those resources to get something that is more effective.

Mr. SCOTT. We have heard a lot about common interest agreements and working with private lawyers secretly. What does the EBSA law say about sharing information?

Mr. KHAWAR. There is a specific provision in ERISA that allows the Department to share information essentially with interested parties. Frequently, that is actually used to share information with the people that you are investigating, right, because you want to tell them information about the investigation.

It is also used in the context of these common interest agreements. I will point out that when we are talking about the context, we should be I think, and I am hoping that the IG report does this, is to not just look at kind of a numerical there are this many conversations with, you know, these kinds of parties, but to look at kind of broadly at what is going on, and understand what EBSA's role was in these things.

I mean I will tell you in my own experience is that I talked far more to people in the defense bar than people in the plaintiff's bar in the entire time in my tenure at EBSA.

Mr. SCOTT. Is there anything that you supply that could not be gotten by the other side through discovery?

Mr. KHAWAR. I think it is a question of when. My understanding is that for private plaintiffs, they do not—I have never brought a private litigation, but my understanding is that it can sometimes be difficult for them to get their hands on information, even when they are entitled to it by law.

I am thinking right now of some guidance that we put out because an insurance company had denied someone's claim. The attorney wrote to us and said I am not—they have tapes that they are using as the basis of the denial. They are not turning over those tapes to us.

We put out some guidance that said that no, that is covered. That is one example where people would not be able to get information.

Mr. SCOTT. Finally, we have heard that ESOPs are being investigated. What problems can workers have with the ESOPs that would require EBSA to intervene?

Mr. KHAWAR. The primary issue that EBSA looks at is really around the acquisition of the ESOP, and the debt that the ESOP, or the entity incurs. It is actually quite uncommon for EBSA to investigate ESOPs kind of on an ongoing basis.

Mr. SCOTT. I yield back.

Chairman ALLEN. The gentleman yields. I now call on our Conference Chair, Ms. McClain from Michigan, for your 5 minutes of questioning.

Mrs. MCCLAIN. Thank you, Mr. Allen. Thank you all for being here. Really important as a former business owner, to understand the importance. Mr. Golumbic, Mr. Banducci and Mr. Bonham, my legislation, EBSA Investigations Transparency Act requires the EBSA to report annually to Congress on investigations in enforcement status, right?

The report, which will not include the names of any private parties, will include the office that opened the investigation, and how long it has been open. I am curious as how you think how this bill would help your organization's members determine whether they are being treated fairly or not, right? We have all these different regionals, and every—the sharing of information is not actually there, and we all know some of these cases are opened way longer than 36 months.

I would like to know whether—how you think this legislation would help in terms of the employers? Mr.—you can all answer if you like.

Mr. GOLUMBIC. Yes, I think that level of transparency can be immensely helpful. There was a number of questions today about the timeliness of investigations. One issue, and I do not represent a trade organization, I am just a private attorney, but often in investigations that we are involved in, there is no closing letter.

The Department makes a decision, we are not—we are going to close the file, and my client never hears about it. You know again, it is one level of transparency to make sure that everyone understands that there is an investigation, and it is closed, and closed with no results. That would certainly be helpful.

Mrs. MCCLAIN. Why would anyone oppose that?

Mr. GOLUMBIC. I personally do not know.

Mrs. MCCLAIN. Thank you.

Mr. BANDUCCI. Thanks for introducing the legislation as well. We support it for a number of reasons. From a transparency standpoint, obviously our member companies would benefit by being able to see, for instance, which regional offices are pursuing what kinds of cases.

It helps us on the front end, our members on the front end, sort of identify those areas where maybe we really need to be looking. From, not to get out of my lane, but from an appropriations perspective, I would think it would be absolutely vital for you to have all that information as well. In particular, to sort of address con-

cerns about, you know, budget cuts, you know, how if there were additional funds, where those moneys would actually be spent.

I think that is—it is not obvious to me that they would all go to benefits advisors.

Mrs. MCCLAIN. Right. It might help us too regionally, and which regions are doing best practices, and maybe we could learn from those regions, right? I mean if we were transparent, we could say oh my goodness, this region is doing really good, maybe we could learn instead of trying to get stuff done, we could actually get stuff done, but I will let you respond.

Mr. BONHAM. Thank you, if I might, I would say we have heard a lot about how your bill would supposedly disproportionately tax the resources of EBSA, but I would have to say that, you know, issuing an annual report that inventories the open cases does not seem overly burdensome to me. You probably have on your own staff more open constituent case work that you have your staff track for you than EBSA does in the entire agency on an annual basis.

Just the issuance of that type of a report from a management perspective, I would suspect our members would benefit because it would cause a lot of those cases to be closed when they otherwise would just linger on for years.

Mrs. MCCLAIN. I am also curious, is it safe to say that the standards in which you hold your members to in terms of compliance, right, and I had a business. We actually have more people—had more people in our compliance department filling out forms and filing, you know, to be in compliance, than we did actually have in customer service.

If we hold your members to certain standards, do not you think it would be safe to say to hold the government agencies and all these agencies to the same standard?

Mr. BONHAM. Yes.

Mrs. MCCLAIN. Oh, I do not know what a concept, right? Anyone disagree with that, that—

Mr. BONHAM. No. It is in fact, you know, part of the sort of feedback that we have gotten from our members is that, particularly the interviews investigations, for example the turnaround in document requests.

Mrs. MCCLAIN. Yes.

Mr. BONHAM. Right? Provide everything right now.

Mrs. MCCLAIN. Right. I am the employer, I have got to give you everything right now, but once I give it to you, well, you can take as long as you want.

Mr. BONHAM. Correct.

Mrs. MCCLAIN. It seems a little unfair, does it not?

Mr. BONHAM. It does.

Mrs. MCCLAIN. Yes.

Mr. BONHAM. I would add to that, there is an ongoing buildup of costs for the employers as well.

Mrs. MCCLAIN. Sure.

Mr. BONHAM. We have to answer every single year, do you have any open cases or investigations at the Department of Labor when we fill out our insurance forms.

Mrs. MCCLAIN. Would it make sense to hold the agency accountable too?

Mr. BONHAM. Sure.

Mrs. MCCLAIN. Thank you.

Chairman ALLEN. The gentlelady yields. Now, I call on Ranking Member DeSaulnier of California for your questions.

Mr. DESAULNIER. Thank you, Mr. Chairman, and to the last comments, before the Conference Chair leaves, she is not listening. I am happy to followup in a dialog. It is consistent with my opening statements. These hearings drive me crazy too.

As a professional health care patient for the last 10 years, and as a former small business owner, and we have had these conversations multiple times, the Chair and I, this is just something that just seems so obvious, and unfortunately our current atmosphere in the Congress does not bode well that we will actually come to conclusions.

I would say that waiting for the IG report would be very helpful, and hopefully the Inspector General will give us a real objective way that we can make this beleaguered agency work. Given that we have one investigator for every 17,500 plans. Mr. Khawar, give a moment here to talk about the cuts in efficiencies, and I would be interested in hearing from private employers.

If you are not going to fund a program to make it efficient, why would you be surprised it does not work well? Talk about the budget cuts, and then if you could talk about just, it was Brandeis who said, "Sunshine is the best antidote," but how do we get to that point where it is efficient, so everybody has it?

This nefarious idea that somehow the employees are getting information, and as you said to Mr. Scott's comments, that you are not history, that is not your history, you are trying to help with a settlement that is both efficient and is acceptable to both parties. Speak to both, cutting the budget, and then we added money in the No Surprise Act, so that helped the budget.

Speak to the budget problems, but then this accusation from the majority that there are nefarious things going on that benefit the one side as opposed to working with both sides, to mutually agreed acceptable settlement and conclusion.

