



The ESOP Association

Advocacy Kit

Spring 2013



**REALLY WANT TO HELP?
INVITE YOUR MEMBER OF CONGRESS
TO VISIT YOUR ESOP COMPANY!!**

Remember: YOU ARE THE ANSWER

“Since its inception in 1978, The ESOP Association has represented the interests of all corporations that sponsor employee stock ownership plans, or ESOPs. The ESOP Association provides advocacy and educational services on behalf of its members. Corporate membership in The ESOP Association is open to all ESOP companies; our members range from closely held businesses to large public companies, and include both C and S corporations, across all industries. The ESOP Association welcomes all corporate members and pledges that our advocacy and educational initiatives will continue to serve the entire ESOP community.”

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INTRODUCTION

Serious Challenges and Opportunities Facing ESOPs in 2013

For the first time ever in history, the worthiness of employee stock ownership through the ESOP model is being challenged by the Executive Branch of our national government, as the current Administration has recommended repeal of an ESOP tax incentive and justifies its position with a very lame position. The Administration justifies repeal of an ESOP tax incentive because it believes that ESOPs are too risky for employees because employees that work in a company with more than 15 or so employees may not be able to understand how their work efforts can impact the performance of their company.

If the view of the Administration becomes the view of Congress, the future of employee stock ownership in your company and in America would be bleak.

In the Congress, concrete steps are being taken to develop a total re-write of the Internal Revenue Code, and the overall plan is to eliminate certain tax law provisions that provide specific benefits to certain taxpayers. ESOP tax benefits that help operate and encourage ESOP creation are to be scrutinized.

And, the Department of Labor in the past 18 months has been very aggressive in bringing law suits against ESOP companies, and filing friend of the court briefs in support of trial lawyers' suing ESOP companies. The Department has taken a more adversarial view of ESOPs in audits of ESOP companies, and thus has opened up more formal investigations of ESOP companies. All three, law suits, adversarial audits, and investigations, no matter the outcome, make operation and creating an ESOP much more costly and time consuming.

At the same time, these challenges present opportunities for the ESOP community, and you and your company, to make the case for ESOPs being good for you, your company, your community, and your nation.

This Advocacy Kit gives you the tools to make the case for ESOPs. All the suggestions are suggestions, as you know best what you know in your heart and mind—that ESOPs are good policy—and thus your words and thoughts are always the best.

On behalf of the entire ESOP community, we thank you for joining your colleagues in proving our nation needs more employee ownership through the ESOP model, not less.

Challenge to ESOPs By The Administration

DOCUMENT 1

The Administration Condemns ESOP: Unprecedented Position

I. Attack on a 30 year old ESOP tax law provision that provides an incentive for average pay employees to receive income from share ownership is justified by the Administration with unsupported, lame, claim that ESOPs are bad for employee owners if their company has \$5 million plus in revenues!!!

I.A. On April 10th, the Administration published a proposed budget for the Federal government for fiscal year 2014 beginning October 1, 2013. The proposal recommended many changes in tax laws in order to increase revenues, and to lower Corporate tax rates.

Among the tax increase proposals was a recommendation to repeal Internal Revenue Code Section 404(k), that provides a C corporation may deduct from its adjusted gross income for tax purposes the value of dividends paid on ESOP stock in cash to ESOP participants, or used to pay the loan incurred to acquire company stock for employees, or that the employee directs it to be invested in more company stock.

[404(k) was adopted by Congress in 1984, in order to ensure ESOPs were a tool to enhance one goal of ESOPs, which is to increase income to average pay employees. As income inequality worsens in the U.S., the need for a law such as 404(k) is even greater than in 1984.]

But, in a document issued by the Administration justifying the repeal of IRC 404(k), the Administration condemned ESOPs as bad policy, and insulted the employees of 99% of the ESOP companies in America.

How did the Administration insult ESOP companies and their employees? By setting forth on pages 96-97 of the "Green Book", which explains tax law proposals that ESOPs were too risky for employees because the employees may not understand, appreciate, or have a role in the performance of a company with revenues over \$5 million a year. (A company with less than \$5 million in revenues a year would have 1 to 15 employees. It is rare, very rare for such a small company to sponsor an ESOP.)

Attached is the justification for the Administration's position.

