

October 2026

Retire through Ownership Act Signed into Law

On October 15, 2026, the Retire through Ownership Act ("Act") was signed into law amending the definition of "adequate consideration" under Section 3(18) of the Employee Retirement Income Security Act of 1974 ("ERISA") as it relates to an employee stock ownership plan ("ESOP").

Background

An ESOP is a retirement plan that invests primarily in employer securities. Generally, the purchase of employer securities within the employer's own retirement plan would be considered a prohibited transaction under ERISA unless the ESOP pays no more than "adequate consideration" for the stock. For privately held stock, ERISA defines adequate consideration as the fair market value determined in good faith by the plan's fiduciary pursuant to terms of the plan and "in accordance with regulations promulgated by the Secretary [of Labor]." However, to date, final regulations have not been issued with respect to valuing privately held stock within an ESOP.

Provisions of the Act

For purposes of determining adequate consideration for privately held employer securities within an ESOP, the Act adds that an ESOP fiduciary may rely in good faith on a valuation prepared by an independent valuation expert or business appraiser. To qualify for this treatment, the valuation expert or appraiser must have relied on the principles and methodologies established under IRS Revenue Ruling 59-60 (as amplified and modified by the IRS from time to time) in determining the fair market value of the privately held stock.

The Act also makes clear that this new provision:

- Does not prevent the Secretary of Labor from issuing regulations interpreting the new law;
- Does not expand the Secretary of Labor's regulatory authority over the definition of "adequate consideration" beyond the authority that existed immediately before enactment; and
- Does not modify a fiduciary's obligations under ERISA Section 404, including the duties of prudence and loyalty.

The Act is effective immediately, with its provisions applying to adequate consideration determinations made on or after October 15, 2026.

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