Mr. KHAWAR. Thank you. I will do my best in the remaining time to answer all of that. On the budget cuts, I mean I think it is ironic to have a conversation about additional reporting at a time when the agency's personnel has been cut so much, and the budget cut is important to understand in the context of the personnel cuts that it creates.

If the agency can only support 640 employees all told, which is what the Fiscal Year 2026 budget request is for, that is not just 640 investigators, that is the investigators, that is economists, that is reg writers, that is benefits advisors, that is also people that handle personnel, travel, those kinds of things. There is an accounting function.

It is everything that the agency does in 640 people. At its peak the agency had close to 1,000, so it is in that context tiny for the obligations that it has, and that the timeliness problem is going to get worse, and I just wish the conversation we were having, it is not coming at a point where the agency has been given a fair

chance to do everything that it can to close investigations in a timely manner for example.

Instead, it has been resourced starved. It has been trying to figure out how to make due with less and less and less. One function is that investigations are going to take longer. That is going to be another consequence of the budget cuts.

On this issue of, you know, the trust, and the relationship between the agency and its various stakeholders, I mean I have a few thoughts. First is just as Mr. Golumbic you know, observed in his opening statement, that you know he does not view the agency as playing the same role that it used to.

I would say the same is true for the private defense bar in particular, which has become over the years far more antagonistic. Another cause of untimely investigations is that the private defense bar increasingly tells their clients that they should not cooperate with EBSA, they should not help us get to the bottom of it.

What we really want to do is get in, get the documents, figure out the problem, fix it and move out. The agency's goal is to solve problems voluntarily. It is in no one's interest for the agency to start bringing lawsuits and everything, and what we want to try and do is have an efficient process that works for plan sponsors, works for the agency, but importantly also works for participants, and makes sure that their rights are actually being realized.

Mr. DESAULNIER. Thank you. I yield back.

Chairman ALLEN. All right. The gentleman yields, and I think we have no more questions. I want to now recognize the—well, first, I will give my closing statement, and then—well, actually the Ranking Member gives his closing statement. Would you like to close out your side? You did a good job on questions by the way.

Mr. DESAULNIER. Oh, thank you, Mr. Chairman. Collegiality, maybe it will come back, Mr. Banducci, and then you can come back as well. Well, I do appreciate that, and although we have had some serious disagreements, this is something I think can really be constructive Mr. Chairman, to have a conversation about it.

With the increase in denials that we had hearings about in this Subcommittee over the last couple sessions, your predecessor, Mr. Good, who is no longer a Member of Congress, we actually worked to try to make corrections in a bipartisan way, but it is so important if people are going to be—not be able to access Medicaid, and we have more denials in the private—in the employer-employee section, having been on the governing body of a public hospital, do you know where people are going to end up?

They are going to end up in the emergency room, with critical care. If we do not get this right, it affects the whole system. If you cut police, unfortunately there are going to be people who do bad things. You have got to have the appropriate level of funding, so that people like Mr. Khawar can work in good faith with both parties.

I would just say, Mr. Chairman, there is an opportunity here. I am afraid that ethical behavior more and more in our culture, politically and businesswise, is making it harder for us to get people to do the right thing without regulators. Just consistently underfunding and demeaning public sector employees who are doing a good job does not help the situation.

From my perspective, as opposed to our conversations about our experience in the business sector, it is eroding the level of trust, and in this case where you have got denials going up, and the efficiency of the system unfortunately not working, it would be really a wonderful opportunity for us to work together to see if we could fix some of the challenges we have.

Just defunding and blaming the people who are left, I do not think it speaks well to our institution that is trying to engage in problem solving. Mr. Banducci, Mr. Khawar, I have the feeling in a former setting the two of you could go into a room and negotiate a lot of this for everybody's benefit, particularly all of the American taxpayers, consumers, and high road business owners, both public and private, so with that, Mr. Chairman, these bills do not solve the problem.

I would argue that it would be better for us to take a deep breath, wait for the Inspector General's report, and engage in constructive bipartisan heavy work of legislating in good faith to see if we can fix the situation before we make it worse, and I will yield back.

Chairman ALLEN. Okay. I thank the Ranking Member, and yes, I agree. We need to get to the bottom of this problem. You know, a couple of things that I heard is obviously, the insurance companies are a big problem, and of course you know, somehow in this country we have got to get healthcare back to our providers, and those who are actually treating people for these sometimes fatal decisions.

That is another matter, but going forward the Employment Benefits Security Administration is the small agency with vast jurisdiction. In these conversations, it kind of reminds me of the IRS. You are guilty until you prove yourself innocent. I do not think that is exactly the juris prudence in our Nation, you know, we are supposed to be innocent until you are proven guilty.

We have got it backward in many instances here. It is important for this agency to use its investigative resources wisely and efficiently, and you know, it needs to be open. No behind the back, behind the scene activity. Employers sponsor retirement plans voluntarily, and EBSA should work with employers to promote and protect employee retirement savings.

Republicans are committed to protecting retirement savings for workers, retirees, and their families. As we learned today, government agencies that resist oversight can run amuck, and their actions can harm workers and job creators. Under the Biden Harris administration, EBSA teamed up with class action Plaintiff attorneys to bypass Court rules on fair litigation. That is a black eye, and it needs to be dealt with.

The legislation we discuss today calls for transparency. Sunlight is the best disinfectant, and Ranking Member, I look forward to working with you, and all the members of this Committee to providing a workable solution that secures workers' retirement, and with that I yield back.

I would like to thank all of our witnesses again for taking the time to testify before the Subcommittee today, and without objection, there being no further business, the Subcommittee stands adjourned.

[Whereupon, at 12:01 p.m., the Subcommittee was adjourned.]

[Additional submissions from Chairman Allen follows:]



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

July 22, 2025

Committee on Education and Workforce
Subcommittee on Health, Employment, Labor and Pensions
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Committee Members,

The U.S. Chamber of Commerce (Chamber) supports the Balance the Scales Act (HR 2958) which would require the Employee Benefits Security Administration (EBSA) to provide a report to Congress annually on adverse interest agreements and provide copies of such agreements to impacted employers, plan sponsors or fiduciaries. This legislation would help ensure transparency and oversight of EBSA's current practice of sharing information it obtains during the course of an investigation with third parties and their attorneys who are not a party to a related lawsuit.

In 2024, it was discovered that EBSA was sharing information it obtained through investigations with plaintiffs' attorneys. EBSA's claim that sharing this information was part of common interest agreements makes no sense because EBSA was not in active litigation against the affected entities. The Chamber and others tried to obtain more information on this practice from EBSA through Freedom of Information Act requests, but EBSA refused to provide any further information.

The Chamber and its members understand EBSA's role in investigating employers, plan sponsors, and fiduciaries to ensure compliance; however, the information they provide should be kept in confidence and not shared with the plaintiffs' bar. HR 2958 will shed light on such practices and restore confidence in EBSA and its investigatory practices.

Sincerely,



Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

July 22, 2025

Committee on Education and Workforce
Subcommittee on Health, Employment, Labor and Pensions
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Committee Members,

The U.S. Chamber of Commerce supports the EBSA Investigations Transparency Act (HR 2869), which would require the Employee Benefits Security Administration (EBSA) annually to report to Congress the status of any longstanding active investigations. This bill helps ensure transparency and oversight of EBSA's current investigatory processes.

Our members understand and appreciate the importance of EBSA investigations and oversight. However, over the years, many investigations have become open ended fishing expeditions. EBSA begins its investigations with an extremely broad document request, which places a time and monetary burden on plan sponsors. After the documents have been provided, it is not uncommon to hear nothing from EBSA for more than 18 months. In fact, a 2021 GAO report on EBSA's investigation process found that 17% of all investigations opened in 2017 were still open four years later. Unfortunately, this may still be the case as members have reported cases remaining open for years, with long periods of inactivity, and repeated document requests even after no violations were found.

