



The ESOP Association

Advocacy Kit

Summer 2014

**Keeping Your ESOPs
Strong: What We Need
To Do!**



**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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DOCUMENT 1

House and Senate To Reform Federal Revenue Tax Laws

Overview

The Chair of the House Tax Committee, Ways and Means, Dave Camp (R-MI) has put in motion a complete rewrite of the Internal Revenue Code.

First, he had the Committee staff working for the committee's majority, (Republicans) draft a tax reform bill for his colleagues to review.

While his proposal released on February 26, 2014, it is not expected to be formally considered by the Congress before 2015, his proposal will be the foundation for a re-write of our federal income tax laws when Congress does formally consider a tax reform proposal, both in House and Senate.

His goal, and of senior Republican members, is to reduce the C corporate tax rate to no more than 25%, and individual rates to 25% and 10%, without reducing the revenue from the existing U.S. income tax regime.

To accomplish his and his Republican colleagues' goal, the Congress will have to eliminate, or significantly reduce all, special tax law provisions, such as mortgage interest deduction, cap gains rate, local government bond tax treatment, and the list can go on.

On that list of special tax laws there are three major ESOP tax law special provisions. 1. S ESOPs are not currently taxed on the S ESOPs share of the S sponsors taxable income, but employee owners are taxed on value of ESOP distribution in the future, 2. Sellers of private C corporation stock may defer the tax on the sale of his/her stock to the ESOP under certain conditions; and 3. C Corporations may deduct value of dividends paid on ESOP stock under certain conditions.

(Note, ESOPs also are able to be established without getting specific permission from the Department of Labor. While not a direct tax benefit, some commentators have urged the House Ways and Means Committee to repeal this provision as part of the tax reform. In 1987, the Ways and Means Committee did consider, and rejected such a proposal.)

Now for some good news: The tax proposal put forward by Chair Camp did not propose any modification of the special ESOP tax benefits! See <http://youtu.be/i2Y2ffbrWco>

This endorsement of ESOPs in the Camp Tax Reform proposal is very, very noteworthy because the proposal reduces special tax law benefits for the housing, insurance, energy industries, among many others, and impacts state and local governments, churches, charities, 401(k) plans, again and many others.

What are ESOP advocates to do?

DON'T STOP NOW!

We won the first quarter, but there is still work to be done in the legislation process before a bill goes to the President.

Therefore the ESOP community needs to continue presenting to members of Congress that our nation's modest ESOP policies are to be maintained and expanded.

As the handouts in this kit evidence, the vast majority of ESOP companies are more productive, more sustainable, and more profitable, providing locally controlled jobs.

But, as always, the most powerful story is your company's story; tell it; make it front and center; you and your fellow employee owners make the difference.

Ignore the Media's Advice to Ignore Tax Reform Developments

Do not be lulled into thinking there is no need to persuade members of Congress not to degrade, or eliminate ESOP tax benefits because the media says that Congress will not pass a tax reform bill in 2014.

The media is right! But so what?

The fact is if the House Ways and Means Committee approves a tax reform bill that impacts ESOPs negatively, that fact could impact your ESOP eventually. If Ways and Means approves a tax reform bill that does not harm ESOPs, that is a significant better victory for ESOPs.

Why? Because historically, since 1921, what the Ways and Means Committee approves in a tax reform bill, 80% or so of that bill is eventually signed by the President of the United States.

So, until the Congress, whenever, sends legislation to a President to reform the Federal income tax laws, the ESOP community must continue to make a positive case to maintain, and even expand, positive law for ESOP creation and expansion.

**What Do
ESOP Advocates Do
Now?**

**Obtain More Open
Public for
Pro-ESOP Bills
Pending in Congress
Why?**

**Read the Following
ESOP Report's
*Washington Report***

DOCUMENT 2
ESOP Report
Washington Report Column
June 2014

House Pro-ESOP Tax Bill: In Line with Strategy, Goals, and Tactics

Even in the current Congress, the 113th of our nation, where fewer bills are being introduced, and very few bills are being considered by either the House or the Senate; it might be simple to yawn about the June 11th introduction of H.R. 4837 by eight members of the House Ways and Means Committee --- four Republicans and four Democrats.

