

The ESOP Association's
Advocacy Kit
2008



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

Summer 2008

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DOCUMENT 1
Your Government Relations Challenges
Summer 2008

The ESOP Association has for 30 years vigorously promoted laws to encourage the creation of employee ownership through ESOPs and to facilitate the operation of the ESOP to benefit the corporation sponsoring the ESOP and the employee ESOP participants. Similarly, over the past 30 years, the Association has vigorously urged Congress to defeat legislative proposals that would impact ESOP companies and their employees negatively. This Advocacy Kit for the Association's 31st Annual Conference spells out reasons, for the current ESOP Association campaign to

- defeat a negative ESOP proposal pending before the House of Representatives' Committee on Ways and Means,
- to garner support for the pro-ESOP H. Con. Res. 333, and
- to urge Senators to support the pro-ESOP Legislation S. 1322

Following are background documents on the Association's agenda, and suggested documents to leave with Members of Congress and their staff.

Document 2

House Ways and Means Committee Chair Proposes Cutback in Benefits of Deferred Compensation in S ESOP Companies, Section 3701, H.R. 3970

On October 25, 2007, Congressman Charles Rangel [D-NY], Chair of the House Ways and Means Committee, introduced the “Tax Reduction and Reform Act of 2007,” which includes a provision that impacts an S ESOP corporation’s ability to compensate any employee with what is referred to in the S ESOP community as synthetic equity, as defined in IRC Section 409(p)(6)(C). [As defined in S ESOP law synthetic equity is deferred compensation that is not part of a tax qualified retirement savings plan.] [Specific citation to Chair Rangel’s proposal is H.R. 3970, Section 3701, page 122 of proposed legislation.]

While the first published explanation of Chair Rangel’s proposal described the proposed new law on S ESOP as applying only to stock options, which few S ESOP companies award to employees, the precise language of Section 3701, H.R. 3970 makes it clear that a heavy tax burden would be placed on a person receiving stock options, warrants, restricted stocks, deferred issuance stocks, or similar interest or right to acquire or receive stock in the S corporation. The definition used in Section 3701 includes stock appreciation rights, phantom stock units, or a similar right to a future cash payments.

The new taxes on persons with synthetic equity arrangements would be applicable to so-called “grants” after the date of the legislation’s enactment date. Experts have calculated the tax under Section 3701 could be as high as 80 to 100% of the deferred compensation.

The ESOP S provision is part of a very large tax proposal, which Chair Rangel has labeled as a massive overhaul of the Federal Income Tax system, and is primarily focused on eliminating the Alternative Minimum Tax for all Americans, raising taxes substantially for upper income tax brackets, lowering taxes for middle class and lower income tax brackets, and lowering the corporate tax rate from 35% to 30.5%, in a manner that does not reduce Federal tax revenues by offsetting the reductions with higher taxes on upper income, and repeal of many tax provisions now used by corporations to reduce federal income taxes, or what Chair Rangel calls “loophole” closers. [The ESOP S provision Section 3701 under Chair Rangel’s general rhetoric falls under the “loophole” closer category.]

There is strong opposition to the overall legislation from Congressional Republicans and the White House to Chair Rangel’s proposal. But, the reasons for Congress to consider major tax reform and so-called corporate tax loopholes gains momentum in the Congress.

The Board of Directors of The ESOP Association, has reviewed the proposal and by consensus wants the ESOP community to urge Congress to reject Section 3701 of H.R. 3970 and its negative impact on S ESOPs. The proposal will supposedly raise \$600 million over ten years, or a mere \$60 million per year, in order to help pay for a near \$400 billion reduction in corporate income taxes due to a proposed rate cut in the C corporation current rate of 35% to 30.5%.

The ESOP Association will work with its ESOP friends on the Committee, both Democrat and Republican, to be sure misguided proposals that hurt ESOP companies are not part of some false concept that ESOPs do not help U.S. companies be more competitive.

DOCUMENT 3

What Does Ways and Means Committee's S ESOP Proposal Mean for ESOP Community?

First, there is the potential that Section 3701, H.R. 3970, as introduced would render impracticable any deferred compensation program, other than ESOP contributions, in an S ESOP company. The reason for this bold statement is Section 3701 would tax the deferred compensation at a level equal to, or nearly equal to, the value of the deferred compensation. [Some estimate at an effective tax rate of 80 to 100%.]

Thus, if Section 3701 becomes law as introduced, S ESOP corporations could not attract competent leaders for executive positions, and thus employee owners would see the value of their ESOP accounts go down, more than likely.

Second, if Section 3701 as introduced becomes law, the use of various techniques to finance an S ESOP transaction which results in majority employee ownership may result in taxes so high on the person/entity financing the potential transaction, no transaction will take place.

Limiting the number of S ESOPs will lessen American competitiveness, as evidenced by thirty years of data proving overwhelmingly the vast majority of ESOP companies are much more competitive by many measures than non-ESOP companies.