HR 2869 will require EBSA to provide an annual report of investigations that have not been closed within 36 months and the reasons why. Such a report should encourage EBSA to improve its investigation process, which will benefit both participants and plan sponsors by allowing more expeditious investigations. We look forward to working with the Committee on this important legislation.

Sincerely,

Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce



July 21, 2025

The Honorable Rick Allen
Chairman HELP Subcommittee
462 Cannon HOB
Washington, DC 20515

The Honorable Mark DeSaulnier
Ranking Member HELP Subcommittee
2134 Rayburn HOB
Washington, DC 20515

RE: House Education and Workforce Committee HELP Subcommittee Hearing: *Restoring Trust: Enhancing Transparency and Oversight at EBSA*

Dear Chairman Allen and Ranking Member DeSaulnier:

On behalf of the SPARK Institute, I would like to thank you for holding a hearing about the Department of Labor's Employee Benefits Security Administration (EBSA). The hearing offers an important opportunity to review how EBSA has operated and consider important legislative proposals to ensure EBSA remains a trusted regulator of our nation's retirement plans and the millions of retirement savers they serve.

The SPARK Institute believes that retirement security is the shared responsibility of individuals, employers, government, and the providers, consultants, and advisors who serve them. We represent the interests of a broad-based cross section of retirement plan service providers and collectively our members serve more than 110 million employer-sponsored plan participants.

SPARK is supportive of two measure that we understand the HELP Subcommittee will be formally considering. Specifically, SPARK supports and endorses the *EBSA Investigations Transparency Act*, H.R. 2869, to require the Department of Labor to report to Congress on its ongoing enforcement actions and investigations. For too long, EBSA investigations have continued for year after year without end. SPARK thanks Representative Lisa McClain for introducing this common-sense bill to provide much needed transparency to these ongoing investigations.

Additionally, SPARK supports and endorses the *Balance the Scales Act*, H.R. 2958, to require transparency about the troubling recent revelations of information sharing by EBSA with private plaintiff's attorneys. SPARK thanks Representative Michael Rulli for introducing this important measure to require reporting to Congress about information sharing with plaintiff's attorneys and hopefully ensure they do not occur again in the future.

SPARK appreciate your continued interest enhancing retirement security for all Americans. Going forward, we also look forward to working with you to enact broad litigation reform measures to ensure that the growing wave of litigation against retirement plan sponsors and services providers does not reverse the great progress we have made in our voluntary defined contribution system to help retirement plan participants achieve a financially secure retirement.

Sincerely,

Tim Rouse
Executive Director
The SPARK Institute, Inc.

CC: Chairman Tim Walberg; Ranking Member Robert C. "Bobby" Scott; Representative Lisa McClain; Representative Michael Rulli

SHAPING AMERICA'S RETIREMENT

[Additional submissions from Representative McClain follows:]



July 21, 2025

The Honorable Lisa McClain
U.S. House of Representatives
Washington, DC 20515

Re: Support for H.R. 2869 – EBSA Investigations Transparency Act

Dear Representative McClain:

Business Group on Health is writing to express our support for H.R. 2869, the *EBSA Investigations Transparency Act*. The Business Group represents a [network of more than 440 of today's largest and most forward-thinking employers and industry partners](#) including 72 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries. In general, Business Group members are part of the regulated community over which the Employee Benefits Security Administration (EBSA) has primary jurisdiction for aspects of health and welfare plan administration.

We value the important role that EBSA plays in helping to ensure the integrity of employer-sponsored benefit plans. We believe that the best approach for EBSA is to first and foremost work as a compliance assistance partner with the regulated community to engender a collaborative and innovation-driving environment where employers are encouraged to adopt and invest in robust benefit plans and programs, and work with EBSA to ensure compliance.

We believe that compliance assistance and, when justified, a more directive enforcement posture should be built upon a foundation of transparency, due process, and clear communication—principles consistent with H.R. 2869. In our view, the bill preserves the agency's ability to carry out its mission and promotes efficient, consistent, timely and reliable resolution of investigations and other compliance-focused engagements. We urge Congress to move forward with H.R. 2869 and to continue promoting accountability and good governance in the administration of ERISA.

Thank you for your leadership and attention to this important issue. We would welcome the opportunity to discuss these comments or any other matters impacting employer plan sponsors. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Vice President, Policy and Advocacy (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO



April 7, 2025

The Honorable Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

Dear Representative McClain:

The American Benefits Council ("the Council") strongly supports the EBSA Investigations Transparency Act, which would shine much-needed light on excessively long U.S. Department of Labor (DOL) audits of ERISA plans.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

Our experience in the DOL audit area has been primarily in the context of audits regarding retirement plan sponsors' efforts to find missing participants (i.e., former employees who cannot be located). As we noted in a January letter to the Trump-Vance transition team, the DOL has taken an adversarial approach to this issue. Instead of providing workable guidance on what plan sponsors should do to find missing participants, the DOL has often conducted adversarial audits of employers that can last as long as eight years. There are often long periods of time during these audits when DOL is silent, followed by additional document requests, followed again by long periods of inaction, followed by more requests. These extended audits are expensive and require episodic intense periods of work, which get much harder as more time passes since the years being audited. And then sometimes a change in DOL personnel triggers a new waiting period and a new set of requests.

We obviously have no concerns with the DOL enforcing the law to unite participants with their well-deserved benefits. On the contrary, uniting participants with their benefits is a critical part of our mission and the mission of our plan sponsors. We do have concerns with excessively long audits that divert resources away from our mission of serving participants and toward endless document production, especially when the

reason for the audits is the DOL's failure to provide workable guidance on what plan sponsors should do in this area.

Your bill would require public disclosure regarding the length of DOL audits, and thereby increase DOL accountability. In our view, this bill is very much needed, and it is our pleasure to support it.

We thank you for your leadership on this critical transparency issue and look forward to working with you to enact this important bill.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is written in black ink and is positioned above the printed name and title.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy



AMERICAN BENEFITS COUNCIL

July 17, 2025

Delivered via email

The Honorable Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

Dear Representative McClain:

On behalf of the American Benefits Council (“the Council”), I am writing in support of your bill, the EBSA Investigations Transparency Act (H.R. 2869). Thank you for your leadership on this important issue.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include more than 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

As you know, the Employee Benefits Security Administration (EBSA) at the U.S. Department of Labor (DOL) has been conducting extremely long audits lasting up to eight years, especially scrutinizing plan fiduciaries’ efforts to find missing participants. These audits have been marked by long delays, shifts in DOL personnel (requiring old ground to be covered again), and often overly broad requests for information. The audits are costly and burdensome, especially when the fiduciary gets new questions about factual issues from eight or more years ago.

These practices are putting unjustified cost and resource burdens on employers that are doing the right thing by providing retirement benefits, burdens ultimately borne by plan participants. It is time to shine a light on these audits, which your bill would do.

We look forward to working with you to get this bill enacted.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is fluid and elegant, with the first and last names being more prominent than the middle initial.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: Representative Tim Walberg, chair, U.S. House of Representatives Education and
Workforce Committee



JAMES GELFAND
President and CEO

April 10, 2025

The Honorable Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

Congresswoman McClain:

On behalf of The ERISA Industry Committee (ERIC), thank for you for introducing *the Employee Benefit Security Administration (EBSA) Investigations Transparency Act*. We applaud your commitment to ensuring full transparency for regulators enforcing the *Employee Retirement Income Security Act of 1974*, as amended (ERISA).

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to millions of employees and their families, located in every state, city, and Congressional district.

ERIC member companies sponsor health and retirement plans governed by ERISA and other laws and regulations overseen by EBSA, a subagency of the Department of Labor. To be sure, EBSA has significant enforcement responsibilities on behalf of the workers, retirees, and their families that rely on these plans. We appreciate the role the agency is intended to play.