But to dismiss the introduction of the “Promotion and Expansion of Private Employee Ownership Act” (see page 1) would be a mistake by the ESOP community and its advocates.

Having supporters of ESOPs who are members of the House tax committee, which is arguably the most important Committee in Congress, put their names on a bill that represents a modest expansion of law to encourage ESOP creation and operation is a big deal for implementation of The ESOP Association’s advocacy strategy, The ESOP Association’s advocacy goals, and The ESOP Association’s tactical implementation of its strategy.

The ESOP Association’s strategy to reach its goal is simple, and straight-forward: Do what is necessary to protect and expand all laws that promote the creation of employee ownership through the ESOP model, and that aid positively the operation of ESOPs in existence.

The goal is to have the group responsible for the laws and regulations that impact the promotion and operation of ESOPs, i.e. the Congress of the United States, do nothing to diminish the incentives to create ESOPs and to help in their operation by the ESOP corporate sponsor, and to add to the laws, regulations, and incentives to create ESOPs and to help in their operation.

The grand tactic to reach the goal is to be active with what can be loosely referenced as an “offense” for more and better ESOP laws. The specific tactic is to have legislation that can be used to implement the grand tactic.

To be more plain spoken --- having a pending bill that ESOP advocates can use to ask a member of Congress to endorse formally, by putting her or his name of the list of members of Congress that have declared “for” ESOPs, is essential in developing a “defense” against any effort to repeal or reduce pro-ESOP laws.

Why? The dynamic of how a member of Congress decides to relay to her and his colleagues the provisions of law s/he does not want to change, or that s/he wishes to expand, relates primarily to prior declarations of policy positions.

Qualified observers of decision-making by members of Congress have noted that the number of issues, the multitude of requests, sometimes impolite demands, from their “customers” --- i.e. voters --- are many, and can be muddled. There are literally thousands of matters that impact the well-being of the United States, domestic and foreign. The demands can of course vary from one section of the country to the next, but are from both the less government is best view and from the government should do more view.

Given the huge number of issues, it is noted that a member of Congress’s brain becomes like a “collage,” with little pictures and writings numbering in the hundreds on a bulletin board. When an issue comes up, the member runs a mental check to see if that issue is “on his/her bulletin board,” and is it a positive on the bulletin board, or a negative.

Take ESOP issues for example. Let’s assume that the Chair of the Ways and Means Committee is leading an effort to re-write the Federal income tax laws by lowering the tax rates, but making sure the lower rates do not raise the Federal deficit. To not increase the deficit, the proposed tax code will have to eliminate or reduce special tax benefits. In response, the staff, after hearings, or briefings, prepares a list of special tax laws that can be repealed in order to raise more tax money in order to offset tax revenue loss due to lower rates.

Let’s assume that on the staff list are all the special ESOP tax rules, and an estimate that repealing those special ESOP provisions will mean X billion more tax revenues to be used to offset the cut in the tax rates. The Chair of Ways and Means Committee will want to know from his/her colleagues if they have any objection to getting rid of the ESOP tax benefits.

The response will depend on what has been placed on each member’s collage of issues. If the ESOP picture is a memory of, “Yes, I sponsored a pro-ESOP tax bill after visiting and hearing from employee owners in my district, and I have staked out a pro-ESOP position,” that member is more than likely to say to the Chair, “No, let’s keep the special ESOP rules, and find some other ways to raise the tax revenues needed.”

The outcome, ESOP positive law is retained.

What was set forth above was a general explanation of the dynamics that resulted in the Chair of the Ways and Means Committee, Dave Camp's (R-MI) tax reform proposal, released February 26, 2014, that did not cutback on positive ESOP law.

Over 94 members of Congress had formally endorsed ESOPs in the 112th Congress by co-sponsoring that Congress's proposal H.R. 1244, and reports are many of these people conveyed to Chair Camp that they did not wish to abandon their pro-ESOP position.

But sitting back and not pushing for renewed declarations of support for ESOPs in the 113th Congress because of what happened earlier this year would mean that when the tax committees sit down in 2015 and 2016 to consider repealing tax benefits, including ESOP tax benefits, it might result in the key members' collage having that ESOP picture further back in the corner of their brain, and perhaps faded in prominence.