Finally, it should be noted that Section 3701, as introduced, effectively repeals the Ways and Means amendment to ESOP law in 2001 that sanctioned deferred compensation/synthetic arrangements in S ESOP companies.

In sum, the ESOP community must stop proposed Section 3701 as quickly as possible in the legislative process.

DOCUMENT 4
Sample Letter from ESOP Company
To Oppose Limiting Employee Ownership
Through ESOPs
To Members of Members of House Ways and Means Committee,
U.S. House of Representatives

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

Dear Representative [Name]:

As a company that makes its employees owners through an employee stock ownership plan, or ESOP, we are aware that your membership on the House Ways and Means Committee requires you to express your views, and to cast votes on laws that affect the employee owners of [name of company].

Thus, we express to you our sincere concerns with proposed Section 3701, H.R. 3970, the "Tax Reduction and Reform Act of 2007."

We believe that Section 3701, as introduced, would stop all deferred compensation outside of an ERISA plan in S corporations sponsoring employee ownership through an ESOP, not just those awarding stock options to employees, as explained in the summary of H.R. 3970. The reason for this statement is the tax to be imposed by Section 3701 could easily be greater than the value of deferred compensation.

Also, another potential impact of Section 3701 is the virtual stopping of the creation of employee ownership of an S Corporation at a level greater than 50% of the S corporations' shares. The reason for this statement is large ESOP transactions, as measured by the percentage of shares owned by the ESOP, not the dollar value, have to have, nearly always, secondary levels of financing beyond a prime lender's loan. The provider of the secondary financing more than not requires some kind of equity based interest in the S corporation. Here again, the tax imposed by Section 3701 would be so high to stop nearly all secondary financing.

ESOPs have a thirty-year plus record proving that ESOP companies are high performing companies compared to non-ESOP companies, that create wealth and equity stakeholds for average pay employees. See enclosures.

[If desired, here write about how the ESOP arrangement has benefited your company.]

Because of all of the above, we urge you to oppose Section 3701 of H.R. 3970 as introduced in order to continue policies to have more fair and equitable ownership in our nation's free enterprise economy.

Sincerely,

[Name of Company Person(s)/ or More Effective, Names of Many Employee Owners]

Enclosure

**ENCLOSURES TO INCLUDE WITH LETTERS
TO MEMBERS OF CONGRESS –**

**Data and Research on Employee Ownership
Through ESOPs**



Employee Ownership and Corporate Performance

1. In January 2007, the co-operative relationship between The ESOP Association and the University of Pennsylvania's Center for Organizational Dynamics led to an important new and "fresh" study of the effectiveness of ESOPs and employee ownership as uncovered in 30 years of scholarly research on the issue. The study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," authored by Dr. Stephen F. Freeman, Affiliated Faculty and Visiting Scholar in the Center for Organizational Dynamics, Graduate Division, School of Arts and Sciences at the University of Pennsylvania, confirms what the Association has been saying for years, that employee-owned companies experience increased productivity, profitability, and longevity. To download the study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," please visit the University of Pennsylvania's Library Digital Archive - http://repository.upenn.edu/od_working_papers/2/. The research was possible thanks to a generous, unrestricted donation to the University by ESOP Association member company, Alliance Holdings Inc. of Willow Grove, PA. Alliance is also a significant donor to the Employee Ownership Foundation, which gives significant donations to the University of Pennsylvania's Center for Organizational Dynamics Program.
2. In 2007, the Employee Ownership Foundation, conducting its 16th Annual Economic Performance Survey, found that a very high percentage of companies, 89%, declared that creating employee ownership through an ESOP (employee stockownership plan) was "a good decision that has helped the company." In addition, the EPS asked companies to indicate their performance in 2006, relative to 2005. Approximately 72% of respondents indicated a better performance in 2006 than 2005, 9% indicated a nearly identical performance, and 19% indicated a worse performance. Around 82% indicated that revenue increased while 18% indicated revenue did not increase. In terms of profitability, 72% indicated that profitability did increase and 28% indicated that profitability did not increase in 2006. This survey was conducted in the summer of 2007 among corporate members of The ESOP Association.
3. The most comprehensive and significant study to date of ESOP performance in closely held companies was conducted by Dr. Joseph R. Blasi and Dr. Douglas L. Kruse, professors at the School of Management and Labor Relations at Rutgers University, and funded in part by the Employee Ownership Foundation. The study, which paired *1,100 ESOP companies* with *1,100 comparable non-ESOP companies* and followed the businesses for *over a decade*, reported overwhelmingly positive and remarkable results indicating that ESOPs appear to increase sales, employment, and sales/employee by about 2.3% to 2.4% over what would have been anticipated, absent an ESOP. In addition, Drs. Blasi and Kruse examined whether ESOP companies stayed in business longer than non-ESOP companies and found that 77.9% of the ESOP companies followed as part of the survey survived as compared to 62.3% of the comparable non-ESOP companies. According to Drs. Blasi and Kruse, ESOP companies are also more likely to continue operating as independent companies over the course of several years. Also, it is substantially more probable that ESOP companies have other retirement-oriented benefit plans than comparable non-ESOP companies, such as defined benefit plans, 401(k) plans, and profit sharing plans.
4. Research done by the Washington State Department of Community, Trade and Economic Development of over 100 Washington not publicly-traded ESOP companies compared to 500 not publicly-traded non-ESOP companies showed that the ESOP companies paid better benefits, had twice the retirement income for employees, and paid higher wages than their non-ESOP counterparts. *Wealth and Income Consequences of Employee Ownership: A Comparative Study from Washington State*, Kardas, Peter A., Scharf, Adria L., Keogh, Jim, November, 1998.