The Labor Department should see plan sponsors as key partners in enhancing health care and retirement security. Unfortunately, too many employers report audits and investigations relating to their benefit plans that have shifting scope and burdensome demands for information of questionable relevance. These investigations often stretch on for many years without clear purpose or timely ending. And at the end, after thousands of dollars and countless hours of compliance and negotiation with enforcement personnel, these burdensome investigations often unveil no wrongdoing, though they may morph into new, tangentially-related inquiries.

The *EBSA Investigations Transparency Act* would help Congress fulfil its critical oversight responsibilities, helping to ensure that EBSA's enforcement activities and priorities are transparent and efficient. We look forward to working with you on this legislation and on other measures to improve the administration of the laws governing employee benefits.

Respectfully,

James P. Gelfand
President and CEO



May 5, 2025

Representative Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

Dear Representative McClain,

The ESOP Association is proud to endorse the EBSA Investigations Transparency Act (HR 2869), legislation that would require the Employee Benefits Security Administration (EBSA) to report to Congress annually on the status of any longstanding active investigations. This important bill helps ensure transparency and oversight of EBSA's current investigatory tactics and supports Congress's longstanding and bipartisan intent to promote and expand employee ownership in the United States.

The ESOP Association is the largest organization in the world supporting employee-owned companies, the nearly 11 million U.S. employee owners who participate in employee stock ownership plans (ESOPs), and the professionals who serve them. We conduct and fund academic research, provide comprehensive services to employee-owned businesses, and represent employee owners and their companies before federal and state lawmakers.

Evidence of EBSA's lengthy investigatory tactics is not speculation or anecdotal. Reports from the Government Accountability Office (GAO) show that EBSA is failing to conduct enforcement in a timely fashion. The May 2021 GAO report found that 17% of all investigations opened in 2017 were still open four years later. Plan sponsors often share that investigations lack specificity or purpose and drag on for years at great cost to ESOP companies and their professional advisors. The needed and overdue annual reporting required by HR 2869 coupled with continued congressional oversight would help limit these abuses.

For years, The ESOP Association's members have noted EBSA's investigations have been not just lengthy, but unspecific and disproportionately focused on ESOP companies and plan sponsors. Since 2005 the Department of Labor (DOL) has engaged in a National Enforcement Project focused on ESOPs. Past Office of the Inspector General (OIG) reports have shown that EBSA spent about 7% of its time on this effort, while the ESOP community represents <1% of qualified retirement plans. In 2013 EBSA focused "more investigative resources on professional fiduciaries and service providers with responsibility for large amounts of plan assets and the administration of large amounts of plan benefits." The targeting of ESOP companies via a two-decade-old National Enforcement Project, along with seemingly perpetual EBSA investigations, should end. The chilling effect on ESOP formation is undeniable.

The International Employee Ownership Center

200 Massachusetts Avenue, NW • Suite 410 • Washington, D.C. 20001

Phone: (202) 293-2971 • Fax: (202) 293-7568 • E-mail: esop@esopassociation.org • Website: www.esopassociation.org

Congress consistently demonstrates bipartisan support for ESOPs and employee ownership due to their broad societal benefits. Research consistently shows employee-owned companies exhibit higher productivity and stronger resilience during economic downturns. Employees at these companies enjoy enhanced financial security, with substantially higher retirement savings compared to their peers at non-employee-owned companies. Furthermore, employee-owned companies anchor jobs within local communities, preventing job losses from closures or foreign acquisitions and preserving the legacy of family-owned businesses. Yet the investigatory tactics of EBSA, including lengthy investigations that hamper businesses for many years at great cost, have caused a distinct chilling effect on ESOPs and their formation, denying millions of workers these potential benefits.

For these reasons, The ESOP Association appreciates continual congressional oversight of EBSA, strongly supports the EBSA Investigations Transparency Act (HR 2869), and urges swift action by Congress to enact this legislation.

We appreciate your leadership on this important issue. If you have any questions, please contact Greg Facchiano at 202-293-2971 or via email at gfacchiano@esopassociation.org. Thank you for your continued support of ESOPs and employee ownership.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. Bonham", enclosed within a thin black rectangular border.

James J. Bonham
President & CEO
The ESOP Association



August 8, 2025

The Honorable Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

The Honorable Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Dear Representatives McClain and Rulli:

The Investment Company Institute (ICI), the association representing the asset management industry in service of individual investors, writes to express our strong support for the *EBSA Investigations Transparency Act* (HR 2869) and the *Balance the Scales Act* (HR 2958). These bills would enhance the transparency of activities of the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) and help facilitate effective congressional oversight of EBSA.

ICI and its members strive to promote retirement security for all US workers and are especially attuned to the needs of retirement savers. The asset management industry plays a significant role in US retirement savings by making available the investment products through which pension plans, defined contribution plans, and individual retirement accounts (IRAs) invest. Total US retirement assets were \$44.1 trillion as of December 31, 2024¹ with our members managing a large portion of these assets through regulated funds, collective investment trusts, and separately managed accounts.

Endless EBSA audits and surreptitious litigation activities increase burdens and uncertainty for companies that voluntarily offer retirement plans to their employees. ICI supports appropriate oversight of benefit plans that are subject to ERISA. However, EBSA's activities in recent years have unduly burdened plan sponsors, which risks detracting from the success of the US voluntary retirement benefits system. The *EBSA Investigations Transparency Act* addresses EBSA's lengthy and burdensome audits by requiring DOL to submit annual, redacted reports to Congress regarding the status of EBSA investigations. The *Balance the Scales Act* increases transparency and oversight of how DOL engages with plaintiffs' attorneys in cases regarding employee benefit plans by requiring DOL to provide annual reports to Congress on assistance it provided to plaintiffs' attorneys for potential use in civil actions under section 502(a) of ERISA.

¹ See ICI, Quarterly Retirement Market Data.

The Honorable Lisa McClain
The Honorable Michael Rulli
August 8, 2025
Page 2 of 2

By facilitating better oversight and accountability for EBSA, these two bills will help ensure that EBSA's investigatory activities serve to benefit the interests of plan participants.

We look forward to working with you to reduce unnecessary burdens on employers that choose to provide retirement benefits to their employees.

* * * *

Sincerely,

/s/ Eric J. Pan

Eric J. Pan
President & CEO

cc: The Honorable Tim Walberg, Chairman, House Committee on Education & Workforce
The Honorable Rick Allen, Chairman, Subcommittee on Health, Employment, Labor, and Pensions

[Additional submissions from Representative Rulli follows:]



July 21, 2025

The Honorable Michael Rulli
U.S. House of Representatives
Washington, DC 20515

Re: Support for H.R. 2958 – Balance the Scales Act

Dear Representative Rulli:

Business Group on Health is writing express our support for H.R. 2958, the *Balance the Scales Act*. The Business Group represents a [network of more than 440 of today's largest and most forward-thinking employers and industry partners](#) including 72 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries. In general, Business Group members are part of the regulated community over which the Employee Benefits Security Administration (EBSA) has primary jurisdiction for aspects of health and welfare plan administration.

We value the important role that EBSA plays in helping to ensure the integrity of employer-sponsored benefit plans. We believe that the best approach for EBSA is to first and foremost work as a compliance assistance partner with the regulated community to engender a collaborative and innovation-driving environment where employers are encouraged to adopt and invest in robust benefit plans and programs, and work with EBSA to ensure compliance.

We have been concerned about recent reports of EBSA's use of "common interest agreements" or other similar instruments and believe such practice undermines the trust and open engagement that should be the hallmark of promoting adoption of voluntary health, welfare, and other employee benefits. We support the enactment of H.R. 2958 and believe it will help avoid inappropriate information sharing and abuse by civil litigators while encouraging the agency to maintain a focus on trust-building, open dialog with the regulated community.