So, it is important that ESOP advocates seek their members of Congress to sponsor H.R. 4837 in the House, and for the Senators to sponsor S. 742 in the Senate.

The Association's website will post names of sponsors of S. 742, H.R. 4837, and the 94 who sponsored H.R. 1244 in 2011 and 2012 who should readily sponsor H.R. 4837 if asked.

Enlist Support

For H.R. 4837

**The Promotion and Expansion
Of Private Employee Ownership
Act of 2014**

DOCUMENT 3

Enlist House Members to Support H.R. 4837

An important part of the 2014 Association agenda is to persuade as many members of the House as possible, to co-sponsor H.R. 4837, the “Promotion and Expansion of Private Employee Ownership Act of 2014”

For background, see

- Bullet points explaining H.R. 4837 provision; and
- Memo to members of Congress, or staff, asking the members of Congress to co-sponsor H.R. 4837.
- List of current co-sponsors

DOCUMENT 3A
H.R. 4837 Co-sponsors

Co-sponsors (14)
As of 7-23-14

Sponsor

*Rep. David G. Reichert, R-8-WA

Co-sponsors

*Rep. Earl Blumenauer, D-3-OR
Rep. Suzanne Bonamici, D-1-OR
*Rep. Charles W. Boustany, Jr., R-3-LA
*Rep. Lynn Jenkins, R-2-KS
Rep. Michael G. Fitzpatrick, R-8-PA
*Rep. Ron Kind, D-3-WI
Rep. Gwen Moore, D-4-WI
*Rep. Richard E. Neal, D-1-MA
*Rep. Bill Pascrell, Jr., D-9-NJ
*Rep. Erik Paulsen, R-3-MN
Rep. Gary C. Peters, D-14-MI
*Rep. Peter J. Roskam, R-6-IL
Rep. C.A. Dutch Ruppersberger, D-2-MD
*Rep. Patrick J. Tiberi, R-12-OH

*on Ways and Means, the House Tax Committee

DOCUMENT 3B
Summary of H.R. 4837
“Promotion and Expansion of Private
Employee Ownership Act of 2014”
(Introduced June 11, 2014)

H.R. 4837 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. Permit lenders to S corporations with 50% or more ownership through an ESOP to exclude 50% of the interest from the loan, if used to acquire stock for the ESOP;
3. Establish an office in the Department of Treasury to provide technical assistance to S corporations with ESOPs;
4. Provide that a small business, S or C, eligible for one of the many programs provided by the Small Business Administration to remain eligible for SBA programs if the company becomes owned 50% or more by and 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

1. As evidenced in [name of your company] employee stock ownership plans are benefiting [name of company], our employees, and [name of your city or town.]
2. 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.
3. H.R. 4837 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 ESOPs in H.R. 4837. For example, more ESOPs will be created, certain existing ESOP small businesses will qualify for SBA loans, and all S ESOP private companies can access Treasury experts on the complex rules governing S ESOPs.
4. In short H.R. 4837 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” you can hand to the visiting member of Congress, or her/his aide.)

(Following are summaries of overwhelming evidence that the vast majority of private ESOP companies 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 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.
- In the summer of 2013, the Employee Ownership Foundation released its 22nd Annual Economic Performance Survey (EPS). Since the annual survey began 22 years ago, a very large majority, 94% of survey respondents, reported that creating employee ownership through an ESOP was "a good business decision that has helped the company." It should be noted this figure has consistently been over 85% since 2000. In addition, 77% of respondents indicated the ESOP positively affected the overall productivity of the employees. In terms of profitability and revenue, both were up from previous years -- 70% of respondents reported profitability increased and 78% of respondents noted revenue increased. In terms of stock value, the majority of respondents, 83%, stated the company's stock value increased as determined by outside independent valuations; 14% of the respondents reported a decline in share value, and 3% reported no change. The survey also asked respondents what year the ESOP was established. Among those responding to this survey, the average age of the ESOP was 16 years with the average year for establishment being 1997.
- 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 3C
Suggested Communication to a
Member of the House Who
IS NOT A Co-Sponsor of
H.R 4837

“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.

