

118TH CONGRESS
1ST SESSION

H. R. 5011

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

JULY 27, 2023

Mr. KELLY of Pennsylvania (for himself, Mr. BLUMENAUER, Mr. WENSTRUP, Mrs. MILLER of West Virginia, Mr. ESTES, Mr. PASCRELL, Mr. DAVIS of Illinois, and Ms. SEWELL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Small Business, and Education and the Workforce, 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promotion and Expan-
5 sion of Private Employee Ownership Act of 2023”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) on January 1, 1998—nearly 25 years after
4 the Employee Retirement Income Security Act of
5 1974 was enacted and the employee stock ownership
6 plan (hereafter in this section referred to as an
7 “ESOP”) was created—employees were first per-
8 mitted to be owners of subchapter S corporations
9 pursuant to the Small Business Job Protection Act
10 of 1996 (Public Law 104–188);

11 (2) with the passage of the Taxpayer Relief Act
12 of 1997 (Public Law 105–34), Congress designed in-
13 centives to encourage businesses to become ESOP-
14 owned S corporations;

15 (3) since that time, several thousand companies
16 have become ESOP-owned S corporations, creating
17 an ownership interest for several million Americans
18 in companies in every State in the country, in indus-
19 tries ranging from heavy manufacturing to tech-
20 nology development to services;

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

1 (5) recent studies have shown that employees of
2 ESOP-owned S corporations enjoy greater job sta-
3 bility than employees of comparable companies;

4 (6) studies also show that employee-owners of S
5 corporation ESOP companies have amassed mean-
6 ingful retirement savings through their S ESOP ac-
7 counts that will give them the means to retire with
8 dignity;

9 (7) under the Small Business Act (15 U.S.C.
10 631 et seq.) and the regulations promulgated by the
11 Administrator of the Small Business Administration,
12 a small business concern that was eligible under the
13 Small Business Act for the numerous preferences of
14 the Act is denied treatment as a small business con-
15 cern after an ESOP acquires more than 49 percent
16 of the business, even if the number of employees, the
17 revenue of the small business concern, and the ra-
18 cial, gender, or other criteria used under the Act to
19 determine whether the small business concern is eli-
20 gible for benefits under the Act remain the same,
21 solely because of the acquisition by the ESOP; and
22 (8) it is the goal of Congress to both preserve
23 and foster employee ownership of S corporations
24 through ESOPs.

1 **SEC. 3. FULL DEFERRAL OF TAX FOR CERTAIN SALES OF**
2 **EMPLOYER STOCK TO EMPLOYEE STOCK**
3 **OWNERSHIP PLAN SPONSORED BY S COR-**
4 **PORATION.**

5 (a) ACCELERATION OF DEFERRAL.—Section 114(c)
6 of the SECURE 2.0 Act of 2022 is amended by striking
7 “December 31, 2027” and inserting “the date of the en-
8 actment of the Promotion and Expansion of Private Em-
9 ployee Ownership Act of 2023”.

10 (b) REPEAL OF LIMITATION.—

11 (1) IN GENERAL.—Section 1042 of the Internal
12 Revenue Code of 1986, as amended by section 114
13 of the SECURE 2.0 Act of 2022, is amended by
14 striking subsection (h).

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall apply to sales after the date
17 of the enactment of this Act.

18 **SEC. 4. DEPARTMENT OF THE TREASURY TECHNICAL AS-**
19 **SISTANCE OFFICE.**

20 (a) ESTABLISHMENT REQUIRED.—Before the end of
21 the 90-day period beginning on the date of enactment of
22 this Act, the Secretary of the Treasury shall establish the
23 S Corporation Employee Ownership Assistance Office to
24 foster increased employee ownership of S corporations.

25 (b) DUTIES OF THE OFFICE.—The S Corporation
26 Employee Ownership Assistance Office shall provide—

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

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

6 **SEC. 5. SMALL BUSINESS AND EMPLOYEE STOCK OWNER-**
7 **SHIP.**

8 (a) IN GENERAL.—The Small Business Act (15
9 U.S.C. 631 et seq.) is amended—

10 (1) by redesignating section 49 as section 50;
11 and

12 (2) by inserting after section 48 the following:

13 **“SEC. 49. EMPLOYEE STOCK OWNERSHIP PLANS.**

14 **“(a) DEFINITIONS.—**In this section—

15 **“(1) the term ‘ESOP’ means an employee stock**
16 **ownership plan, as defined in section 4975(e)(7) of**
17 **the Internal Revenue Code of 1986; and**

18 **“(2) the term ‘ESOP business concern’ means**
19 **a business concern that was a small business con-**
20 **cern eligible for a loan, preference, or other program**
21 **under this Act before the date on which more than**
22 **49 percent of the business concern was acquired by**
23 **an ESOP.**

24 **“(b) CONTINUED ELIGIBILITY.—**In determining
25 whether an ESOP business concern qualifies as a small

1 business concern for purposes of a loan, preference, or
2 other program under this Act, each ESOP participant
3 shall be treated as directly owning his or her proportionate
4 share of the stock in the ESOP business concern owned
5 by the ESOP.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on January 1 of the first cal-
8 endar year beginning after the date of the enactment of
9 this Act.

