



The ESOP Association

Congressional Lobbying Kit *Annual Conference 2013*

ESOP Advocates,

Following are documents to leave at ANY Congressional office you visit while in Washington, DC. Three (3) copies are provided of each leave behind to ensure you have enough!

Thank You,
The ESOP Association



Summary of The ESOP Association's Priorities

1. Oppose Administration's position on ESOPs.
2. Urge House of Representatives to maintain positive ESOP laws.
3. Urge Senators to sponsor S. 742.
4. Oppose DOL's proposal, or policy, to make ESOP appraisers ERISA fiduciaries.

The ESOP Association's Priority List

- I. With regard to the Administration
 - A. Protest the Administration's position that ESOPs are too risky for employees if they work in companies with more than \$5 million in gross revenue per year.

- II. With regard to the House of Representatives
 - A. Request those on House Ways and Means Committee (the tax committee) to support ESOPs.
 - B. Request those not on House Ways and Means Committee to be supportive of ESOP law.
 - C. Ask all House Members to be alert to a pro-ESOP bill for private companies when introduced in the House like S. 742.

- III. With regard to the Senate
 - A. Thank those who have sponsored S. 742.
 - B. Request those who are not sponsors to sponsor S. 742.

- IV. With regard to the Department of Labor
 - A. Request Senators to consider sponsoring S. 273, Ayotte to stop any DOL mandate that ESOP appraisers be ERISA fiduciaries.

See Handouts for Each Priority

Leave Off on Administration's Position on ESOPs

Suggested Verbalization to a Member of the Senate and/or House of Representatives on The Administration's Position, After Telling Briefly What Your ESOP Means To You!

“Specifically, the Administration justifies the repeal of an 1984 law permitting a tax deduction for dividends paid on stock in an employee owner’s ESOP account because ESOPs are bad for employees unless thy work in a company with 1 to 15 or so employees. (Name of Company) has XX employees. 99% of the ESOP companies have more than 15 employees.)

The overwhelming evidence from 35 plus years of research is ESOP companies in the vast majority of instances are more productive, more profitable, provide locally controlled sustainable jobs, with better retirement savings than comparable non-employee owned companies. None of this research is only about companies with 15 or fewer employees. It is research on all ESOP companies.” (See Attachment/Enclosure)

“In sum, please convey our dismay, and respectfully request that based on your review of employee ownership you too are puzzled by the Administration’s position that contradicts all prior Administrations, both Democratic and Republican.”

(Three Copies of Leave Offs Provided)

Leave Off on Administration's ESOP Position

Evidence Is Overwhelming that Administration Is Just Plain Wrong About ESOPs Being Bad for Employees Working in Companies with Over \$5 Million Annual Revenue, and Is Actually an Insult to Employee Owners.

Fact: Nearly all ESOP companies have annual revenues of more than \$5 million.

Fact: Companies with less than \$5 million in revenues annually are nearly always companies with only 1 to 15 or so employees. It is estimated that 99% of the ESOP companies have more than 15 employees.

Fact: The following evidence that ESOP companies are more productive, more profitable, providing sustainable locally controlled jobs while providing better retirement savings for its employees than non-employee owned companies, developed over many years, is from ALL ESOP companies, not just the handful with less than \$5 million annually in revenues.

Fact: Employees of ESOP companies are not stupid, and can comprehend how their efforts can impact their companies if they work in companies with more than \$5 million annual revenue.

Conclusion: The Administration's justification for no tax deduction for dividends paid on ESOP stock that employees of ESOP companies with more than \$5 million in revenue annually is an insult to the intelligence of average pay Americans who work for ESOP companies.

Summary of Recent Research on ESOP companies and their performance and compensation of employees follows.