On June 11, 2014, a bi-partisan group of Ways and Means members introduced H.R. 4837, the Promotion and Expansion of Private Employee Ownership Act of 2014. 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 Representatives Reichert, Kind, Boustany, Blumenauer, Neal, Paulsen, Pascrell, and Tiberi. Since introduction 4 members of the House have joined efforts to promote private company employee ownership, including 2 more Ways and Means members.

Enclosed is a brief summary of the legislation.

We would respectfully ask that you review the provision of H.R. 4837 and consider co-sponsoring H.R. 4837.

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. For example, during the Great Recession of 2009, employees of employee-owned companies were four times less likely to be laid off than employees of conventionally-owned companies! (General Social Survey, February, 2010) See enclosed summary of new evidence supporting value of ESOPs to America, America’s economy, and America’s Jobs.

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.

Attachment: Summary of H.R. 4837
Background Documents on ESOPs

Summary of H.R. 4837
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(Introduced June 11, 2014)

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3. Establish an office in the Department of Treasury to provide technical assistance to S corporations with ESOPs;
4. Provide that a small business, S or C, eligible for one of the many programs provided by the Small Business Administration to remain eligible for SBA programs if the company becomes owned 50% or more by and 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

5. As evidenced in [name of your company] employee stock ownership plans are benefiting [name of company], our employees, and [name of your city or town.]
6. 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.
7. H.R. 4837 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 ESOPs in H.R. 4837. For example, more ESOPs will be created, certain existing ESOP small businesses will qualify for SBA loans, and all S ESOP private companies can access Treasury experts on the complex rules governing S ESOPs.
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DOCUMENT 3D
H.R 4837

113th CONGRESS
2d Session

H. R. 4837

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 11, 2014

Mr. Reichert (for himself, Mr. Kind, Mr. Tiberi, Mr. Boustany, Mr. Paulsen, Mr. Neal, Mr. Pascrell, and Mr. Blumenauer) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Promotion and Expansion of Private Employee Ownership Act of 2014''.

SEC. 2. FINDINGS.

Congress finds that--

(1) on January 1, 1998--nearly 25 years after the Employee Retirement Income Security Act of 1974 was enacted and the employee stock ownership plan (hereafter in this section referred to as an ``ESOP'') was created--employees were first permitted to be owners of subchapter S corporations pursuant to the Small Business Job Protection Act of 1996 (Public Law 104-188);

(2) with the passage of the Taxpayer Relief Act of 1997 (Public Law 105-34), Congress designed incentives to encourage businesses to become ESOP-owned S corporations;

(3) since that time, several thousand companies have become ESOP-owned S corporations, creating an ownership interest for several million Americans in companies in every State in the country, in industries ranging from heavy manufacturing to technology development to services;

(4) while estimates show that 40 percent of working Americans have no formal retirement account at all, every United States worker who is an employee-owner of an S corporation company through an ESOP has a valuable qualified retirement savings account;

(5) recent studies have shown that employees of ESOP-owned S corporations enjoy greater job stability than employees of comparable companies;

(6) studies also show that employee-owners of S corporation ESOP companies have amassed meaningful retirement savings through their S ESOP accounts that will give them the means to retire with dignity;

(7) under the Small Business Act (15 U.S.C. 631 et seq.) and the regulations promulgated by the Administrator of the Small Business Administration, a small business concern that was eligible under the Small Business Act for the numerous preferences of the Act is denied treatment as a small business concern after an ESOP acquires more than 49 percent of the business, even if the number of employees, the revenue of the small business concern, and the racial, gender, or other criteria used under the Act to determine whether the small business concern is eligible for benefits under the Act remain the same, solely because of the acquisition by the ESOP; and

(8) it is the goal of Congress to both preserve and foster employee ownership of S corporations through ESOPs.

SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EMPLOYER STOCK TO EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S CORPORATION.

(a) In General.--Subparagraph (A) of section 1042(c)(1) of the Internal Revenue Code of 1986 (defining qualified securities) is amended by striking ``domestic C corporation'' and inserting ``domestic corporation''.

(b) Effective Date.--The amendment made by subsection (a) shall apply to sales after the date of the enactment of this Act.

SEC. 4. DEDUCTION FOR INTEREST ON LOAN TO FINANCE PURCHASE OF EMPLOYER SECURITIES BY AN EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY AN S CORPORATION.