5. Research conducted by Professor Hamid Mehran, while he served on the faculty of the J.L. Kellogg Graduate School of Management, Northwestern University, of nearly 400 publicly traded companies with significant ESOPs both before and after the adoption of the ESOP, compared to non-ESOP companies in similar lines of businesses, showed that the rate of return for the ESOP companies was 2.7% higher, 60% of the ESOP companies experienced share price increases upon announcement of the ESOP program, and 82% indicated that the ESOP had a positive impact on business results.
6. In 1995, Douglas Kruse of Rutgers University examined several different studies between ESOPs and productivity growth. Kruse found through an analysis of all studies that "positive and significant coefficients [are found] much more often than would be expected if there were no true relation between ESOPs and productivity." Kruse concludes that "the average estimated productivity difference between ESOP and non-ESOP firms is 5.3%, while the average estimated pre/post-adoption difference is 4.4% and the post-adoption growth rate is 0.6% higher in ESOP firms. Kruse cites two studies as part of his research: Kumbhakar and Dunbar's 1993 study of 123 public firms and Mitchell's 1990 study of 495 U.S. business units in public firms. Both reports found significant positive effects of greater productivity and profitability in the first few years after a company adopted an ESOP.
7. In 1995, the U.S. Department of Labor released a study entitled "The Financial and Non-Financial Returns to Innovative Workplace Practices: A Critical Review." This study found that companies that seek employee participation, give employees company stock, and train employees, can positively affect American corporations' bottom lines. In addition, the report cited three studies that analyzed "the market reaction to announcements of ESOPs which found significant positive returns to firms which implemented ESOPs as part of a broader employee benefit or wage concession plan." The three studies are: Chang's 1990 "Employee Stock Ownership Plans and Shareholder Wealth: An Empirical Investigation"; Dhillon and Ramirez' 1994 "Employee Stock Ownership and Corporate Control"; and Gordon and Pound's 1990 "ESOPs and Corporate Control." citation at (202) 293-2971 or E-mail: esop@esopassociation.org.

For additional information about ESOP or The ESOP Association, visit the website at www.esopassociation.org, call 1-866-366-3832, or email esop@esopassociation.org.



ESOP Facts and Figures

- There are approximately 11,500 ESOPs in place in the U.S., covering 10 million employees (10% of the private sector workforce).
- These employees draw in excess of 3% of their total compensation from ESOP contributions.
- The growth of ESOP formation has been influenced by federal legislation. While the rapid increase in new ESOPs in the late 1980s subsided after Congress removed certain tax incentives in 1989, the overall number has remained steady with new plans replacing terminated ESOPs. Currently, it is estimated that there are approximately 11,500 ESOPs in place in the U.S. However, there is no precise way to measure this figure accurately since the overwhelming majority of ESOP companies are privately held and do not file public reports with the SEC.
- About 330 ESOPs - 3% - are in publicly traded companies. However, these companies employ just under 50% of the nation's 10 million employee owners.
- An estimated 7,000 of the 11,500 companies have ESOPs that are large enough to be a major factor in the corporation's strategy and culture.
- Approximately 4,000 ESOP companies are majority-owned by the ESOP.
- Approximately 2,500 are 100% owned by the ESOP.
- About 2% of ESOP companies are unionized.
- While ESOPs are found in all industries, more than 25% of them are in the manufacturing sector.
- At least 75% of ESOP companies are or were leveraged, meaning they used borrowed funds to acquire the employer securities held by the ESOP trustee.
- A majority of ESOP companies have other retirement plans, such as defined benefit pension plans or 401(k) plans, to supplement their ESOP.
- Of the 11,500 employee-owned companies nationwide, fewer than 2% were financially distressed when they established their ESOP.
- Total assets owned by U.S. ESOPs is estimated to be \$800 billion at the end of 2006.