Employee Owner Impact Corporate Performance Positively

Overwhelming Evidence ESOP Companies More Productive, More Profitable, and More Sustainable, Providing Locally Controlled Jobs

- During the Great Recession, employee stock owned companies laid off employees at a rate of less than 3%, whereas conventionally owned companies laid off at a rate greater than 12%. (Data source: 2010 General Social Survey.)
- Because employees of ESOP companies were four times more likely to retain jobs during the Great Recession, Federal government recognized savings of over \$14 billion in 2010 compared to tax payments foregone by laid off employees of conventionally owned companies; in other words for every \$1 in tax expenditures to promote employee stock ownership, the Federal government collected \$13 in taxes. (Data Source: 2010 General Social Survey analyzed by National Center for Employee Ownership.)
- A survey of 1400 ESOP companies in 2010 evidenced the average age of the companies' ESOPs were 15 years, and the average account balances for employees were nearly \$200,000, much higher than data reported for average 401(k) account balances. (The ESOP Company Survey, 2010, of The ESOP Association's Corporate members.)
- According to 2012 General Social Survey, 13% of employees of employee stock-owned companies were thinking of seeking employment elsewhere, whereas 24% of the employees of conventionally-owned companies were considering leaving their current job.
- More than half of the ESOP companies have two retirement savings plan (primarily a 401(k)), whereas more than half of all companies have no retirement income savings plan. (Analysis of forms 5500, and Bureau of Labor Statistics by the National Center for Employee Ownership, funded by the Employee Ownership Foundation.)
- The average ESOP company (less than 200 employees) has sales \$9 million more per year than its non-employee owned comparable competition. (June 2008 Dissertation, Dr. Brent Kramer, CUNY.)
- A study of 1100 ESOP companies over eleven years compared to 1100 comparable conventional owned companies evidenced the 1100 ESOP companies had better sales, more employment, and were more likely over the period to remain independent businesses by 16%. (Most detailed study of ESOP companies by Dr. Joseph Blasi, and Dr. Douglas Kruse, tenured professors, Rutgers University School of Labor and Management, 1999.)

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The House and Tax Reform

Leave Offs

Special Role of House Members Tax Reform

The following members of the House Ways and Means Committee are right now reviewing retirement savings laws, including tax benefits for ESOPs, which some cynics label as tax loopholes. These members are:

Representatives:

Xavier Beccera (D-34th-CA)

Lloyd Doggett (D-30th -TX)

Sam Johnson (R-3rd-TX)*

Ron Kind (D-3rd -WI)*

Sander Levin (D-9th-MI)*

Richard E. Neal (D-1st -MA)*

Erik Paulsen (R-3rd -MN)*

Jim Renacci (R-16th -OH)

Pat Tiberi (R-12th -OH)*

*Indicates the Member Has Openly Supported Pro-ESOP Proposals in Prior Congress.

See Leave Off, Next Document

Suggested Verbalization with Leave Off

“We leave a summary of just some of the overwhelming data indicating ESOPs in the vast majority of instances, are more productive, more profitable, and more sustainable, providing locally controlled jobs.

We respectfully ask that as you judge the value of employee ownership to our nation, as a member of the Ways and Means Committee task force on retirement savings, you not accept proposals to weaken an excellent policy that creates sustainable jobs and provides excellent retirement savings for average pay employees. Please take note of the recent research proving value of ESOPs to employee owners, their companies, and our nation.”

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Other Ways & Means Committee Members Not on Task Force but Who Will Vote on Tax Reform Bills

And other members of Ways and Means will eventually consider ideas and data developed by the members on the Pensions/Retirement Task force. These men and women should hear from ESOP advocates now before any negative ESOP proposals are seriously reviewed.