(a) In General.--Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 199 the following new section:

``SEC. 200. INTEREST ON CERTAIN LOANS FOR THE PURCHASE OF EMPLOYER SECURITIES BY AN EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY AN S CORPORATION.

``(a) In General.--There shall be allowed as a deduction an amount equal to 50 percent of the interest received during the taxable year by a bank (within the meaning of section 581) with respect to a qualified securities acquisition loan.

``(b) Qualified Securities Acquisition Loan.--

``(1) In general.--For purposes of this section, the term

`qualified securities acquisition loan' means--

``(A) any loan to an employee stock ownership plan sponsored by an S corporation to the extent that the proceeds are used to acquire employer securities for the plan, and

``(B) any loan to an S corporation that sponsors an employee stock ownership plan to the extent that the proceeds of such loan are loaned to the employee stock ownership plan to acquire employer securities for the plan.

For purposes of this paragraph, the term `employer securities' has the meaning given such term by section 409(1).

``(2) Terms applicable to certain qualified securities acquisition loans.--For purposes of paragraph (1)(B), the term `qualified securities acquisition loan' shall not include any loan to the S corporation unless the loan to the employee stock ownership plan has repayment terms which are substantially similar to the terms of the loan to the S corporation.

``(3) Treatment of refinancings.--The term `qualified securities acquisition loan' shall include any loan which is (or is part of a series of loans) used to refinance a loan described in paragraph (1) (after the application of paragraph (2)).

``(4) Plan must hold more than 50 percent of stock after acquisition or transfer.--

``(A) In general.--A loan shall not be treated as a qualified securities acquisition loan for purposes of this section unless, immediately after an acquisition of employer securities referred to in paragraph (1), the employee stock ownership plan owns more than 50 percent of the outstanding stock of the S corporation.

``(B) Failure to retain minimum stock interest.--

``(i) In general.--Subsection (a) shall not apply to any interest received with respect to a qualified securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

``(ii) Exception.--To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

``(C) Stock.--For purposes of subparagraph (A), the Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

``(c) Employee Stock Ownership Plan.--For purposes of this section, the term `employee stock ownership plan' has the meaning given to such term by section 4975(e)(7).''.

(b) Clerical Amendment.--The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 199 the following new item:

``Sec. 200. Interest on certain loans for the purchase of employer securities by an employee stock ownership plan sponsored by an S corporation.''.

(c) Effective Date.--The amendments made by this section shall apply to interest accrued on loans made after the date of the enactment of this Act.

SEC. 5. DEPARTMENT OF THE TREASURY TECHNICAL ASSISTANCE OFFICE.

(a) Establishment Required.--Before the end of the 90-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall establish the S Corporation Employee Ownership Assistance Office to foster increased employee ownership of S corporations.

(b) Duties of the Office.--The S Corporation Employee Ownership Assistance Office shall provide--

(1) education and outreach to inform companies and individuals about the possibilities and benefits of employee ownership of S corporations; and

(2) technical assistance to assist S corporations in sponsoring employee stock ownership plans.

SEC. 6. SMALL BUSINESS AND EMPLOYEE STOCK OWNERSHIP.

(a) In General.--The Small Business Act (15 U.S.C. 631 et seq.) is amended--

(1) by redesignating section 47 as section 48; and

(2) by inserting after section 46 the following:

``SEC. 47. EMPLOYEE STOCK OWNERSHIP PLANS.

``(a) Definitions.--In this section--

``(1) the term `ESOP' means an employee stock ownership plan, as defined in section 4975(e)(7) of the Internal Revenue Code of 1986, as amended; and

``(2) the term `ESOP business concern' means a business concern that was a small business concern eligible for a loan or to participate in a contracting assistance or business development program under this Act before the date on which more than 49 percent of the business concern was acquired by an ESOP.

``(b) Continued Eligibility.--In determining whether an ESOP business concern qualifies as a small business concern for purposes of a loan, preference, or other program under this Act, each ESOP participant shall be treated as directly owning his or her proportionate share of the stock in the ESOP business concern owned by the ESOP.''.

(b) Effective Date.--The amendments made by this section shall take effect on January 1 of the first calendar year beginning after the date of the enactment of this Act.