Thank you for your leadership and attention to this important issue. We would welcome the opportunity to discuss these comments or any other matters impacting employer plan sponsors. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Vice President, Policy and Advocacy (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO



April 4, 2025

The Honorable Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Dear Representative Rulli:

On behalf of the American Benefits Council (the Council), I am writing in strong support of your bill regarding adverse interest agreements entered into by the U.S. Department of Labor (DOL). We also strongly support the part of the bill that would make it clear that a policy of ERISA is "to promote, encourage, and facilitate the voluntary establishment and maintenance of, and contribution to, [retirement] plans." This key point needs to be the guiding principle in the administration of ERISA.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include more than 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

The DOL has publicly acknowledged previously entering into a secret agreement with plaintiffs to, in the words of the magistrate dealing with a pending case, "feed" the plaintiffs information to use in litigation against a retirement plan sponsor. Under the agreement, The DOL provided the plaintiffs with information gathered by DOL using its broad investigative powers. The magistrate found the secret agreement to be very concerning, stating: "[This] would allow a government agency to weaponize private litigation against some target before confirming the target should be a target. Moreover, the government could litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself" (emphasis added). The magistrate ordered DOL to make the secret agreement public but DOL has declined pending appeal.

Under the prior administration, the DOL publicly defended these secret agreements as a "well-established legal tool." This is very concerning for employers to know that their government views it as well-established that it can secretly hurt employers that voluntarily help their employees prepare for retirement. Your bill would bring

transparency to a previously secret set of arrangements by ensuring that plan sponsors and fiduciaries and Congress know about these agreements. We strongly support your bill.

We thank you for your leadership on these issues and look forward to working with you to enact this important legislation.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is written in dark ink and is positioned above the printed name and title.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy



AMERICAN BENEFITS COUNCIL

July 17, 2025

Delivered via email

The Honorable Mike Rulli
21 Cannon House Office Building
Washington, DC 20515

Dear Representative Rulli:

On behalf of the American Benefits Council (“the Council”), I am writing in support of your bill, the Balance the Scales Act (H.R. 2958). Thank you for your leadership on this important issue.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include more than 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

Your bill addresses the very concerning secret agreements that the U.S. Department of Labor (DOL) has been entering into with plaintiffs to help them sue ERISA plan fiduciaries. Your bill would very appropriately end the secrecy by requiring that a copy of any such agreement be disclosed to the employer, plan sponsor, or fiduciary impacted by the agreement. The bill also requires that DOL submit an annual report to Congress describing, in a redacted form, details regarding each such agreement, including a description of certain aspects of the written and verbal assistance provided to the plaintiffs. The report must also include “an explanation of how such agreement is consistent with the public policy of promoting the voluntary sponsorship of employee benefit plans subject to” ERISA. This is exactly the type of transparency that is needed.

Finally, the bill amends ERISA to include the following statement: “It is hereby declared to be a policy of [ERISA] to promote, encourage, and facilitate the voluntary establishment and maintenance of, and contribution to, [retirement] plans.” This is a

vitaly important statement that needs to be at the forefront of everyone's minds as they work on ERISA issues.

We look forward to working with you to get this bill enacted.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is fluid and elegant, with the first letters of each word being capitalized and prominent.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: Representative Tim Walberg, chair, U.S. House of Representatives Education and Workforce Committee



JAMES GELFAND
President and CEO

April 9, 2025

The Honorable Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Congressman Rulli:

On behalf of The ERISA Industry Committee (ERIC), thank you for introducing legislation bringing transparency to the coordination between the U.S. Department of Labor (DOL) and the plaintiffs' bar. Since it came to light last year that the DOL collaborates with plaintiffs' attorneys through the use of "common interest agreements," employee benefit plan sponsors have sought to better understand the prevalence and scope of these agreements. Our primary concerns are the negative consequences for health and retirement plans governed by the *Employee Retirement Income Security Act of 1974*, as amended (ERISA), and the tens of millions of plan participants who ultimately bear the costs of the proliferation of ERISA litigation.

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to millions of employees and their families, located in every state, city, and Congressional district. ERIC member companies sponsor health and retirement plans governed by ERISA and other laws and regulations overseen by the Employee Benefits Security Administration (EBSA), a subagency of the Department of Labor.

Unfortunately, the specter of frivolous and voluminous litigation poses a significant threat to the health of the voluntary employee benefits system. Too often, plan sponsors face expensive lawsuits no matter what reasonable course of action they take. These lawsuits can cost hundreds of thousands, even millions of dollars to defend, even if the claim ultimately is dismissed. Plan participants ultimately bear those costs. If EBSA is determined to provide information to attorneys suing benefits plans, then surely it is reasonable that the scope of this cooperation should be documented and transparent to any employer or plan fiduciary that might be adversely impacted. Furthermore, Congress has a legitimate oversight interest in understanding exactly the scope of EBSA's activities. Finally, we wholeheartedly endorse the "finding" in Section 2 of this bill, articulating that ERISA is designed to "promote, encourage, and facilitate the voluntary establishment and maintenance of, and contribution to" pension plans. EBSA's activities should always be consistent with this framework.

We look forward to working with you on this legislation and on other measures to improve the administration of the laws governing employee benefits.

Respectfully,

James P. Gelfand
President and CEO



May 5, 2025

Representative Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Dear Representative Rulli,

The ESOP Association is proud to endorse the Balance the Scales Act (HR 2958), legislation that would require the Employee Benefits Security Administration (EBSA) to report to Congress annually on adverse interest agreements. This important bill helps ensure transparency and oversight of EBSA's current investigatory tactics and supports Congress's longstanding and bipartisan intent to promote and expand employee ownership in the United States.

The ESOP Association is the largest organization in the world supporting employee-owned companies, the nearly 11 million U.S. employee owners who participate in employee stock ownership plans (ESOPs), and the professionals who serve them. We conduct and fund academic research, provide comprehensive services to employee-owned businesses, and represent employee owners and their companies to federal and state lawmakers.

The reporting requirement included in HR 2958 would curtail the use of common interest agreements by EBSA. In these legal agreements, the taxpayer-funded investigatory efforts and information from the government is shared with private plaintiff law firms in pursuit of claims. In some instances, the Department of Labor (DOL) is not even a party to these lawsuits, meaning its time and resources are directing and assisting private lawsuits. Both the prior and current chairs of the House Education and the Workforce Committee have rightly expressed serious concerns to the DOL Inspector General about this potentially abusive taxpayer-funded support for private plaintiffs' attorneys. While The ESOP Association prefers that this practice end entirely, reporting and transparency would help shed light on this highly concerning practice.

That EBSA used this questionable tactic in ESOP cases is not theoretical – this issue, in part, came to light because of the use of a secret common interest agreement in an ERISA case against Envision Management Holding Inc. After being informed of the nature of the extensive cooperation between the DOL and a private plaintiffs' firm, Magistrate Judge Maritza Dominguez Braswell (U.S. District Court for the District of Colorado) stated that such an agreement "*could set a dangerous precedent.*" Judge Braswell further stated "*It would allow a government agency to weaponize private litigation against some target before confirming the target should be a target. Moreover, the government could litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself.*" While common interest agreements are between two parties in active litigation, the DOL was not even party to that lawsuit.

The International Employee Ownership Center

200 Massachusetts Avenue, NW • Suite 410 • Washington, D.C. 20001

Phone: (202) 293-2971 • Fax: (202) 293-7568 • E-mail: esop@esopassociation.org • Website: www.esopassociation.org

In February of 2025, in response to Freedom of Information Act (FOIA) requests, DOL reported more than a dozen instances of secret common interest agreements between it and private plaintiff's firms.

If the voluntary cooperation by ESOP trustees at EBSA's request is weaponized against their clients, a strong disincentive is created for voluntary cooperation. The annual reporting required by HR 2958 and continued congressional oversight of this matter would help limit these potential abuses.