I. B. What Do You, and Your ESOP Colleagues Do?

A. Make clear to your Senators and Representative that you, your fellow employee owners, and your company oppose repeal of I.R.C. 404(k) and are super insulted with the Administration's position that ESOPs are bad because employees are not capable of contributing positively to their company's performance as owners.

B. Make clear to your Senators and Representative that the Administration's view of ESOPs is 180% opposite of research that evidences in the vast majority of instances ESOP companies are more profitable, more productive, providing locally controlled sustainable jobs than non-ESOP companies. None of this overwhelming evidence was ever restricted to companies with less than \$5 million in annual revenues.

See Attached Administration Negative View of All ESOPs

ELIMINATE SECTION 404(K) EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) DIVIDEND DEDUCTION FOR LARGE C CORPORATIONS

Current Law

Generally, corporations do not receive a corporate income tax deduction for dividends paid to their shareholders. However, C corporations are allowed a deduction for dividends paid with respect to employer stock held in an ESOP if certain conditions are met. To be eligible for this treatment, the dividend must be an “applicable dividend.” For this purpose, a dividend qualifies as an applicable dividend only if the provisions of the ESOP provide that the dividend is paid or used in accordance with one of four available alternatives. Specifically, a dividend qualifies as an applicable dividend if the provisions of the ESOP provide that the dividend is paid directly to the plan’s participants or their beneficiaries, paid to the plan and distributed to participants or their beneficiaries no later than 90 days after the end of the plan year, or, at the election of the participants or their beneficiaries, is either paid directly to the participants or their beneficiaries or paid to the plan and distributed to the participants or their beneficiaries no later than 90 days after the end of the plan year. Alternatively, a dividend qualifies as an applicable dividend if the plan terms provide that it may be used to repay a loan originally used to purchase the stock with respect to which the dividend is paid. For this purpose, the dividend qualifies as an applicable dividend only to the extent that employer securities with a fair market value of not less than the amount of the dividend are allocated to the accounts to which the dividend would have been allocated. The limitation of deductibility of dividends used to repay loans to those paid with respect to stock acquired with those loans does not apply to employer securities acquired by an ESOP prior to August 4, 1989 (if the plan was an ESOP prior to that date).

A deduction for a dividend that otherwise qualifies as an applicable dividend may be disallowed if the Secretary determines that the dividend is, in substance, an “avoidance or evasion” of taxation. This includes authority to disallow a deduction of unreasonable dividends, which has been used to recharacterize excess dividends as contributions subject to the limit on annual additions under section 415. Thus, the authority to disallow a deduction for a dividend serves not only to disallow the deduction but also to constrain any dividend that, in substance, constitutes an employer contribution to the ESOP in excess of the otherwise applicable limit on annual additions.

When distributed to participants or their beneficiaries, either directly or from the plan, applicable dividends constitute taxable plan distributions (ordinary income) but are not subject to the 10% early distribution tax. Applicable dividends are not treated as wages for purposes of income tax withholding or federal employment taxes.

Reasons for Change

Current law extends several tax benefits to ESOPs that are in addition to those applicable to other tax-qualified retirement plans. The ESOP dividend deduction is one these benefits. Thus, while current law does not allow a paying corporation a deduction for dividends paid with respect to its stock, including stock that is held in a retirement plan, the deduction for dividends on employer stock held in an ESOP constitutes an exception to this rule. The difference in treatment creates an additional incentive for employers to encourage investment in employer stock through ESOPs. Concentration of employees’ retirement savings in the stock of the company for which they work, however, subjects employees’ retirement benefits to increased risk (Potentially the same risk that could affect their job security) without necessarily offering a commensurate return. To the extent that current payments of dividends to ESOP participants may be viewed as having a productivity incentive effect, the effect may

be more likely in small firms, where each employee's efforts could more directly affect overall company performance and where there may be greater possibility that the benefits of any such incentives could justify the risks associated with concentration of retirement savings in employer stock. By providing an proposal seeks to strike a balance between these competing considerations. (Underline added.)

Proposal

The proposal would repeal the deduction for dividends paid with respect to stock held by an ESOP that is sponsored by a C corporation (subject to an exception for C corporations with annual receipts of \$5million or less). The current law rules allowing for immediate payment or use of an applicable dividend would remain intact, without a deduction, and be moved to section 4975(f)(7), which currently provides corresponding rules for distributions (as described in section 1368(a)) with respect to S corporation stock held in an ESOP maintained by a S corporation that is used to repay the loan or loans with which the stock with respect to which the distribution is paid was originally purchased. The Secretary would continue to have authority to disallow an unreasonable dividend or distribution (as described in section 1368(a)) for this purpose.