<all>

Enlist Support

For H.R. 2041

**To Modify the Definition of Fiduciary
under the Employee Retirement
Income Security Act of 1974 to
Exclude Appraisers of Employee
Stock Ownership Plans**

DOCUMENT 4

Problems with DOL's ESOP Position

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 2014. 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, 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.

Congressmen Guthrie and Loeb sack et al introduced a bill, H.R. 2041 to amend the statute known as ERISA by clearly setting forth that appraisers of private company ESOP stock are not to be mandated ERISA fiduciaries.

DOCUMENT 4A
H.R. 2041 Co-sponsors

Co-sponsors (39)
As of 7-16-14

Sponsor

Brett S. Guthrie, R-2nd-KY

Co-sponsors

Rep. Mark E. Amodei, R-2nd-NV

Rep. Andy Barr, R-6th-KY

Rep. Timothy Bishop, D-1st-NY

Rep. Charles W. Boustany, Jr. R-3rd-LA

Rep. Bruce L. Braley, D-1st-IA

Rep. John Campbell, R-45th-CA

Rep. Kevin Cramer, R-ATL-ND

Rep. Shelley Moore Capito, R-2nd-WV

Rep. John C. Carney, Jr., D-ATL-DE

Rep. Michael K. Conaway, R-11th-TX

Rep. Tom Cotton, R-4th-AR

Rep. Eric A. "Rick" Crawford, R-1st-AR

Rep. Michael G. Fitzpatrick, R-8th-PA

Rep. Tim Griffin, R-2nd-AR

Rep. Lynn Jenkins, R-2nd-KS

Rep. Steve King, R-4th-IA

Rep. Ann M. Kuster, D-2nd-NH

Rep. Tom Latham, R-3rd-IA

Rep. Robert E. Latta, R-5th-OH

Rep. David Loebsack, D-2nd-IA

Rep. Daniel B. Maffei, D-24th-NY

Rep. Carolyn McCarthy, D-4th-NY

Rep. Patrick Murphy, D-18th-FL

Rep. Kristi L. Noem, R-ATL-SD

Rep. Erik Paulsen, R-3rd-MN

Rep. Collin C. Peterson, D-7th-MN

Rep. James B. Renacci, R-16th-OH

Rep. Todd Rokita, R-4th-IN

Rep. Bradley S. Schneider, D-10th-IL

Rep. Aaron Schock, R-18th-IL

Rep. Austin Scott, R-8th-GA

Rep. Brad Sherman, D-30th-CA

Rep. Adrian Smith, R-3rd-NE

Rep. Glenn W. Thompson, D-5th-PA

Rep. Mike Thompson, D-5th-CA

Rep. Juan Vargas, D-51st-CA

Rep. Tim Walberg, R-7th-MI

Rep. Steve Womack, R-3rd-AR

Rep. Todd C. Young, R-9th-IN

DOCUMENT 4B
Sample Communication to a U.S. House of Representative
IF NOT A Co-Sponsor of H.R. 2041

Representative [Name of Congressperson]
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. This letter [communication] respectfully request you considering joining Representatives Bret Guthrie and David Loeb sack who introduced H.R. 2041, and 30 other co-sponsors 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 Guthrie 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 H.R. 2041.

Sincerely,
Name of Executive
Name of Employee Owners

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

Note: In a verbal exchange with a member of Congress, or staff that might take place in your company, in an office, or town hall/civic club session, the same message above altered to be conversational in tone, is recommended.

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 4C

H.R. 2041

H.R. 2041 – 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 House – IH)

HR 2041 IH

113th CONGRESS

1st Session

H. R. 2041

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 HOUSE OF REPRESENTATIVES

May 17, 2013

Mr. Guthrie (for himself, Mr. Loeb sack, and Ms. Jenkins) introduced the following bill; which was referred to the Committee on Education and the Workforce

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),''.

Enlist Senate Support For
S. 742
&
S. 273

DOCUMENT 5
Bi-partisan Group of Senators Introduces and Sponsors
Pro-Private Company ESOP Promotion Bill
S. 742

Background: While there is a pro-ESOP tax bill pending in the Senate, with 19 sponsors, the letter now to Senators should differ from letters (communications) to those who are sponsors; and the letter (communication) should have focus on tax reform and ESOPs.