Here is the list:

Rep. Dave Camp (R-MI-4th), Chairman*
Rep. Diane Lynn Black (R-TN-6th)
Rep. Earl Blumenauer (D-OR-3rd)*
Rep. Charles W. Boustany, Jr. (R-LA-3rd) *
Rep. Kevin Brady (R-TX-8th)*
Rep. Vern Buchanan (R-FL-16th)*
Rep. Joseph Crowley (D-NY-14th)
Rep. Danny K. Davis (D-IL-7th)*
Rep. Jim Gerlach (R-PA-6th)*
Rep. Timothy “Tim” Griffin (R-AR-2nd)
Rep. Lynn Jenkins (R-KS-2nd)*
Rep. George J. “Mike” Kelly, Jr. (R-PA-3rd)
Rep. John B. Larson (D-CT-1st)
Rep. John Lewis (D-GA-5th)*
Rep. Kenny Marchant (R-TX-24th)*
Rep. Jim McDermott (D-WA-7th)
Rep. Devin Nunes (R-CA-22nd)
Rep. Bill Pascrell, Jr. (D-NJ-9th)*
Rep. Tom Price (R-GA-6th)
Rep. Charles B. Rangel (D-NY-13th)*
Rep. Tom Reed (R-NY-23rd)*
Rep. Dave G. Reichert (R-WA-8th)*
Rep. Peter J. Roskam (R-IL-6th)*
Rep. Paul D. Ryan (R-WI-1st)*
Rep. Linda T. Sanchez (D-CA-38th)
Rep. Aaron Schock (R-IL-18th)*
Rep. Allyson Schwartz (D-PA-13th)*
Rep. Adrian Smith (R-NE-3rd)
Rep. Mike Thompson (D-CA-1st)*
Rep. Todd Christopher Young (R-IN-9th)

*Indicates the Member Has Openly Supported Pro-ESOP Proposals in Prior Congress.

Your Leave Off for these members follows. (Same as the other one.)

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House Members Not on Ways & Means Committee

Your leave off for House members not on Ways and Means – all other House members not on Ways and Means Committee not previously listed specifically.

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Senate and S. 742

Bi-partisan Group of Senators Introduces and Sponsors Pro-Private Company ESOP Promotion Bill S. 742

On April 17, 2013, seven members of the U.S. Senate introduced S. 742, the “Promotion and Expansion of Private Employee Ownership and Expansion of Private Employee Ownership and Expansion of Private Employee Ownership Act of 2013.” Four are members of the Senate Committee on Finance, which has jurisdiction over all ESOP tax instances. Two more Senators, both members of the Senate Finance Committee joined as co-sponsors recently.

They are: Senators Ben Cardin (D-MD), Pat Roberts (R-KS), John Thune (R-SD), Mary Landrieu (D-LA), Amy Klobuchar (D-MN), Debbie Stabenow (D-MI), Roy Blunt (R-MO), Mike Crapo (R-ID), and Sherrod Brown (D-OH).

As more ESOP advocates contact their Senators, we expect other sponsors. (The ESOP Association will notify you when a Senator from your state joins his/her colleagues taking the pro-ESOP position. Also, the Association lists Senators who have taken pro-ESOP positions on its website.)

Summary of S. 742’s substantive provisions are:

1. Would extend the gain deferral provisions of Internal Revenue Code Section 1042 to sales of employer stock to S corporation ESOPs. (I.R.C. 1042 permits sellers of C corporation stock to defer paying capital gains on the sale proceeds if, and only if, the ESOP owns 30% of the company stock, and the seller reinvests her/his proceeds in the securities of another U.S. operating corporation. When disposing of the securities acquired with proceeds from the sale to the ESOP, the seller pays the capital gains tax on his/her gain based on his/her basis in the shares sold to the ESOP.
2. Would mandate the establishment of an “S Corporation Employee Ownership Assistance Office” by the Department of Treasury to foster increased employee ownership of S corporations. The S Corporation Employee Ownership Assistance Office would be required to provide education and outreach to inform people about the possibilities and benefits of employer ownership of S corporations and would provide technical assistance for companies that may be interested in forming an S corporation ESOP. The Department of Treasury would be required to establish the S Corporation Employee Ownership Assistance Office within 90 days after the date of enactment of the bill.
3. Would permit an SBA certified small business, C or S, to be eligible for SBA 8A preference programs to maintain its eligibility after becoming majority-owned by an ESOP, if employee demographics remain the same. Since the passage of ERISA in 1974, SBA has taken the unfair position that when a small business is eligible for SBA 8A preference programs such as women, minority etc. becomes majority owned by an ESOP, it is no longer eligible for SBA 8A preference programs, even though the workforce remains the same or nearly the same. Such a position has had unfair results such as a minority-owned, SBA eligible company with a 100% minority workforce is no longer deemed to be so after ESOP majority ownership.

