



# The ESOP Association

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## ESOP Legislative Bulletin

### New Pro-ESOP Promotion Proposal Introduced in Senate

On August 6, 2009, Senator Blanche L. Lincoln (D-AR) introduced S. 1612, the ESOP Promotion and Improvement Act of 2009. The legislation has four sections, including an entirely new proposal to remove a 35 year bias against ESOP companies by the Small Business Administration.

One, S. 1612 would repeal the punitive 10% penalty tax on S corporations distributions from current earnings, also referred to as dividends, placed on the distributions from current earnings that are passed through to ESOP participants in cash.

Two, S.1612 would clarify that dividends paid by C corporations on ESOP stock are not a preference item in calculating the corporate alternative minimum tax.

Three, S. 1612 improves the 1042 ESOP tax deferred rollover provisions by (a.) permitting sellers to the ESOP of an S corporation to utilize the ESOP tax benefit referred to as the tax deferred rollover, or the so-called 1042 treatment; (b.) permitting proceeds received from a 1042 transaction to be reinvested in mutual funds consisting of operating U.S. corporation securities; and (c.) redefining what is a 25% owner, for purposes of IRC 1042, as a 25% owner or more of voting stock, or 25% owner or more of all stock of the corporation, instead of current law definition that owning of 25% of any class of stock is a 25% owner for purposes of IRC 1042.

And, four, S. 1612 would eliminate a bias against majority owned ESOP companies by making clear that a non-ESOP small businesses currently eligible for any Small Business Administration program is still eligible for the SBA program if becoming a majority owned ESOP company with the same characteristics it had before becoming a majority owned ESOP company. (A majority owned ESOP company is 50% plus owned by the ESOP on behalf of the employees.)

Senator Blanche Lincoln is the senior Senator from Arkansas elected in 1998 and as the fifth ranking majority member of the Senate Committee on Finance, chairs the Social Security, Pensions, and Family Policy Subcommittee.

Senator Mary L. Landrieu (D-LA) is an original co-sponsor. Senator Landrieu is chair of the U.S. Senate Committee on Small Business and Entrepreneurship as an original co-sponsor.

For more information, please call The ESOP Association at 202/293-2971 or email [media@esopassociation.org](mailto:media@esopassociation.org).

Did you know...

- Approximately 4,000 of the 11,500 ESOP companies in the U.S. are majority-owned by the ESOP.
- An estimated 7,000 ESOP companies have ESOPs that are large enough to be a major factor in the corporation's strategy and culture.
- Total assets owned by U.S. ESOPs is estimated to be \$800 billion at the end of 2006.

Source: *The ESOP Association*,  
[www.esopassociation.org](http://www.esopassociation.org)

On the calendar...

### Board of Directors Retreat

September 29 & 30, 2009

The Drake Hotel

Chicago, IL

Contact: 866/366-3832 or

[meetings@esopassociation.org](mailto:meetings@esopassociation.org)

### Las Vegas Conference and Trade Show

November 12 & 13, 2009

Caesar's Palace

Las Vegas, NV

Contact: 866/366-3832 or

[meetings@esopassociation.org](mailto:meetings@esopassociation.org)

For a complete list of conferences and events, please visit The ESOP Association's website at [www.esopassociation.org](http://www.esopassociation.org).