The proposal would apply to dividends and distributions that are paid after the date of enactment.

DOCUMENT 1A

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 of 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.)

What Is An ESOP Advocate to Do?

1. Send an e-mail to the White House, which urges citizens to e-mail the White House, at <http://www.whitehouse.gov/contact/submit-questions-and-comments/open>
2. Ask your Senators to (a) oppose the Administration's position, and (b) convey her/his disagreement with the Administration's anti-ESOP position by writing/or e-mailing the White House Office for liaison to Senate for the President.
3. Ask your Representative to (a) oppose the Administration's anti-ESOP position and (b) convey her/his disagreement with the Administration's anti-ESOP position by writing/e-mailing the White House Office for liaison to the U.S. House of Representatives for the President.

When Taking Action Suggested Communication

1. To the White House:

“Dear President Barack Obama:

My Company, (Name of Company) and XX (*Number of participants in your ESOP*) fellow co-owners through (Name of Company)’s employee stock ownership plan, or ESOP, respectfully express opposition to your Administration’s proposal to repeal a provision of law that addresses the disparity of income between wage earners and owners of corporations that do not share ownership with employees.

In particular we are dismayed to read the justification of your Administration’s position that ownership by average pay employees of stock where they work is “bad” for employees because they cannot comprehend how their efforts impact the value of their employer’s stock, which we co-own through our ESOP, unless they work in a company with one to fifteen, or so employees.

Specifically, the Administration proposes repeal of a 1984 law, that permits a tax deduction for C corporations that pay dividends on ESOP stock under certain situations.

The Administration’s specific justification is found on pages 96-97 of the “Green Book” which explains reasons for tax proposals in the Administration Fiscal Year 2014 budget. It is on these pages that a position is set forth that all ESOPs are bad for employees unless only 1 to 15 employees or so work in the company.

The Administration’s position is 100% different from all prior Administration’s general position towards ESOPs beginning with President Ford, and continued by President’s Carter, Regan, Bush I, Clinton, and Bush II.

Thirty years of evidence is overwhelming that ESOP companies are more productive, more profitable, providing sustainable jobs, and providing better retirement benefits than conventionally-owned, comparable corporations.

Furthermore, as evidence of the sustainable jobs ESOP companies provide, 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 12%.

All of this evidence used data from all ESOP companies, not just very, very small companies.

In sum, please reconsider the Administration’s position on repealing 404(K), and please alter your Administration’s view that ESOPs are bad for employees.

2. To a Member of the Senate and/or House of Representatives:

(I)(We) work for (Name of Company and Address). (Name of Company) has employee ownership through an employee stock ownership plan, or ESOP. We respectfully request that you convey to the White House office of Congressional liaison with the (Senate) (House of Representatives) our dismay that for the first time in the 35 plus years of ESOPs, an Administration has expressed an anti-ESOP view.

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.

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

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The Tax Reform Challenge to ESOPs

DOCUMENT 2

What About Tax Reform and Positive ESOP Law?

During the first quarter of 2013, the Chair of the House Ways and Means Committee, Dave Camp (R-MI) began a process for the House tax law committee to develop a tax reform bill this year.

Congress passes a tax code rewrite approximately every 25 to 35 years since 1921. The last tax reform bill was in 1986, so it is time.

Chair Camp intends for tax reform to eliminate what some call tax loopholes, some tax expenditures, and some tax preference to lower tax rates and to make tax laws more “simple”.

The Chair of the Senate Tax Committee, the Finance Committee, Max Baucus (D-MT) has also begun a process to develop a tax reform bill. He meets with all committee members in closed meetings to review staff reports on all areas of the tax code. He is coordinating with Chair Camp of the House Ways and Means Committee.

Unfortunately some people who work for Congress consider ESOP tax benefits as wasteful tax loopholes, or expenditures. And the Administration has declared ESOPs as being bad for employees. **(See Document 1)**

As always, certain people say “Congress will not enact tax reform, so why worry?”

The ESOP advocate should say, “What difference does it make?” ESOP advocates need to be pushing, pushing the pro-ESOP message as often as possible.

The easiest way to push ESOPs is to tell your ESOP story, and to share positive national data on what ESOPs do for employees and our economy. Following is a summary revealing very impressive data for ESOPs.