Congress has consistently demonstrated bipartisan support for ESOPs and employee ownership due to their broad societal benefits. Research consistently shows employee-owned companies exhibit higher productivity and stronger resilience during economic downturns. Employees at these companies enjoy enhanced financial security, with substantially higher retirement savings compared to their peers at non-employee-owned companies. Furthermore, employee-owned companies anchor jobs within local communities, preventing job losses from closures or foreign acquisitions and preserving the legacy of family-owned businesses. Yet the investigatory tactics of EBSA, including secret common interest agreements between the DOL and plaintiffs' firms, have caused a distinct chilling effect on ESOPs and their formation, denying millions of workers these potential benefits.

For these reasons, The ESOP Association appreciates continual congressional oversight of EBSA, strongly supports the Balance the Scales Act (HR 2958), and urges swift action by Congress to enact this legislation.

We appreciate your leadership on this important issue. If you have any questions, contact Greg Facchiano at 202-293-2971 or via email at gfacchiano@esopassociation.org. Thank you for your continued support of ESOPs and employee ownership.

Sincerely,



James J. Bonham
President & CEO
The ESOP Association



August 8, 2025

The Honorable Lisa McClain
562 Cannon House Office Building
Washington, DC 20515

The Honorable Michael Rulli
421 Cannon House Office Building
Washington, DC 20515

Dear Representatives McClain and Rulli:

The Investment Company Institute (ICI), the association representing the asset management industry in service of individual investors, writes to express our strong support for the *EBSA Investigations Transparency Act* (HR 2869) and the *Balance the Scales Act* (HR 2958). These bills would enhance the transparency of activities of the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) and help facilitate effective congressional oversight of EBSA.

ICI and its members strive to promote retirement security for all US workers and are especially attuned to the needs of retirement savers. The asset management industry plays a significant role in US retirement savings by making available the investment products through which pension plans, defined contribution plans, and individual retirement accounts (IRAs) invest. Total US retirement assets were \$44.1 trillion as of December 31, 2024¹ with our members managing a large portion of these assets through regulated funds, collective investment trusts, and separately managed accounts.

Endless EBSA audits and surreptitious litigation activities increase burdens and uncertainty for companies that voluntarily offer retirement plans to their employees. ICI supports appropriate oversight of benefit plans that are subject to ERISA. However, EBSA's activities in recent years have unduly burdened plan sponsors, which risks detracting from the success of the US voluntary retirement benefits system. The *EBSA Investigations Transparency Act* addresses EBSA's lengthy and burdensome audits by requiring DOL to submit annual, redacted reports to Congress regarding the status of EBSA investigations. The *Balance the Scales Act* increases transparency and oversight of how DOL engages with plaintiffs' attorneys in cases regarding employee benefit plans by requiring DOL to provide annual reports to Congress on assistance it provided to plaintiffs' attorneys for potential use in civil actions under section 502(a) of ERISA.

¹ See ICI, Quarterly Retirement Market Data.

The Honorable Lisa McClain
The Honorable Michael Rulli
August 8, 2025
Page 2 of 2

By facilitating better oversight and accountability for EBSA, these two bills will help ensure that EBSA's investigatory activities serve to benefit the interests of plan participants.

We look forward to working with you to reduce unnecessary burdens on employers that choose to provide retirement benefits to their employees.

* * * *

Sincerely,

/s/ Eric J. Pan

Eric J. Pan
President & CEO

cc: The Honorable Tim Walberg, Chairman, House Committee on Education & Workforce
The Honorable Rick Allen, Chairman, Subcommittee on Health, Employment, Labor, and Pensions

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, D.C. 20006 • PHONE 202-737-5315 • FAX 202-737-1308

MICHAEL D. SCOTT
 EXECUTIVE DIRECTOR
 E-MAIL: MScott@NCCMP.ORG

July 22, 2025

The Honorable Michael A. Rulli
 Representative
 U.S. House of Representatives
 421 Cannon House Office Building
 Washington, D.C. 20515

Re: Support for H.R. 2958, Balance the Scales Act

Dear Representative Rulli:

The National Coordinating Committee for Multiemployer Plans (“NCCMP”) was deeply troubled upon learning of the existence of Common Interest Agreements between the Department of Labor (“DOL”), including the Employee Benefits Security Administration (“EBSA”), and plaintiff law firms to share DOL investigatory and enforcement materials for the purpose of privately suing ERISA plans. Our concerns were shared by a Federal Magistrate and the U.S. District Court for the District of Colorado in *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*

The materials provided by EBSA to these firms include materials obtained by EBSA through the exercise of its statutory subpoena powers and provided by the plans with the expectation of confidentiality, unless EBSA determines that a violation of law has occurred. Contrary to these expectations, these investigatory materials have, at least on some occasions, been provided without the benefit of any determination by EBSA that a violation of law has occurred or that enforcement action should be initiated.

Litigation, particularly unnecessary privately financed litigation, is expensive for ERISA plans, their participants and beneficiaries, the fiduciaries who voluntarily serve on these plans’ boards of trustees, and these plans’ other stakeholders, and should not be encouraged by EBSA or any other governmental entity.

We therefore support H.R. 2958, Balance the Scales Act, the proposed legislation to require disclosure of the existence of these arrangements, both to the affected parties and to the public in general. By shining a light on these arrangements, EBSA will be encouraged to restrict their use to the very unusual circumstances where they may be appropriate.

The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans, as well as the unions and the job-creating employers of America that establish and maintain them, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP’s purpose is to assure a statutory and regulatory environment in which multiemployer plans can

The Honorable Michael A. Rulli
Representative
U.S. House of Representatives
July 22, 2025
Page 2

continue their vital role in providing retirement, health, training, and other benefits to America's hard-working men and women.

Regards,

A handwritten signature in black ink, appearing to read "m. scott", is displayed within a light gray rectangular box.

Michael D. Scott
Executive Director

[Questions and responses submitted for the record by Mr.
Khawar follows:]



**COMMITTEE ON
EDUCATION AND WORKFORCE**
U. S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY MEMBERS:

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August 13, 2025

Ali Khawar
Founder and President
FCP, LLC
1329 Quincy St. NW
Washington, DC 20011

Dear Mr. Khawar:

Thank you again for testifying before the Subcommittee on Health, Employment, Labor, and Pensions at the hearing titled "Restoring Trust: Enhancing Transparency and Oversight at EBSA." Enclosed are additional questions from Committee members following the hearing. Please provide written responses no later than September 3, 2025, for inclusion in the hearing record. The responses should be sent to Katerina Kerska of the Committee staff who can be contacted at (202) 226-9435 or Katerina.Kerska@mail.house.gov.

We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Rick W. Allen
Chairman
Subcommittee on Health, Employment, Labor, and Pensions

**Questions for the Record from
REPRESENTATIVE ROBERT C. “BOBBY” SCOTT**

**Committee on Education and Workforce
HELP Subcommittee hearing titled: “Restoring Trust: Enhancing Transparency and
Oversight at EBSA”**

**Tuesday, July 22, 2025
10:15 A.M.**

**Representative Robert C. “Bobby” Scott (D-VA)
Questions for Mr. Ali Khawar**

1. In the *No Surprises Act*, Congress provided the Departments of Labor, Health and Human Services, and the Treasury with a combined \$500 million in supplemental funding. What was the impact of this additional funding on EBSA’s capacity and how will the refusal of the Trump Administration to extend this funding affect the agency moving forward?
2. During his confirmation hearing in June, the Trump Administration’s nominee for Assistant Secretary for EBSA told the Senate HELP Committee that he would “[end the war on ESOPs](#).” Could you respond to this? Do you believe that the Department has “declared war on ESOPs”?
3. One witness claimed during the hearing, without providing supporting evidence, that there is a “revolving door” between the plaintiffs’ bar and the Department of Labor. Please respond to this assertion.
4. In evaluating the timeliness of the Department of Labor’s handling of enforcement matters, one statistic cited by Republicans during the hearing was that a large number of cases remain open for extended periods of time. My understanding is that this might not paint a full picture—i.e. many of the cases described as “open” have effectively been closed. Could you clarify the meaning of when a case is considered “closed” by EBSA?
5. When ERISA was enacted in 1974, Congress emphasized the need for enforcement to protect participants, declaring that it was the intent of Congress to “provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.” Could you describe how ERISA is enforced by both EBSA and by participants? Why must this system be preserved and strengthened, rather than rolled back?
6. Under section 504 of ERISA, the Department of Labor has broad power to investigate potential violations of the law. Could you please describe the process of undertaking an ERISA investigation?