But for your information, set forth below is information on S. 742, “the Promotion and expansion of Private Employee ownership Act of 2013”, plus list of sponsors.

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 5A

Suggested Communication to a U.S. Senator Who **IS NOT** A Co-Sponsor of S. 742 that Contains Pro-ESOP and Tax Reform Message

Senator _____
U.S. Senate
Washington, DC 20510

Dear Senator [_____]:

We would respectfully ask that you review the provision of S. 742 and consider co-sponsoring S. 742. This Bi-partisan legislation, introduced by Senator Cardin has current 18 co-sponsors, 10 Democrats and 8 Republicans.

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.

Sincerely yours,

Name[s] of
Company Executive and/or Employees

Enclosure: Summary and Reasons to Enact S. 742
Background Documents on ESOPs

Note: In a verbal exchange with a member of Congress, or staff that might take place in your company, in an office, or town hall/civic club session, the same message above altered to be conversational in tone, is recommended.

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.

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.
- In the summer of 2013, the Employee Ownership Foundation released its 22nd Annual Economic Performance Survey (EPS). Since the annual survey began 22 years ago, a very large majority, 94% of survey respondents, reported that creating employee ownership through an ESOP was "a good business decision that has helped the company." It should be noted this figure has consistently been over 85% since 2000. In addition, 77% of respondents indicated the ESOP positively affected the overall productivity of the employees. In terms of profitability and revenue, both were up from previous years --- 70% of respondents reported profitability increased and 78% of respondents noted revenue increased. In terms of stock value, the majority of respondents, 83%, stated the company's stock value increased as determined by outside independent valuations; 14% of the respondents reported a decline in share value, and 3% reported no change. The survey also asked respondents what year the ESOP was established. Among those responding to this survey, the average age of the ESOP was 16 years with the average year for establishment being 1997.
- 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 5B
Current List of Sponsors of S. 742
“The Promotion and Expansion of Private
Employee Ownership Act of 2013”

Sponsors (20)
As of 7-16-14

Sen. Tammy Baldwin (D-WI)
Sen. Roy Blunt (R-MO)
*Sen. Sherrod Brown (D-OH)
*Sen. Ben Cardin (D-MD)
Sen. Susan M. Collins (R-ME)
*Sen. Mike Crapo (R-ID)
Sen. Al Franken (D-MN)
Sen. John Hoeven (R-ND)
Sen. Tim Johnson (D-SD)
Sen. Amy Klobuchar (D-MN)
Sen. Mary L. Landrieu (D-LA)
Sen. Patrick J. Leahy (D-VT)
Sen. Jerry Moran (R-KS)
Sen. James E. Risch (R-ID)
*Sen. Pat Roberts (R-KS)
Sen. Bernard Sanders (I-VT)
*Sen. Debbie Stabenow (D-MI)
Sen. Jon Tester (D-MT)
*Sen. John Thune (R-SD)
Sen. Sheldon Whitehouse (D-RI)

***Senate Finance Committee**

DOCUMENT 5C

S. 742

113th CONGRESS
1st Session

S. 742

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 16, 2013

Mr. Cardin (for himself, Mr. Roberts, Ms. Landrieu, Mr. Thune, Ms. Stabenow, Mr. Blunt, and Ms. Klobuchar) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Promotion and Expansion of Private Employee Ownership Act of 2013''.

SEC. 2. FINDINGS.

Congress finds that--

(1) on January 1, 1998--nearly 25 years after the Employee Retirement Income Security Act of 1974 was enacted and the employee stock ownership plan (hereafter in this section referred to as an ``ESOP'') was created--employees were first permitted to be owners of subchapter S corporations pursuant to the Small Business Job Protection Act of 1996 (Public Law 104-188);

(2) with the passage of the Taxpayer Relief Act of 1997 (Public Law 105-34), Congress designed incentives to encourage businesses to become ESOP-owned S corporations;

(3) since that time, several thousand companies have become ESOP-owned S corporations, creating an ownership interest for several million Americans in companies in every State in the country, in industries ranging from heavy manufacturing to technology development to services;

(4) while estimates show that 40 percent of working Americans have no formal retirement account at all, every United States worker who is an employee-owner of an S corporation company through an ESOP has a valuable qualified retirement savings account;