And the easiest way to obtain an elected official’s commitment is to have her, or him, agree to support a pro-ESOP proposal.

Such a bill, has been introduced in the Senate, S. 752. **(See Document 3)**

A similar bill is expected to be introduced in the House.

Watch for bulletins, blog posts, YouTube postings, with suggested communications as soon as a pro-ESOP bill is introduced in the House.

Meanwhile, use the following fact sheet, along with your company story to show a member of Congress that protecting ESOP tax benefits is good national policy.

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The Challenge in the House of Representatives

DOCUMENT 2A

Action Now for ESOPs in Tax Reform Process

While no pro-ESOP bill has been introduced in the House “yet” in the 113th Congress by members of the House Representatives, do not wait to tell your Representative how your ESOP is good for your company’s employee owners, your company, and your community.

For example, tax reform, which is intended to eliminate certain tax “loopholes”, “expenditures”, and “preferences”, has begun. 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 Becerra (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.

ESOP advocates residing in the Congressional districts of those on the Task Force should write/e-mail/telephone these members of the House Ways and Means Committee Task Force on Retirement Savings, a suggested communication is below. (See Document 6 for thoughts on effective communication to members of Congress)

“Honorable [Name of House Member]
U.S. House of Representatives
Washington, DC 20515

Dear Representative [Name]:

[Name of Company] sponsors an employee stock ownership plan, or ESOP. Our ESOP makes employees of [Name of Company] beneficial owners of our stock.

We have learned you are serving on the Ways and Means Committee’s Task Force on Pensions Retirement Savings. We understand the Task Force is gathering data on whether a revision of the Federal tax income laws impacting retirement savings plans sponsored by employers should be changed. We further understand you and your colleagues will specifically review tax laws enacted by Congress to encourage the creation and operation of ESOPs, such as [Name of Company]’s ESOP.

First and foremost, [Name of Company]’s ESOP has been good for our employees, our company, and our community. We welcome you or your staff contacting the undersigned to learn more about [Name of Company] and how our ESOP operates to benefit all of us.

We enclose 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, you not accept proposals to weaken an excellent policy that creates sustainable jobs and provides excellent retirement savings for average pay employees.

Sincerely,

Name[s] of
Company Executive and/or Employees”

Enclosure

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DOCUMENT 2B
Other Ways & Means Committee **Not on Task 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.

Here is a suggested communication to these men and women if one is your Representative in Congress.

“Honorable [Name of House Member]
U.S. House of Representatives
Washington, DC 20515

Dear Representative [Name]:

[Name of Company] sponsors an employee stock ownership plan, or ESOP. Our ESOP makes employees of [Name of Company] beneficial owners of our stock.

We are aware the Ways and Means Committee intends to develop a tax reform bill this year, and to present that proposal to the full House.

First and foremost, [Name of Company]’s ESOP has been good for our employees, our company, and our community. We welcome you or your staff contacting the undersigned to learn more about [Name of Company] and how our ESOP operates to benefit all of us.

We enclose a summary 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, you not accept proposals to weaken an excellent retirement savings policy that creates sustainable jobs and provides excellent retirement savings for average pay employees.

Sincerely,

Name[s] of
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- 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 of 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.)

DOCUMENT 2C
House Members **Not** on Ways & Means Committee

If your member of Congress is not on the Ways and Means Committee, here is a suggested letter to write, as members of Congress will consider views of colleagues who are not on their committees.

“Honorable [Name of House Member]
U.S. House of Representatives
Washington, DC 20515

Dear Representative [Name]:

[Name of Company] sponsors an employee stock ownership plan, or ESOP. Our ESOP makes employees of [Name of Company] beneficial owners of our stock.

We are aware the Ways and Means Committee intends to develop a tax reform bill this year, and to present that proposal to the full House.

First and foremost, [Name of Company]’s ESOP has been good for our employees, our company, and our community. We welcome you or your staff contacting the undersigned to learn more about [Name of Company] and how our ESOP operates to benefit all of us.

We enclose a summary 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, you not accept proposals to weaken an excellent policy that creates sustainable jobs and provides excellent retirement savings for average pay employees.

Sincerely,

Name[s] of
Company Executive and/or Employees”

Enclosure

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 of 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.)

The Senate Challenge And Opportunity

DOCUMENT 3
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.