Your “Leave Off” at a Senate Office

(Explain who you are: For example “*(I)(we) are employees of (Name of Company) located in (Name of Town/City).*”

(Verbalize position primarily after testimonial what employee ownership means to you, and your co-workers and company.)

What to Say to Current Sponsors of S. 742 “The Promotion and Expansion of Private Employee Ownership Act of 2013”

Original Group

Sen. Ben Cardin (D-MD)

Sen. Roy Blunt (R-MO)

Sen. Amy Klobuchar (D-MN)

Sen. Mary Landrieu (D-LA)

Sen. Pat Roberts (R-KS)

Sen. Debbie Stabenow (D-MI)

Sen. John Thune (R-SD)

Joined as Sponsors as of April 23

Sen. Mike Crapo (R-ID)

Sen. Sherrod Brown (D-OH)

Say “Thank You” to the Senators Above If Visiting

“We are appreciative that you have joined your colleagues in sponsoring S. 742, the “Promotion and Expansion of Private Employee Ownership Act of 2013.”

S. 742 is a modest proposal, but if its provisions become law there would be an increase among private company ownership by employees through an ESOP.

There are pages and pages of data gathered over 35 years by respected academics that ESOP companies are more productive, more profitable, providing locally controlled jobs that are more sustainable. For example, the 2010 General Social Survey evidences that during the Great Recession employee stock owned companies laid off employees at a rate less than 3% while conventionally-owned companies laid off employees at a rate of more than 12%. Furthermore, evidence is ESOP companies provide employees better retirement savings.

So, your support of S. 742 is support of a good national policy and we thank you.”

Leave Off Proving ESOPs Are Good Policy

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Suggested Verbalization to U.S. Senators Who Are Not Sponsors of S. 742

“We would respectfully ask that you review the provision of S. 742 and consider co-sponsoring S. 742.

ESOPs sponsor privately-owned corporations have a very positive 35 year track record of providing locally controlled jobs that provide significant benefits in a high performing company. The 2010 General Social Survey evidences convincingly that employee owners were four times less likely to be laid off during the Great Recession than employees without ownership in the companies where they work. See also enclose summary of evidence supporting our assertive.

Please contact [Name] [anyone at Name of Company] for any questions. Or, if you wish, you or your staff, may ask the representative of The ESOP Association to visit your office for a full dialogue of questions you may have.

Enclosed is a brief summary of the legislation.”

Leave Off Follows

Summary of S. 742
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Employee Ownership Act of 2013”
(Introduced April 17, 2013)

S. 742 will:

1. Permit owners of S stock to sell the stock to an ESOP and defer the capital gains tax on his/her gain if the proceeds are reinvested in the equities of U.S. operating corporations as owners of C corporations stock have done under IRC 1042 since 1984;
2. Establish an office in the Department of Treasury to provide technical assistance to S corporations with ESOPs;
3. Provide that a small business, S or C, eligible for one of the many programs provided by the Small Business Administration referred to as 8A preference programs to remain eligible for SBA 8A programs if and when the company becomes owned 50% or more by an ESOP, and the workforce remains the same or nearly the same as before the establishment of the 50% ownership by employees through the ESOP.

General Explanation Why S. 742 Should Become Law

1. There is ample macro-data evidencing that the benefits our ESOP provides to [name of company] is also the case in the vast majority of privately-held ESOP companies in America.
2. S. 742 is a modest proposal that will not cost any significant tax revenues, and will build even larger account balances for retired employee owners, who will pay more taxes on their ESOP distributions than the targeted tax expenditure. For example, more ESOPs will be created, certain existing ESOP small businesses will qualify for SBA preference treatment for contracts and loans, and all S ESOP private companies can access Treasury experts on the complex rules governing S ESOPs.
3. In short S. 742 will address the growing concerns of individual access to ownership, equitable distribution of our nation’s capitalism, in companies that are more productive, more profitable, and more sustainable providing locally controlled jobs.