**Questions for the Record from
REPRESENTATIVE DONALD NORCROSS**

Representative Donald Norcross (D-NJ)

Questions for Ali Khawar

1. Under the *Mental Health Parity and Addiction Equity Act* (MHPAEA), health plans and insurers are prohibited from imposing barriers on access to mental health or substance use disorder benefits that don't apply to medical and surgical benefits. Yet, the Department has repeatedly found widespread noncompliance by the industry, and the Trump Administration has turned its back on this bipartisan legislation by slashing EBSA's workforce and refusing to enforce the Biden Administration's 2024 Final Rules.
 - a. Could you discuss the importance of Mental Health Parity for workers?
 - b. What additional tools does the Department need to improve its enforcement of the law?

**Questions for the Record from
REPRESENTATIVE ROBERT C. “BOBBY” SCOTT
Committee on Education and Workforce**

HELP Subcommittee hearing titled: “Restoring Trust: Enhancing Transparency and Oversight at EBSA”

Tuesday, July 22, 2025

10:15 A.M.

Representative Robert C. “Bobby” Scott (D-VA)

Questions for Mr. Ali Khawar

1. In the No Surprises Act, Congress provided the Departments of Labor, Health and Human Services, and the Treasury with a combined \$500 million in supplemental funding. What was the impact of this additional funding on EBSA’s capacity and how will the refusal of the Trump Administration to extend this funding affect the agency moving forward?

EBSA’s base budget has remained essentially flat for years, even as fixed costs like salaries and rent have risen. That left the agency with no choice but to reduce staffing. The supplemental funding provided under the No Surprises Act (NSA) was therefore critical in reversing staffing declines and sustaining EBSA’s capacity to achieve its mission.

With this support, EBSA was able to (1) dramatically strengthen and expand its mental health parity enforcement efforts, which showed widespread industry noncompliance, addressed both individual and systemic barriers such as blanket exclusions for eating disorder treatment, and informed the changes EBSA made to its MHPAEA rules in coordination with HHS and Treasury; (2) alongside HHS and Treasury, effectively implement the NSA by issuing guidance and rules on arbitration and other provisions, and ensuring workers, providers, and plans received timely answers;¹ (3) devote resources to NSA implementation and mental health parity enforcement without having to divert resources away from other important enforcement and participant assistance work.

The consequences of losing this funding are severe. In 2024, EBSA estimated that without the approximately \$33 million in annual supplemental support it was receiving from the NSA funding, it would need to cut about 120 full-time employees—roughly the equivalent

¹ In 2024, EBSA Benefits Advisors handled more than half of all NSA provider help desk complaints nationwide.

of three of its 13 field offices.² That reduction would significantly diminish the agency's ability to enforce mental health parity, carry out the NSA, and respond to participant inquiries. It will also result in the diversion of enforcement resources away from other important issues, like EBSA's efforts to prevent fraud in health plans and protect retirement plan participants from fiduciary breaches.

2. During his confirmation hearing in June, the Trump Administration's nominee for Assistant Secretary for EBSA told the Senate HELP Committee that he would "end the war on ESOPs." Could you respond to this? Do you believe that the Department has "declared war on ESOPs"?

The Department has not declared war on ESOPs. Claims to the contrary are soundbites that only serve to inflame tensions between the Department and the regulated community, impact the morale of the Department's workers, and undermine the Department's important work. I believe ESOPs can play an important role in building wealth across income and seniority levels, and ensuring worker voice. However, particularly for transactions in thinly traded private markets that can be dominated by corporate insiders who have financial conflicts of interest, having a regulator that ensures participants are getting a fair deal is essential. I viewed and continue to view the Department's role in ESOP enforcement as making sure that ESOPs complied with the law.

In one case I worked on as an EBSA investigator, the first appraiser hired to independently value the company for the sale transaction was fired after providing a value that was too low, and the first attorney hired to represent the ESOP was fired after disagreeing with the selling owner's preferred terms of sale. The transaction went forward with a new appraiser and a new ESOP attorney who worked with the selling owner to ensure the valuation represented a number the owner was satisfied with – not the fair market value. The Department's actions returned millions of dollars to participants and is illustrative of why the agency's work is essential.

The Department's track record in court also disproves the "war" narrative. Federal judges have overwhelmingly sided with the Department's views on ESOPs – in fact, part of why the Bowers + Kubota case stands out is because it is one of the only instances of the Department ever losing an ESOP case it litigated.

² The Solicitor's Office at the Department of Labor also received supplemental funding from the NSA, and estimated the loss would cause it to reduce headcount by approximately 30 full-time employees.

The notion of a “war” on ESOPs is also at odds with the Biden Administration’s efforts to promote worker ownership. Even absent funding, we created the Division of Employee Ownership in EBSA to educate the public and promote worker ownership, including through ESOPs. By contrast, the second Trump Administration has (1) rescinded a Biden Administration proposal to provide regulatory clarity to the appraisal process; and (2) first firing, and ultimately rehiring, the head of the Division on Employee Ownership.

3. One witness claimed during the hearing, without providing supporting evidence, that there is a “revolving door” between the plaintiffs’ bar and the Department of Labor. Please respond to this assertion.

This is another attention-grabbing, but misleading, claim. My quick review of the biographies at the witness’s own law firm revealed eight professionals who previously worked at the Department of Labor. Presumably the witness does not view that as evidence of a problematic “revolving door” between his firm and the Department.

In my time at the Department, including my time in leadership roles, I regularly engaged with valued employees who were considering leaving the agency. The overwhelming majority of those employees departed because they were being offered higher salaries in less demanding roles, either at other government agencies (like the SEC, which operates on a different salary scale) or private-sector law firms (like the witness’s). I cannot recall a single instance from my time at the Department when I was counseling an employee who ultimately left because they wanted to join the plaintiff’s bar.

Finally, to the extent EBSA had a hiring priority, it was bringing on recent graduates in order to build a talent pipeline, not to recruit plaintiff’s attorneys. The notion of a “revolving door” between EBSA and the plaintiff’s bar is not borne out by my experience, or the facts.

4. In evaluating the timeliness of the Department of Labor’s handling of enforcement matters, one statistic cited by Republicans during the hearing was that a large number of cases remain open for extended periods of time. My understanding is that this might not paint a full picture—i.e. many of the cases described as “open” have effectively been closed. Could you clarify the meaning of when a case is considered “closed” by EBSA?

Many cases EBSA has marked as “open” are no longer under active investigation by the agency. This is an important distinction that is essential when evaluating timeliness. While I was at the agency, we aimed to ensure that investigations were both timely and thorough, but an “open” case for EBSA does not always mean an “active” case.

Once EBSA completes its fact-finding – meaning it has conducted interviews, reviewed documents, or completed other investigative steps to support any alleged noncompliance – the agency will typically send a “voluntary compliance” letter to the subject of an investigation³ outlining potential civil violations of ERISA, including the factual basis, and inviting corrective action. From that point forward, the investigation is effectively concluded, but it is coded as “open” while the subject of the investigation responds, negotiates over corrective action, implements the correction, and provides proof of completion to the Department. Additionally, cases referred to the Solicitor’s Office for litigation are coded as “open” while the settlement negotiations are ongoing or court proceedings are concluded. In all of those situations, no real investigative work is happening, yet the case is still “open” in EBSA’s system.⁴ EBSA only considers a case closed (and issues a formal closing letter) once no further action is anticipated, which could be years after the investigation is concluded.