DOCUMENT 3A
Current List of 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)

***Senate Finance Committee**

Consider Sending These Senators a “Thank You” Letter, as Suggested Below:

Dear Senator _____:

(I)(We) work at (Name of Company) that sponsors an employee stock ownership plan, or ESOP.

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.

Sincerely yours,

Name

DOCUMENT 3B

Suggested Sample Letter to U.S. Senators Who Are **Not** Sponsors of S. 742

Dear Senator [_____]:

On April 17, 2013, a bi-partisan group of Senators introduced S. 742, the Promotion and Expansion of Private Employee Ownership Act of 2013. This modest legislation would continue Congressional policies to encourage employee ownership through an employee stock ownership plan or ESOP, model, especially by S corporations.

The original sponsors are Senators Ben Cardin (D-MD), Roy Blunt (R-MO), Amy Klobuchar (D-MN), Mary Landrieu (D-LA), Pat Roberts (R-KS), Debbie Stabenow (D-MI), and John Thune (R-SD).

Since introduction Senators Sherrod Brown (D-OH), and Mike Crapo (R-ID) have co-sponsored S. 742.

Enclosed is a brief summary of the legislation.

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.

Sincerely yours,

Name

Enclosures: Summary of S. 742
Background Documents on ESOPs

Summary of S. 742
“Promotion and Expansion of Private
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.

(This is the “one-pager” to hand to the Senator or her/his staff.)

(Also you can pass along the summaries of the overwhelming evidence that private ESOP companies are more productive, more profitable, and more sustainable, providing locally controlled jobs, and demographic data on the ESOP community, that during the Great Recession laid off employees at a rate of less than 3% whereas conventionally-owned companies laid off employees at a rate greater than 12%. ESOP companies were thus generating \$8 in tax revenues for every \$1 the tax code provides as incentive to create and operate an ESOP. See Document XX.)

Department of Labor Challenges ESOPs

DOCUMENT 4

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. See following Document xx.

DOCUMENT 4A

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), '.

DOCUMENT 4A
S. 273 Co-Sponsors

As of 3-5-13
Cosponsors (4)

Sponsor

Senator Kelly Ayotte, R-NH

Cosponsors

Senator Roy Blunt, R-MO

Senator Amy Klobuchar, D-MN

Senator Mary L. Landrieu, D-LA

Senator Mitch McConnell, R-KY

DOCUMENT 4A
Sample Letter To U.S. Senators IF NOT A
Co-Sponsor of S. 273

The Honorable [Name of Senator]
U.S. Senate
Washington, DC 20510

Dear Senator [Name]:

[Name of Company] sponsors an employee stock ownership plan, or ESOP. Our ESOP makes employees of [Name of Company] beneficial owners of our stock. This letter [communication] respectfully request you considering joining Senators Ayott, Landrieu, McConnell and Blunt in sponsoring S. 273, which would stop a negative ESOP proposal by the Department of Labor.

To explain: Federal law requires that every year, as a privately-held company, not traded on a public stock exchange, that [Name of Company] pays to have a qualified, independent valuation establish the value of the employees' shares in the ESOP.

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.

But we do not write to protect the valuation profession; we write to protect our ESOP, and our employee owners, because:

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 Enclosure)

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

Again, we respectfully ask that you consider expressing opposition and/or doubts about the DOL attack on private company ESOPs by co-sponsoring S. 1232.

Sincerely,
Name of Executive
Name of Employee Owners

Attachment: 90 Stat.1520, P.L. 94-455

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)

DOCUMENT 5

How to Learn Who Is “My” Member of Congress

If you don't know who your Member of Congress is, there is a very easy way to find out.

To locate your Representative in the United States House of Representatives, visit the House of Representatives website at <http://www.house.gov/> and near the top of the page, you'll see a box that says “Find Your Representative.” In the box provided, enter your zip code and hit go. It will bring up a new page that lists your Representative. To visit your Representative's website, click on the name.

To find your Members of Congress through The ESOP Association's website, visit <http://www.esopassociation.org/>, and click on the Government Affairs link located at the top of the page. In the Government Affairs section, click on the Capitol Links button on the left hand side of the page. On the Capitol Links page, you will find links to the U.S. House of Representatives.

Each state has two Senators, and this information is found at <http://www.senate.gov>, go to box on right hand side of home page labeled, “Find Your Senators” And of course you can use The ESOP Associations home page as set for above, but click U.S. Senate under Capitol Links button.