For additional information about ESOPs or The ESOP Association, please visit the website at www.esopassociation.org, call 1-866-366-3832, or email esop@esopassociation.org

DOCUMENT 5
Members of House Ways and Means Committee,
U.S. House of Representatives

Below are Members of House Ways and Means Committee with their office building listed. All are U.S. House of Representatives. To send letters use the address below. City, state and zip are the same for all. (Washington, DC 20515)

Rep. Charles B. Rangel (D-NY) Chairman, 2354 Rayburn House Office Building
Rep. Xavier Becerra (D-CA), 1119 Longworth House Office Building
Rep. Shelley Berkley (D-NV), 405 Cannon House Office Building
Rep. Earl Blumenauer (D-OR), 2267 Rayburn House Office Building
Rep. Kevin Brady (R-TX), 301 Cannon House Office Building
Rep. Dave Camp (R-MI), 137 Cannon House Office Building
Rep. Eric Cantor (R-VA), 329 Cannon House Office Building
Rep. Joseph Crowley (D-NY), 2404 Rayburn House Office Building
Rep. Artur Davis (D-AL), 208 Cannon House Office Building
Rep. Lloyd Doggett (D-TX), 201 Cannon House Office Building
Rep. Rahm Emanuel (D-IL), 1319 Longworth House Office Building
Rep. Phil English (R-PA), 2332 Rayburn House Office Building
Rep. Wally Herger (R-CA), 2268 Rayburn House Office Building
Rep. Kenny C. Hulshof (R-MO), 409 Cannon House Office Building
Rep. Sam Johnson (R-TX), 1211 Longworth House Office Building
Rep. Stephanie Tubbs-Jones (D-OH), 1009 Longworth House Office Building
Rep. Ron Kind (D-WI), 1406 Longworth House Office Building
Rep. John B. Larson (D-CT), 1005 Longworth House Office Building
Rep. John Lewis (D-GA), 343 Cannon House Office Building
Rep. Ron Lewis (R-KY), 2418 Rayburn House Office Building
Rep. Sander M. Levin (D-MI), 1236 Longworth House Office Building
Rep. John Linder (R-GA), 1026 Longworth House Office Building
Rep. Jim McCrery (R-LA), 242 Cannon House Office Building
Rep. Michael R. McNulty (D-NY), 2210 Rayburn House Office Building
Rep. Kendrick B. Meek (D-FL), 1039 Longworth House Office Building
Rep. Richard E. Neal (D-MA), 2208 Rayburn House Office Building
Rep. Devin Nunes (R-CA), 1013 Longworth House Office Building
Rep. Bill Pascrell Jr. (D-NJ), 2464 Rayburn House Office Building
Rep. Earl Pomeroy (D-ND), 1501 Longworth House Office Building
Rep. Jon Porter (R-NV), 218 Cannon House Office Building
Rep. Jim Ramstad (R-MN), 103 Cannon House Office Building
Rep. Thomas M. Reynolds (R-NY), 332 Cannon House Office Building
Rep. Paul Ryan (R-WI), 1113 Longworth House Office Building
Rep. Allyson Y. Schwartz (D-PA), 423 Cannon House Office Building
Rep. Fortney Pete Stark (D-CA), 239 Cannon House Office Building
Rep. John S. Tanner (D-TN), 1226 Longworth House Office Building
Rep. Mike Thompson (D-CA), 231 Cannon House Office Building
Rep. Patrick J. Tiberi (R-OH), 113 Cannon House Office Building
Rep. Chris Van Hollen (D-MD), 1709 Longworth House Office Building
Rep. Jerry Weller (R-IL), 108 Cannon House Office Building

DOCUMENT 6
Sample Letter from ESOP Company
To Oppose Limiting Employee Ownership
Through ESOPs
To Members of U.S. House of Representatives Who Are **Not**
Members of House Ways and Means Committee

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

Dear Representative [Name]:

As a company that makes its employees owners through an employee stock ownership plan, or ESOP, we are aware that the House Ways and Means Committee will in the near future review and consider approving proposed Section 3701, H.R. 3970, the "Tax Reduction and Reform Act of 2007."

We believe that Section 3701, as introduced, would stop all deferred compensation outside of an ERISA plan in S corporations sponsoring employee ownership through an ESOP, not just those awarding stock options to employees, as explained in the summary of H.R. 3970. The reason for this statement is the tax to be imposed by H.R. 3970 could easily be greater than the value of deferred compensation.

Also, another potential impact of H.R. 3970, Section 3701 is the virtual stopping of the creation of employee ownership of an S Corporation at a level greater than 50% of the S corporations' shares. The reason for this statement is large ESOP transactions, as measured by the percentage of shares owned by the ESOP, not the dollar value, have to have, nearly always, secondary levels of financing beyond a prime lender's loan. The provider of the secondary financing more than not requires some kind of equity based interest in the S corporation. Here again, the tax imposed by Section 3701 would be so high to stop nearly all secondary financing.

ESOPs have a thirty-year plus record proving that ESOP companies are high performing companies compared to non-ESOP companies, that create wealth and equity stakeholds for average pay employees. See enclosures.

[If desired, here write about how the ESOP arrangement has benefited your company.]

Because of all of the above, we urge you to oppose Section 3701 of H.R. 3970 as introduced and to convey directly to your colleagues who serve on the House Ways and Means Committee your position. It is important, we believe, to continue a policy in our nation to encourage broad-base ownership of our nation's corporations in order to have a more fair and equitable ownership in our nation's free enterprise economy.