10 **SEC. 6. ESTABLISHMENT OF THE ADVOCATE FOR EM-**
11 **PLOYEE OWNERSHIP.**

12 (a) IN GENERAL.—Subtitle A of title III of the Em-
13 ployee Retirement Income Security Act of 1974 (29
14 U.S.C. 1201 et seq.) is amended by adding at the end
15 the following:

16 **“SEC. 3005. ADVOCATE FOR EMPLOYEE OWNERSHIP.**

17 “(a) IN GENERAL.—The Secretary of Labor shall ap-
18 point an Advocate for Employee Ownership within the
19 Employee Ownership Initiative established under section
20 346(b)(1) of the SECURE 2.0 Act of 2022 (division T
21 of the Consolidated Appropriations Act, 2023 (Public Law
22 117–328)). The appointment shall be made without regard
23 to the provisions of title 5, United States Code, relating
24 to appointments in the competitive service or Senior Exec-
25 utive Service.

1 “(b) DUTIES.—The Advocate for Employee Owner-
2 ship shall—

3 “(1) consult with the head of the Employee
4 Ownership Initiative established under section
5 346(b)(1) of the SECURE 2.0 Act of 2022 (division
6 T of the Consolidated Appropriations Act, 2023
7 (Public Law 117–328));

8 “(2) act as a liaison between the Department of
9 Labor, employee ownership advocates, employers
10 considering employee ownership, workers interested
11 in employee ownership, and other stakeholders, in-
12 cluding employee stock ownership plan sponsors and
13 participants;

14 “(3) provide public education and assistance re-
15 lated to the expansion of employee ownership
16 through the establishment and maintenance of prac-
17 tices that promote employee ownership, including the
18 use of employee stock ownership plans;

19 “(4) provide assistance for purposes of resolving
20 a dispute with the Department of Labor to any em-
21 ployee stock ownership plan sponsor, fiduciary, or
22 participant and help facilitate communication be-
23 tween such entities and the Department of Labor for
24 such purposes;

1 “(5) in consultation with the S Corporation
2 Employee Ownership Assistance Office of the De-
3 partment of the Treasury established under section
4 4 of the Promotion and Expansion of Private Em-
5 ployee Ownership Act of 2023, identify and rec-
6 ommend potential legislative and administrative
7 changes, including related to access to capital issues,
8 to increase practices that promote employee owner-
9 ship plans, including the use of employee stock own-
10 ership plans; and

11 “(6) coordinate with other Federal agencies, in-
12 cluding the Administrator of the Small Business Ad-
13 ministration, the Secretary of the Treasury, and the
14 Secretary of Commerce, and State and local govern-
15 ments on outreach and education to inform employ-
16 ees and employers about the possibilities and bene-
17 fits of employee ownership as a business ownership
18 succession planning option.

19 “(c) CONSULTATION AND INPUT.—The Secretary
20 shall solicit advice and input from the Advocate for Em-
21 ployee Ownership in developing regulations or interpreta-
22 tions of this Act that relate to employee stock ownership
23 plans.

24 “(d) COMPENSATION.—The Advocate for Employee
25 Ownership shall be entitled to compensation at the same

1 rate as the rate of basic pay in effect for a position at
2 level V of the Executive Schedule under section 5316 of
3 title 5, United States Code.

4 “(e) ANNUAL REPORT.—

5 “(1) IN GENERAL.—Not later than December
6 31 of each calendar year beginning after the date of
7 enactment of this section, the Advocate for Em-
8 ployee Ownership shall submit a report to the Com-
9 mittee on Health, Education, Labor, and Pensions
10 of the Senate and the Committee on Education and
11 the Workforce of the House of Representatives on
12 the activities of the Office of the Advocate for Em-
13 ployee Ownership during the fiscal year ending dur-
14 ing such calendar year, including the contents de-
15 scribed in paragraph (2).

16 “(2) CONTENT.—Each report submitted under
17 paragraph (1) shall—

18 “(A) summarize the assistance requests re-
19 ceived by the Advocate for Employee Ownership
20 during the fiscal year ending during the cal-
21 endar year of such report;

22 “(B) describe the activities, including the
23 activities described under paragraphs (3) and
24 (4) of subsection (b), and evaluate the effective-

1 ness of the Advocate for Employee Ownership
2 during such fiscal year;

3 “(C) describe any significant problems the
4 Advocate for Employee Ownership has identi-
5 fied during such fiscal year and ways to miti-
6 gate such problems;

7 “(D) contain recommendations for any ad-
8 ministrative or legislative action that may be
9 appropriate to resolve barriers to, and to
10 incentivize, practices that promote employee
11 ownership, including the use of employee stock
12 ownership plans; and

13 “(E) describe progress related to employee
14 ownership in businesses in the United States.

15 “(3) CONCURRENT SUBMISSION.—The Advocate
16 for Employee Ownership shall submit a copy of each
17 report submitted under paragraph (1) to the Sec-
18 retary of Labor, and any other appropriate official,
19 at the same time such report is submitted under
20 paragraph (1).

21 “(4) PUBLIC AVAILABILITY.—The Advocate for
22 Employee Ownership shall make a copy of each re-
23 port submitted under paragraph (1) available to the
24 public.

1 “(5) DEFINITION OF EMPLOYEE STOCK OWNER-
2 SHIP PLAN.—For purposes of this section, the term
3 ‘employee stock ownership plan’ has the meaning
4 given the term in section 4975(e)(7) of the Internal
5 Revenue Code of 1986.

6 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
7 is authorized to be appropriated such sums as may be nec-
8 essary to carry out subsection (d).”.

9 (b) CLERICAL AMENDMENT.—The table of contents
10 in section 1 of the Employee Retirement Income Security
11 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-
12 ing after the item relating to section 3004 the following
13 new item:

“Sec. 3005. Advocate for employee ownership.”.

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