DOCUMENT 6

Write, E-Mail, Fax, or Telephone:
Which One?

Since the advent of email, and since the Anthrax attack on Congress in 2001, when a “call to action” goes out to ESOP advocates, the question is always asked by the ESOP advocate of the national office—“Should I send a letter, an email, a fax, or should I telephone?”

There is no “best” answer, and which will be the most effective in terms of timeliness, and getting through to the decision maker depends on circumstances.

But what is wrong is to assume that an email is the best way to communicate to a member of Congress and his or her staff, as data indicates that the over hundreds of millions of emails received each year by the Congress is overwhelming, and have an impact only if, repeat, only if, the sender of the email has received (1) a specific request to send to a specific person in the Congressional office the email; or (2) a prior line of communications using emails was established prior to taking action on the matter that is the subject of the “call to action”.

If the matter is not time sensitive, in other words, the Congress and the members of Congress will not be asked to take action soon, a letter is suitable if the sender has no prior relationship with the member of Congress and the staff member.

Whether email, or fax, or letter, is always effective to follow up with a telephone call to the staff person who is responsible for briefing the member of Congress on tax, and ERISA laws.

Please note, the sample letters can become a script for a telephone presentation, and are obviously suitable for use as an email, or a faxed letter or memo.

Any questions never hesitate to call, or email, an ESOP Association staff member who works on Government Relations matters, 202.293.2971.

Document 7

Follow-Up: How Do We Make Sure Our Voice Is Heard?

Key to making sure a message is heard by a member of Congress is follow-up. Whether you communicated to your member of Congress via letter, email, fax, or phone call, you have to contact her or his office again, and often again.

Let's do a little role playing.

Assume you written your member of Congress urging him or her to convey concern to the Secretary of Labor about the negative proposal to increase the costs of private ESOP company ESOP transactions and operations. Wait about two weeks after your written communication, and then call that office – telephone number, Congressional switchboard is 202-224-3121, which will connect you to any office in the Capitol Hill complex – yes, it is old fashioned, real person operator service – or you can look up a member of Congress's direct phone number on the web – using www.esopassociation.org, government relations, capital links, or go direct to www.house.gov, or www.senate.gov, and use prompts to find your member of Congress home page.

The person answering the telephone will not be responsible for the Representative's/Senator's legislative staff work 99% of the time. So, you should ask to speak to the staff person who handles tax and/or ERISA issues for the Representative/Senator. Chances are high that you will be placed into that person's voice mail, and what you say initially would be the same whether the person takes the call, or you get that person's voice mail. Sample statement: "Yes, I am xxxxxxx, and I am calling about a proposed reg by the Department of Labor that will have a negative impact on [Name of Company] employee stock ownership plan. I wrote/called/fax'd/email'd our concerns on [date], and am following up to learn if Representative/Senator xxxxxx has had a chance to review our concerns/position. I look forward to hearing from you."

If by chance you are talking to the staff person who handles tax and/or ERISA issues, more likely the person will say, "We have not had a chance to review this matter."

In this case say, "Okay. Do you mind if I touch base with you in about 10 working days to learn Representative/Senator xxxxxx's reaction to our request?"

At some point, whether it takes two calls, three calls, or even five calls, you will be given some kind of answer.

Once you have an answer consider strategizing with the national office of the Association by calling or emailing Michael Keeling, President, at 202.293.2971 or Michael@esopassociation.org.

But in the rare case where the staff person, or the Member wants to be cantankerous about ESOPs, or to argue with you, you have plenty of ammo in the enclosures in this advocacy kit, plus your own ESOP story to rebut each and every point someone cynical about ESOPS can make.

Remember, persistence wins the day, not brilliance, 90% of the time. Or, it was the tortoise that won the race, not the hare.

Also remember, any question, any time, contact The ESOP Association, government relations for consultation to make sure your voice is heard on behalf of your ESOP and your ESOP participants.

Document 8

“Be On Your Toes”

As obvious, this spring advocacy kit talks about “future” government action.

When will you know action of importance to ESOPs is just around the corner?

Simple, keep an eye on www.esopassociation.org for news –Home Page, be on the outlook for e-bulletins from The ESOP Association, but most important follow breaking news, 24-7, 365 days a year on our blog at <http://esopassociationblog.org/>