Sincerely,

[Name of Company Person(s)/ or More Effective, Names of Many Employee Owners]

Enclosure

**ENCLOSURES TO INCLUDE WITH LETTERS
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**Data and Research on Employee Ownership
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Employee Ownership and Corporate Performance

1. In January 2007, the co-operative relationship between The ESOP Association and the University of Pennsylvania's Center for Organizational Dynamics led to an important new and "fresh" study of the effectiveness of ESOPs and employee ownership as uncovered in 30 years of scholarly research on the issue. The study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," authored by Dr. Stephen F. Freeman, Affiliated Faculty and Visiting Scholar in the Center for Organizational Dynamics, Graduate Division, School of Arts and Sciences at the University of Pennsylvania, confirms what the Association has been saying for years, that employee-owned companies experience increased productivity, profitability, and longevity. To download the study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," please visit the University of Pennsylvania's Library Digital Archive - http://repository.upenn.edu/od_working_papers/2/. The research was possible thanks to a generous, unrestricted donation to the University by ESOP Association member company, Alliance Holdings Inc. of Willow Grove, PA. Alliance is also a significant donor to the Employee Ownership Foundation, which gives significant donations to the University of Pennsylvania's Center for Organizational Dynamics Program.
2. In 2007, the Employee Ownership Foundation, conducting its 16th Annual Economic Performance Survey, found that a very high percentage of companies, 89%, declared that creating employee ownership through an ESOP (employee stockownership plan) was "a good decision that has helped the company." In addition, the EPS asked companies to indicate their performance in 2006, relative to 2005. Approximately 72% of respondents indicated a better performance in 2006 than 2005, 9% indicated a nearly identical performance, and 19% indicated a worse performance. Around 82% indicated that revenue increased while 18% indicated revenue did not increase. In terms of profitability, 72% indicated that profitability did increase and 28% indicated that profitability did not increase in 2006. This survey was conducted in the summer of 2007 among corporate members of The ESOP Association.
3. The most comprehensive and significant study to date of ESOP performance in closely held companies was conducted by Dr. Joseph R. Blasi and Dr. Douglas L. Kruse, professors at the School of Management and Labor Relations at Rutgers University, and funded in part by the Employee Ownership Foundation. The study, which paired *1,100 ESOP companies* with *1,100 comparable non-ESOP companies* and followed the businesses for *over a decade*, reported overwhelmingly positive and remarkable results indicating that ESOPs appear to increase sales, employment, and sales/employee by about 2.3% to 2.4% over what would have been anticipated, absent an ESOP. In addition, Drs. Blasi and Kruse examined whether ESOP companies stayed in business longer than non-ESOP companies and found that 77.9% of the ESOP companies followed as part of the survey survived as compared to 62.3% of the comparable non-ESOP companies. According to Drs. Blasi and Kruse, ESOP companies are also more likely to continue operating as independent companies over the course of several years. Also, it is substantially more probable that ESOP companies have other retirement-oriented benefit plans than comparable non-ESOP companies, such as defined benefit plans, 401(k) plans, and profit sharing plans.
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ESOP Facts and Figures

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- The growth of ESOP formation has been influenced by federal legislation. While the rapid increase in new ESOPs in the late 1980s subsided after Congress removed certain tax incentives in 1989, the overall number has remained steady with new plans replacing terminated ESOPs. Currently, it is estimated that there are approximately 11,500 ESOPs in place in the U.S. However, there is no precise way to measure this figure accurately since the overwhelming majority of ESOP companies are privately held and do not file public reports with the SEC.
- About 330 ESOPs - 3% - are in publicly traded companies. However, these companies employ just under 50% of the nation's 10 million employee owners.
- An estimated 7,000 of the 11,500 companies have ESOPs that are large enough to be a major factor in the corporation's strategy and culture.
- Approximately 4,000 ESOP companies are majority-owned by the ESOP.
- Approximately 2,500 are 100% owned by the ESOP.
- About 2% of ESOP companies are unionized.
- While ESOPs are found in all industries, more than 25% of them are in the manufacturing sector.
- At least 75% of ESOP companies are or were leveraged, meaning they used borrowed funds to acquire the employer securities held by the ESOP trustee.
- A majority of ESOP companies have other retirement plans, such as defined benefit pension plans or 401(k) plans, to supplement their ESOP.
- Of the 11,500 employee-owned companies nationwide, fewer than 2% were financially distressed when they established their ESOP.
- Total assets owned by U.S. ESOPs is estimated to be \$800 billion at the end of 2006.

For additional information about ESOPs or The ESOP Association, please visit the website at www.esopassociation.org, call 1-866-366-3832, or email esop@esopassociation.org

DOCUMENT 7

House Concurrent Resolution 333

On April 24, 2008, Congressmen Maurice Hinchey and Dana Rohrabacher introduced H. Con. Res. 333, "Expressing continued support for employee stock ownership plans."

This short resolution makes it clear that, based on 33 years of experience with ESOPs the vast majority of ESOP companies are high performing companies and the Congress therefore expresses continued support for employee stock ownership plans.