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4. Permit owners of S stock to sell the stock to an ESOP and defer the capital gains tax on his/her gain if the proceeds are reinvested in the equities of U.S. operating corporations as owners of C corporations stock have done under IRC 1042 since 1984;
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(Introduced April 17, 2013)

S. 742 will:

10. Permit owners of S stock to sell the stock to an ESOP and defer the capital gains tax on his/her gain if the proceeds are reinvested in the equities of U.S. operating corporations as owners of C corporations stock have done under IRC 1042 since 1984;
11. Establish an office in the Department of Treasury to provide technical assistance to S corporations with ESOPs;
12. Provide that a small business, S or C, eligible for one of the many programs provided by the Small Business Administration referred to as 8A preference programs to remain eligible for SBA 8A programs if and when the company becomes owned 50% or more by an ESOP, and the workforce remains the same or nearly the same as before the establishment of the 50% ownership by employees through the ESOP.

General Explanation Why S. 742 Should Become Law

10. There is ample macro-data evidencing that the benefits our ESOP provides to [name of company] is also the case in the vast majority of privately-held ESOP companies in America.
11. S. 742 is a modest proposal that will not cost any significant tax revenues, and will build even larger account balances for retired employee owners, who will pay more taxes on their ESOP distributions than the targeted tax expenditure. For example, more ESOPs will be created, certain existing ESOP small businesses will qualify for SBA preference treatment for contracts and loans, and all S ESOP private companies can access Treasury experts on the complex rules governing S ESOPs.
12. In short S. 742 will address the growing concerns of individual access to ownership, equitable distribution of our nation's capitalism, in companies that are more productive, more profitable, and more sustainable providing locally controlled jobs.

Employee Owner Impact Corporate Performance Positively

Overwhelming Evidence ESOP Companies More Productive, More Profitable, and More Sustainable, Providing Locally Controlled Jobs

- During the Great Recession, employee stock owned companies laid off employees at a rate of less than 3%, whereas conventionally owned companies laid off at a rate greater than 12%. (Data source: 2010 General Social Survey.)
- Because employees of ESOP companies were four times more likely to retain jobs during the Great Recession, Federal government recognized savings of over \$14 billion in 2010 compared to tax payments foregone by laid off employees of conventionally owned companies; in other words for every \$1 in tax expenditures to promote employee stock ownership, the Federal government collected \$13 in taxes. (Data Source: 2010 General Social Survey analyzed by National Center for Employee Ownership.)
- A survey of 1400 ESOP companies in 2010 evidenced the average age of the companies' ESOPs were 15 years, and the average account balances for employees were nearly \$200,000, much higher than data reported for average 401(k) account balances. (The ESOP Company Survey, 2010, of The ESOP Association's Corporate members.)
- According to 2012 General Social Survey, 13% of employees of employee stock-owned companies were thinking of seeking employment elsewhere, whereas 24% of the employees of conventionally-owned companies were considering leaving their current job.
- More than half of the ESOP companies have two retirement savings plan (primarily a 401(k)), whereas more than half of all companies have no retirement income savings plan. (Analysis of forms 5500, and Bureau of Labor Statistics by the National Center for Employee Ownership, funded by the Employee Ownership Foundation.)
- The average ESOP company (less than 200 employees) has sales \$9 million more per year than its non-employee owned comparable competition. (June 2008 Dissertation, Dr. Brent Kramer, CUNY.)
- A study of 1100 ESOP companies over eleven years compared to 1100 comparable conventional owned companies evidenced the 1100 ESOP companies had better sales, more employment, and were more likely over the period to remain independent businesses by 16%. (Most detailed study of ESOP companies by Dr. Joseph Blasi, and Dr. Douglas Kruse, tenured professors, Rutgers University School of Labor and Management, 1999.)