Additionally, in creating ERISA’s statute of limitations, Congress effectively gave the Department three years from opening an investigation to bring a legal action. Any extension beyond that point can only happen with the agreement of the party being investigated. This reality shapes case management.

Finally, it’s important to note that the timeliness of an investigation is influenced by several factors – for example, how cooperative were the subjects of an investigation in turning over documents? Did they turn over documents voluntarily, or did the Department have to enforce a subpoena in court? Is the civil case on hold because a parallel criminal case needs to be completed first? More contemporaneously, an important issue (left unaddressed by the draft legislation on timeliness under consideration by the Committee) is whether the Trump Administration’s DOGE-driven personnel cuts have resulted in investigator turnover on a case – each time a new investigator is assigned, it will naturally

³ Voluntary compliance letters are not sent in criminal investigations. However, once an investigation is concluded, if a prosecutor is going to bring a criminal action, EBSA will continue to treat the case an “open” until the legal process is completed.

⁴ As the Department reported in November 2023, only 3% of its open civil cases were both old and undergoing active investigation (and about two-thirds of those cases were open for an extended period of time because the investigation expanded after new statutory requirements related to mental health parity became effective).

take that individual some time to get up to speed with the evidence in the case file, no matter how comprehensive or thoughtful the transition is.

Ultimately, because EBSA keeps cases coded as open long after an investigation is actively concluded, evaluating timeliness simply by examining reports of “open” cases risks significantly overstating how many cases are still being actively investigated.

5. When ERISA was enacted in 1974, Congress emphasized the need for enforcement to protect participants, declaring that it was the intent of Congress to “provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.” Could you describe how ERISA is enforced by both EBSA and by participants? Why must this system be preserved and strengthened, rather than rolled back?

When ERISA was passed, Congress recognized that the statute’s fiduciary obligations provided very important consumer protections. Just as in 1974 when ERISA was passed, the reality today is that although many fiduciaries do the right thing, some do not, and the statutory scheme needs to provide appropriate ways to hold fiduciaries accountable.

At the same time, upholding ERISA’s promise is difficult without *both* (1) participants being able to bring lawsuits and (2) the government enforcing on behalf of plan participants. Even with a much less complex statute in 1974, Congress recognized that the Department would never have sufficient resources to discover and address every employee benefit plan issue. As such, Congress wisely created not just the private right of action for fiduciaries, participants, and beneficiaries, it also specifically authorized broad information sharing by the Secretary. The private right of action remains an important accountability mechanism, alongside the Secretary’s enforcement program.

Unfortunately, recent calls to limit participants’ rights to bring lawsuits come on the heels of the second Trump Administration’s severe cuts to EBSA and threaten the entire remedial regime envisioned by Congress. The notion of limiting participant lawsuits is especially troubling given that there are reasons to question whether the current Administration believes in enforcement at all. EBSA’s civil enforcement program typically results in hundreds of millions of dollars being returned to participants and beneficiaries each year, which is commonly a return of thousands of dollars per investigator per day. Yet even though the public can find DOL news releases highlighting this Administration’s nonenforcement policies, the agency has not issued a news release highlighting even a single ERISA enforcement action in this Administration – and the EBSA nominee has been publicly critical of both the enforcement program and participant lawsuits.

6. Under section 504 of ERISA, the Department of Labor has broad power to investigate potential violations of the law. Could you please describe the process of undertaking an ERISA investigation?

EBSA investigations are typically opened as a result of information (such as reports filed with EBSA, referrals from other government agencies, or calls to the agency) that indicates there is a potential violation of ERISA. The investigation would typically proceed as follows:

1. Initial Planning: investigators may prepare a written plan for the investigation and collect background information such as filings, public or proprietary information about the entity).
2. Information gathering: investigators send document requests to the relevant party or parties and conduct interviews with relevant officials in order to develop the factual context. The time to complete these steps vary depending on the nature of the investigation (including the complexity of the issue being investigated) and the level of cooperation from the parties. It is not uncommon for parties to delay and resist document requests, for example, ultimately requiring an administrative subpoena to be issued, or for that subpoena to be enforced in court – which causes significant delays as the case must first be referred to the DOL Solicitor's Office and then a court must consider the case and make a decision.⁵
3. Expert analysis: In complex cases, an outside expert may need to be hired to deliver an opinion before the agency will decide whether to pursue a violation. Hiring an expert can be artificially delayed until a new fiscal year because of the agency's budgetary situation.
4. Voluntary compliance: EBSA will typically send a voluntary compliance letter outlining potential violations to the subject of investigation to attempt to resolve any potential issues without litigation.
5. Litigation: If necessary, EBSA refers the case to the Solicitor's Office for civil litigation.

As previously mentioned, ERISA's statute of limitations – three years from actual knowledge – effectively imposes a timeline on many of EBSA's investigations. If EBSA concludes it will refer a case for litigation, the formal referral needs to take place well ahead of the three-

⁵ The decision is solely on the Department's ability to receive documents pursuant to an administrative subpoena, not the validity of any violations of ERISA. Also, although routinely issuing subpoenas might quicken cases by reducing the time the Department currently spends negotiating over voluntary production, it would routinely require plans – even plans of small employers – to hire legal counsel, which can be fairly costly.

year deadline, so that the lawyers in the Department's Office of the Solicitor have sufficient time to familiarize themselves with the details of the case and prepare legal filings.⁶ Lawyers defending plans in EBSA investigations are well aware of the statute of limitations, which means that the Department's leverage – both in voluntary compliance discussions and settlement negotiations – becomes more limited after the two-year mark. Although the Department can extend the statute of limitations through a tolling agreement, that can only happen with the agreement of the party that the Department might sue.

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1. Under the Mental Health Parity and Addiction Equity Act (MHPAEA), health plans and insurers are prohibited from imposing barriers on access to mental health or substance use disorder benefits that don't apply to medical and surgical benefits. Yet, the Department has repeatedly found widespread noncompliance by the industry, and the Trump Administration has turned its back on this bipartisan legislation by slashing EBSA's workforce and refusing to enforce the Biden Administration's 2024 Final Rules.

a. Could you discuss the importance of Mental Health Parity for workers?

When an individual seeks treatment for a mental health or substance use condition, they and their loved ones deserve to put their focus on getting the care they need, not on fighting with an insurance company.

Mental health parity stands for the promise that when workers – and their family members who may be covered by the health plan – seek treatment for a mental health or substance use condition instead of a traditional medical condition, they will not have to jump over additional administrative hurdles or cut through extra red tape just because they have the “wrong” type of disease.

⁶ EBSA has a variety of mechanisms to ensure that the Solicitor's Office is aware of and up to speed on potential litigation, but ultimately formal referrals are required before litigation can occur.

b. What additional tools does the Department need to improve its enforcement of the law?

Giving the Department authority to impose civil monetary penalties on the health insurance companies that (often more than their plan sponsor clients) are the bad actors would make a significant difference to EBSA's enforcement. I support your Parity Enforcement Act, which would do that.

Additionally, I believe the Biden Administration's rulemaking on mental health parity standards would have generally resulted in improved compliance, and when enforcement was required, would have made noncompliance clearer and therefor easier to prove. Unfortunately, the Trump Administration has indicated that it will not enforce those rules.

Finally, EBSA's enforcement staffing has also been severely cut, and the second Trump Administration has refused to seek any replenishment of the supplemental funding that was EBSA's primary source of money for mental health parity work. I remain concerned that those trends, along with a general reluctance to enforce mental health parity by this Administration, will limit EBSA's ability to ensure that mental health parity is a reality.