The ESOP community urges co-sponsorship of the Hinchey-Rohrabacher resolution to demonstrate to all committees of Congress, to the agencies that regulate ESOPs, to the media, and to the public at-large that when ESOP issues are reviewed they should be reviewed with a goal to promote and improve employee ownership through ESOPs.

Below is the precise wording of H. Con. Res. 333

Mr. HINCHEY (for himself and Mr. ROHRABACHER) submitted the following concurrent resolution; which was referred to the Committee on Education and Labor

CONCURRENT RESOLUTION

Expressing continued support for employee stock ownership plans.

Whereas in the Employee Retirement Income Security Act of 1974, Congress codified a technique of corporate finance which utilizes employee stock ownership, officially named an employee stock ownership plan (ESOP);

Whereas in the 33 years since the statutory recognition of ESOPs, there have been ample data collected by objective research indicating that the vast majority of corporations sponsoring employee stock ownership through ESOPs are high performing companies that, among other indicia of high performing companies, have better sales, are more sustainable, pay better, and provide more retirement savings compared to similar companies that are not employee-owned; and

Whereas Congress, in more than 15 laws since 1974, has made it explicit that ESOPs are to serve the dual purpose of providing retirement savings and stock ownership for employees, as well as being a financing technique for corporations: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress expresses its continued support for employee stock ownership plans.

DOCUMENT 8

Sample Letter Regarding House Concurrent Resolution 333

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

Dear Representative [Name]:

[Name of your company] is an ESOP company, which means that a broad base of employees at [Name of company] are owners of the company's stock through an employee stock ownership plan, or ESOP.

As an ESOP company, we have followed with great interest the growing national discussion about making our nation of owners, and proposals to address the widening income gap between the rich and average wage earners.

As an ESOP company, we believe employee ownership through ESOPs is a proven, 30-year plus, policy that can move more Americans into ownership positions, thus truly making our society one of ownership. And since it is obvious that in a capitalistic, free enterprise society owners are as a rule wealthier than those living on wages only, ESOP policy can thus be one solution to addressing the growing wealth gap in America.

To prove our point, we would welcome your learning more about [name of company] and our experience with ESOPs. To show that our experience is not unique, we enclose a brief summary of the body of data showing the positive impact ESOP have on the vast majority of companies and their employees.

Also, please consider co-sponsoring House Concurrent Resolution 333 by Congressman Maurice Hinchey (D-NY) and Congressman Dana Rohrabacher (R-CA). This short resolution makes it clear that, based on 33 years of research, the vast majority of ESOP companies are high performing companies and the Congress therefore should express continued support for employee stock ownership plans.

Your consideration of our request for your support of a program that is designed to make our nation a nation of owners is appreciated.

Sincerely,

[Name of Company Person(s)]

DOCUMENT 9

S. 1322 Improving ESOP Law and Promoting ESOP Creation, By Senator Blanche Lincoln and Others Why It Would Be Good for the ESOP Community

Why S. 1322, the ESOP Promotion and Improvement Act Of 2007 Is Good for the ESOP Community

- Repeal the punitive 10% penalty tax on S corporations' distributions from current earnings, also referred to as dividends, paid on ESOP stock that are passed through to ESOP participants in cash.
- Clarify that dividends paid by C corporations on ESOP stock are not a preference item in calculating the corporate alternative minimum tax.
- Permit sellers of stock to the ESOP on an S corporation to utilize the ESOP tax benefit referred to as the tax deferred rollover, or the 1042 treatment. (b) Permit proceeds received from a 1042 transaction to be invested in mutual funds consisting of operating U.S. corporation securities. (c) Redefine what is a 25% or more owner for purposes of IRC 1042 to be 25% or more ownership of voting stock, or 25% or more ownership of all stock of the corporation, not 25% of any class of stock.
- Increases the de minimus amount eligible for diversification from ESOP stock balances over \$500 to balances over ESOP stock \$2,500.

DOCUMENT 10
Sample Letter Regarding S. 1322,
The ESOP Promotion and Improvement Act of 2007

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

Dear Senator [Name]:

[Name of your company] has employee ownership of [X%] of the company through an employee stock ownership plan, or ESOP. We established our ESOP in [year]. Our company is [privately-held] [publicly-traded] and is a [C][S] corporation. *[In one or two sentences, set forth why the ESOP is important to your company, and how it benefits the employees of your company.]*

This letter respectfully asks for your consideration of S. 1322, introduced by Senator Blanche L. Lincoln. The legislative proposal is titled "The ESOP Promotion and Improvement Act of 2007."

As an ESOP company, we have followed with great interest the growing national discussion about making our nation of owners, and proposals to address the widening income gap between the rich and average wage earners.

As an ESOP company, we believe employee ownership through ESOPs is a proven, 30-year plus, policy that can move more Americans into ownership positions, thus truly making our society one of ownership. And since it is obvious that in a capitalistic, free enterprise society owners are as a rule wealthier than those living on wages only, ESOP policy can thus be one solution to addressing the growing wealth gap in America.

To prove our point, we would welcome your learning more about [name of company] and our experience with ESOPs. To show that our experience is not unique, we enclose a brief summary of the body of data showing the positive impact ESOP have on the vast majority of companies and their employees.