(5) recent studies have shown that employees of ESOP-owned S corporations enjoy greater job stability than employees of comparable companies;

(6) studies also show that employee-owners of S corporation ESOP companies have amassed meaningful retirement savings through their S ESOP accounts that will give them the means to retire with dignity;

(7) under the Small Business Act (15 U.S.C. 631 et seq.) and the regulations promulgated by the Administrator of the Small Business Administration, a small business concern that was eligible under the Small Business Act for the numerous preferences of the Act is denied treatment as a small business concern after an ESOP acquires more than 49 percent of the business, even if the number of employees, the revenue of the small business concern, and the racial, gender, or other criteria used under the Act to determine whether the small business concern is eligible for benefits under the Act remain the same, solely because of the acquisition by the ESOP; and

(8) it is the goal of Congress to both preserve and foster employee ownership of S corporations through ESOPs.

SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EMPLOYER STOCK TO EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S CORPORATION.

(a) In General.--Subparagraph (A) of section 1042(c)(1) of the Internal Revenue Code of 1986 (defining qualified securities) is amended by striking ``domestic C corporation'' and inserting ``domestic corporation''.

(b) Effective Date.--The amendment made by subsection (a) shall apply to sales after the date of the enactment of this Act.

SEC. 4. DEPARTMENT OF TREASURY TECHNICAL ASSISTANCE OFFICE.

(a) Establishment Required.--Before the end of the 90-day period beginning on the date of enactment of this Act, the Secretary of Treasury shall establish the S Corporation Employee Ownership Assistance Office to foster increased employee ownership of S corporations.

(b) Duties of the Office.--The S Corporation Employee Ownership Assistance Office shall provide--

(1) education and outreach to inform companies and individuals about the possibilities and benefits of employee ownership of S corporations; and

(2) technical assistance to assist S corporations in sponsoring employee stock ownership plans.

SEC. 5. SMALL BUSINESS AND EMPLOYEE STOCK OWNERSHIP.

(a) In General.--The Small Business Act (15 U.S.C. 631 et seq.) is amended--

- (1) by redesignating section 47 as section 48; and
- (2) by inserting after section 46 the following:

``SEC. 47. EMPLOYEE STOCK OWNERSHIP PLANS.

``(a) Definitions.--In this section--

``(1) the term `ESOP' means an employee stock ownership plan, as defined in section 4975(e)(7) of the Internal Revenue Code of 1986, as amended; and

``(2) the term `ESOP business concern' means a business concern that was a small business concern eligible for a loan or to participate in a contracting assistance or business development program under this Act before the date on which more than 49 percent of the business concern was acquired by an ESOP.

``(b) Continued Eligibility.--In determining whether an ESOP business concern qualifies as a small business concern for purposes of a loan, preference, or other program under this Act, each ESOP participant shall be treated as directly owning his or her proportionate share of the stock in the ESOP business concern owned by the ESOP.''.

(b) Effective Date.--The amendments made by this section shall take effect on January 1 of the first calendar year beginning after the date of the enactment of this Act.

<all>

DOCUMENT 6

Problems with DOL's ESOP Position

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 2014. 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, 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.

The Ayotte/Guthrie 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.

DOCUMENT 6A

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 6B
Sample Letter to a U.S. Senator 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, Blunt, Collins, Klobuchar, Thune, Paul, and Toomey 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 January 2015. 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. 273.

Sincerely,
Name of Executive
Name of Employee Owners

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

Note: In a verbal exchange with a member of Congress, or staff that might take place in your company, in an office, or town hall/civic club session, the same message above altered to be conversational in tone, is recommended.

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 6C
S. 273 Co-sponsors

As of 7-16-14
Co-sponsors (8)

Sponsor

Sen. Kelly Ayotte, R-NH

Co-sponsors

Sen. Roy Blunt, R-MO

Sen. Susan M. Collins, R-ME

Sen. Amy Klobuchar, D-MN

Sen. Mary L. Landrieu, D-LA

Sen. Mitch McConnell, R-KY

Sen. Rand Paul, R-KY

Sen. John Thune, R-SD

Sen. Pat Toomey, R-PA

DOCUMENT 7

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 8

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

Since email has become the most common method of communication, 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 9

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 xxxxx 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 10

“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/>