**Department of Labor
Challenges ESOPs
If You Bring It Up**

Department of Labor Proposes Regulation that Will Stymie ESOP Creation

In late third quarter 2010, the Department of Labor proposed that a regulation be issued to mandate that all appraisers of privately held ESOP companies be ERISA fiduciaries. If such a proposal became final, costs for ESOP company appraisals would increase, high insurance costs and legal exposure would trigger many current ESOP appraisers to abandon the ESOP appraisal business, and most important, given that anyone can disagree with a final value assigned to a non-marketable asset, no matter how qualified the appraiser is, such a regulation would make all ESOP companies sitting ducks for lawsuits from aggressive plaintiff lawyers.

Due to protests from the ESOP community, DOL withdrew the proposal, but promised to reissue the proposal summer of this year. It is not expected that the Department of Labor will alter the proposal with regard to ESOP appraisers to any significant degree.

The ESOP community needs to continue to sensitize members of Congress, especially the Senate, that is very opposed to making ESOP appraisers ERISA fiduciaries.

One major way to get the ESOP community on record is to have Senators co-sponsor S. 273 by Senator Ayotte.

Leave Off Follows

S. 273

S. 273 – To modify the definition of fiduciary under the Employee Retirement Income Security Act of 1974 to exclude appraisers of employee stock ownership plans. (Introduced in the Senate)

S 273

113th CONGRESS
1st Session
S. 273

To modify the definition of fiduciary under the Employee Retirement Income Security Act of 1974 to exclude appraisers of employee stock ownership plans.

IN THE SENATE OF THE UNITED STATES
February 12, 2013

Ms. AYOTTE (for herself, Ms. LANDRIEU, Mr. MCCONNELL, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To modify the definition of fiduciary under the Employee Retirement Income Security Act of 1974 to exclude appraisers of employee stock ownership plans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FIDUCIARY EXCLUSION.

Section 3(21)(A) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(21)(A)) is amended by inserting ` and except to the extent a person is providing an appraisal or fairness opinion with respect to qualifying employer securities (as defined in section 407(d)(5)) included in an employee stock ownership plan (as defined in section 407(d)(6)),' after ` subparagraph (B),'.

Verbalization of Problems with DOL's ESOP Position To U.S. Senators IF NOT A Co-Sponsor of S. 273

“On October 22, 2010, the Department of Labor issued a proposed regulation to reverse a 35 year old policy, honored by both Republican and Democratic Administrations prior to October 22, that would automatically make any appraiser of ESOP shares a fiduciary to our ESOP. (Current law clearly makes the trustee a fiduciary, and company personnel with powers over the ESOP can be fiduciaries as well.)

DOL, after a hearing protests about the proposed reg, by both Republicans and Democrats, withdrew the proposal; but DOL has promised to issue a similar rule in 2013. We are still fearful DOL has not heard how this proposal will harm private company ESOPs.

If the valuation provider is a fiduciary, she/he will have to purchase fiduciary insurance, many will withdraw from providing valuation services to an ESOP company like [Name of Company], and be subject to aggressive, needless lawsuits.

If the DOL proposal becomes effective, the cost of having our ESOP will increase, diminishing our profit, which means lower share value, and thus less retirement savings for employees.

The biggest concern is the way the proposal is written, its impact may make all private ESOP companies, both our trustees and company fiduciaries sitting ducks for lawsuits.

Candidly, the proposal will cause a reassessment of whether successful ESOP programs should continue.

The DOL proposal is contra to the law, which says Federal agencies are not to hinder the creation and operation of ESOPs. See Leave Off

The Ayotte et al bill would amend the statute known as ERISA by clearly proving that appraisers of private company ESOP stock are not to be mandated ERISA fiduciaries.”

This Is The Law!

90 Stat.1520, P.L. 94-455 Section 803

(h) Intent of Congress Concerning Employee Stock Ownership Plans. – The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, and the Tax Reduction act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws 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 trust and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. (Pub. L. 94-455, 90 Stat. 1520)

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