S. 1322 is a modest proposal, making clarifications in current law for both C and S corporations; these modest changes would help companies like ours operate the ESOP better as both a retirement savings plan, and as an employee ownership plan, as the ESOP laws since 1975 have intended. In addition, its provisions will make creating more employee ownership through ESOPs more likely, a development, as documented in extensive research since the 80s that would result in better performing US corporations.

Your consideration of our request for your support of a program that is designed to make our nation a nation of owners is appreciated.

Sincerely,

[Name of Company Person(s)]

**ENCLOSURES TO INCLUDE WITH LETTERS
TO MEMBERS OF CONGRESS –**

**Data and Research on Employee Ownership
Through ESOPs**



Employee Ownership and Corporate Performance

8. In January 2007, the co-operative relationship between The ESOP Association and the University of Pennsylvania's Center for Organizational Dynamics led to an important new and "fresh" study of the effectiveness of ESOPs and employee ownership as uncovered in 30 years of scholarly research on the issue. The study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," authored by Dr. Stephen F. Freeman, Affiliated Faculty and Visiting Scholar in the Center for Organizational Dynamics, Graduate Division, School of Arts and Sciences at the University of Pennsylvania, confirms what the Association has been saying for years, that employee-owned companies experience increased productivity, profitability, and longevity. To download the study, "Effects of ESOP Adoption and Employee Ownership: Thirty Years of Research and Experience," please visit the University of Pennsylvania's Library Digital Archive - http://repository.upenn.edu/od_working_papers/2/. The research was possible thanks to a generous, unrestricted donation to the University by ESOP Association member company, Alliance Holdings Inc. of Willow Grove, PA. Alliance is also a significant donor to the Employee Ownership Foundation, which gives significant donations to the University of Pennsylvania's Center for Organizational Dynamics Program.
9. In 2007, the Employee Ownership Foundation, conducting its 16th Annual Economic Performance Survey, found that a very high percentage of companies, 89%, declared that creating employee ownership through an ESOP (employee stockownership plan) was "a good decision that has helped the company." In addition, the EPS asked companies to indicate their performance in 2006, relative to 2005. Approximately 72% of respondents indicated a better performance in 2006 than 2005, 9% indicated a nearly identical performance, and 19% indicated a worse performance. Around 82% indicated that revenue increased while 18% indicated revenue did not increase. In terms of profitability, 72% indicated that profitability did increase and 28% indicated that profitability did not increase in 2006. This survey was conducted in the summer of 2007 among corporate members of The ESOP Association.
10. The most comprehensive and significant study to date of ESOP performance in closely held companies was conducted by Dr. Joseph R. Blasi and Dr. Douglas L. Kruse, professors at the School of Management and Labor Relations at Rutgers University, and funded in part by the Employee Ownership Foundation. The study, which paired *1,100 ESOP companies* with *1,100 comparable non-ESOP companies* and followed the businesses for *over a decade*, reported overwhelmingly positive and remarkable results indicating that ESOPs appear to increase sales, employment, and sales/employee by about 2.3% to 2.4% over what would have been anticipated, absent an ESOP. In addition, Drs. Blasi and Kruse examined whether ESOP companies stayed in business longer than non-ESOP companies and found that 77.9% of the ESOP companies followed as part of the survey survived as compared to 62.3% of the comparable non-ESOP companies. According to Drs. Blasi and Kruse, ESOP companies are also more likely to continue operating as independent companies over the course of several years. Also, it is substantially more probable that ESOP companies have other retirement-oriented benefit plans than comparable non-ESOP companies, such as defined benefit plans, 401(k) plans, and profit sharing plans.
11. Research done by the Washington State Department of Community, Trade and Economic Development of over 100 Washington not publicly-traded ESOP companies compared to 500 not publicly-traded non-ESOP companies showed that the ESOP companies paid better benefits, had twice the retirement income for employees, and paid higher wages than their non-ESOP counterparts. *Wealth and Income Consequences of Employee Ownership: A Comparative Study from Washington State*, Kardas, Peter A., Scharf, Adria L., Keogh, Jim, November, 1998.

12. Research conducted by Professor Hamid Mehran, while he served on the faculty of the J.L. Kellogg Graduate School of Management, Northwestern University, of nearly 400 publicly traded companies with significant ESOPs both before and after the adoption of the ESOP, compared to non-ESOP companies in similar lines of businesses, showed that the rate of return for the ESOP companies was 2.7% higher, 60% of the ESOP companies experienced share price increases upon announcement of the ESOP program, and 82% indicated that the ESOP had a positive impact on business results.
13. In 1995, Douglas Kruse of Rutgers University examined several different studies between ESOPs and productivity growth. Kruse found through an analysis of all studies that "positive and significant coefficients [are found] much more often than would be expected if there were no true relation between ESOPs and productivity." Kruse concludes that "the average estimated productivity difference between ESOP and non-ESOP firms is 5.3%, while the average estimated pre/post-adoption difference is 4.4% and the post-adoption growth rate is 0.6% higher in ESOP firms. Kruse cites two studies as part of his research: Kumbhakar and Dunbar's 1993 study of 123 public firms and Mitchell's 1990 study of 495 U.S. business units in public firms. Both reports found significant positive effects of greater productivity and profitability in the first few years after a company adopted an ESOP.
14. In 1995, the U.S. Department of Labor released a study entitled "The Financial and Non-Financial Returns to Innovative Workplace Practices: A Critical Review." This study found that companies that seek employee participation, give employees company stock, and train employees, can positively affect American corporations' bottom lines. In addition, the report cited three studies that analyzed "the market reaction to announcements of ESOPs which found significant positive returns to firms which implemented ESOPs as part of a broader employee benefit or wage concession plan." The three studies are: Chang's 1990 "Employee Stock Ownership Plans and Shareholder Wealth: An Empirical Investigation"; Dhillon and Ramirez' 1994 "Employee Stock Ownership and Corporate Control"; and Gordon and Pound's 1990 "ESOPs and Corporate Control." citation at (202) 293-2971 or E-mail: esop@esopassociation.org.

For additional information about ESOP or The ESOP Association, visit the website at www.esopassociation.org, call 1-866-366-3832, or email esop@esopassociation.org.



ESOP Facts and Figures

- There are approximately 11,500 ESOPs in place in the U.S., covering 10 million employees (10% of the private sector workforce).
- These employees draw in excess of 3% of their total compensation from ESOP contributions.
- The growth of ESOP formation has been influenced by federal legislation. While the rapid increase in new ESOPs in the late 1980s subsided after Congress removed certain tax incentives in 1989, the overall number has remained steady with new plans replacing terminated ESOPs. Currently, it is estimated that there are approximately 11,500 ESOPs in place in the U.S. However, there is no precise way to measure this figure accurately since the overwhelming majority of ESOP companies are privately held and do not file public reports with the SEC.
- About 330 ESOPs - 3% - are in publicly traded companies. However, these companies employ just under 50% of the nation's 10 million employee owners.
- An estimated 7,000 of the 11,500 companies have ESOPs that are large enough to be a major factor in the corporation's strategy and culture.
- Approximately 4,000 ESOP companies are majority-owned by the ESOP.
- Approximately 2,500 are 100% owned by the ESOP.
- About 2% of ESOP companies are unionized.
- While ESOPs are found in all industries, more than 25% of them are in the manufacturing sector.
- At least 75% of ESOP companies are or were leveraged, meaning they used borrowed funds to acquire the employer securities held by the ESOP trustee.
- A majority of ESOP companies have other retirement plans, such as defined benefit pension plans or 401(k) plans, to supplement their ESOP.
- Of the 11,500 employee-owned companies nationwide, fewer than 2% were financially distressed when they established their ESOP.
- Total assets owned by U.S. ESOPs is estimated to be \$800 billion at the end of 2006.

For additional information about ESOPs or The ESOP Association, please visit the website at www.esopassociation.org, call 1-866-366-3832, or email esop@esopassociation.org

DOCUMENT 11

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.

DOCUMENT 12

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. It is taking letters about two weeks to be tested for anthrax, and then delivered to a Congressional office.

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, toll free 866.366.3832.

Document 13

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 have written your member of Congress who is not on the Ways and Means Committee urging her or him to contact her or his colleagues on Ways and Means about your concerns with Section 3701 of H.R. 3970. Wait about two weeks, and then call that office—telephone number, general switchboard is 202.224.3121, which will connect you to any office in the Capitol Hill complex—yes it is an 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, or go direct to www.house.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 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. 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 xxxxxxxx, and I am calling about a provision in H.R. 3970, Section 3701, the tax reform bill introduced by Congressman Rangel. This provision would have a very negative impact on companies, like [name your company, if S] [if not S, say many companies with employee ownership] and we need the members on the Ways and Means Committee to know of its potential negative impact on employee ownership in America. I wrote/called/fax'd/email'd our concerns on [date], and am following up to learn if Representative xxxxx has had a chance to review our concerns. 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 xxxxxx's reaction to our request to help stem the enactment of anti-employee ownership legislation."

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

It is hard to believe that a member would not convey your concerns about Section 3701 to a member, or members of the House Ways and Means Committee. It is not like you are asking your Representative to offer an amendment, to make a speech, to lead the effort to defeat the proposal—all you are doing is trying to raise the visibility of the controversial nature of Section 3701 among members of Ways and Means so that they are more likely to be open to changes, or deletion of Section 3701; or in other words, to step back and re-examine what they have been asked to do by Chair Rangel.

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. If the excuse for not conveying your concerns is the provision is only for big companies, you have the ammo to point out that this is not the impact of the provision at all—that it will stymie the efficient operation of nearly all S ESOP companies, and certainly make this point if Section 3701 would cause your own company not to be able to hire leaders that would make the company all it could be, and leaders that are the equal to, if not better than, the leaders of your competitors.

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.