

Employee Stock Ownership Plans (ESOPs): Background and Policy

November 19, 2026

Congressional Research Service
https://crsreports.congress.gov
R49521

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R49521

November 19, 2026

Elizabeth A. Myers
Analyst in Income Security

Employee Stock Ownership Plans (ESOPs): Background and Policy

An Employee Stock Ownership Plan (ESOP) is a type of defined contribution (DC) retirement plan designed to invest primarily in employer securities. In DC plans, workers are provided individual accounts funded by their own contributions, contributions from their employers, or both. Contributions and any investment earnings accrue to a participant's account, which can provide a source of income in retirement.

The most common type of DC plan is the 401(k) plan, which permits employees to defer compensation into their own accounts. In contrast, ESOPs are primarily or solely funded by employers: employees typically do not contribute to ESOPs to purchase shares of employer securities for their accounts. ESOPs, like nearly all tax-qualified private-sector DC plans, are governed by the Employee Retirement Income Security Act of 1974 (ERISA, P.L. 93-406) and provisions in the Internal Revenue Code (IRC).

To establish ESOPs, companies set up ESOP trusts, which acquire shares of employer securities sold by shareholders, by the company, or on the open market. In some cases, companies or ESOP trusts use loans to finance the purchase of shares. The value of shares acquired by the ESOP trust, which may increase if the value of the company sponsoring the ESOP increases, is allocated to employees' individual accounts as they work for the sponsoring company. Upon separating from employment or retiring, employees receive the cash value of their shares, or the shares themselves, which can be used as part of their retirement income. Participants are taxed on the value of their account when distributed, as is the case with other tax-deferred retirement plans.

Company owners commonly use ESOPs to transfer partial or full ownership of their businesses. Owners have several ways to sell their companies, such as initial public offerings (IPOs), direct sales to individuals, or sales to private equity firms. However, some owners find ESOPs attractive because they are a way to reward employees, preserve jobs, and promote the continuity of the business. In addition, ESOPs provide selling shareholders with a readily available market to purchase shares (and tax advantages for certain sellers). As the Baby Boomer generation reaches retirement age in the United States, ESOPs may become increasingly relevant as a business transition tool.

ESOPs can be stand-alone plans or combined with other retirement plans. The most common type of hybrid plan is the *KSOP*, which combines an ESOP with 401(k) features. In 2023, about 6,500 ESOPs (which includes KSOPs) covered roughly 15 million participants. While most ESOPs are stand-alone plans sponsored by privately held businesses and have fewer than 250 participants, most participants are in KSOPs sponsored by publicly traded corporations. A number of these corporations created ESOPs decades ago in response to favorable tax changes and, in some cases, as a means of preventing corporate takeovers that were prevalent during the 1980s. Publicly traded companies might offer KSOPs to their employees as a way to provide company stock investment exposure. Others offer stand-alone ESOPs that are not combined with a 401(k) plan.

Congress has expressed bipartisan interest in facilitating employee ownership of firms, particularly through the promotion and expansion of ESOPs. In July 2025, the Senate Committee on Health, Education, Labor, and Pensions (HELP) held a hearing entitled "Empowering Workers by Expanding Employee Ownership," and in January 2024, the Senate Committee on Small Business and Entrepreneurship held a hearing entitled "Succession Planning: Opportunities to Build Wealth and Keep Jobs in Local Communities." In the 117th Congress, the SECURE 2.0 Act of 2022 (P.L. 117-328) included multiple provisions related to ESOPs, such as expanding a tax deferral benefit to shareholders selling S corporation stock to ESOPs and directing the Department of Labor (DOL) to create an Employee Ownership Initiative.

This report provides an overview of ESOPs and how they function; selected ERISA and IRC requirements regarding participation, contributions, investments, and more; data on ESOP prevalence and participation; a discussion of stakeholder tax advantages, benefits, risks, and other considerations; and relevant policy issues. It also provides a legislative history and a summary of proposed legislation in the 119th Congress that would modify ESOP provisions and encourage employee ownership through ESOPs.

Contents

Overview of ESOPs 1
Who Can Sponsor an ESOP? 3
How Does an ESOP Work? 4
Establishing an ESOP Trust 4
ESOP Trust Acquires Company Shares to Allocate to Participants' Accounts 5
Employees' Shares in ESOP Can Accrue Investment Returns 11
Employees Receive Value of Account at Retirement 12
Data on ESOPs in 2023 12
Selected Characteristics of ESOPs 12
ESOP Distribution by Number of Participants 14
Selected ESOP Requirements 16
Minimum Participation and Coverage Standards 16
Contribution Types and Limits 17
Employer Contributions 18
Employee Contributions to KSOPs 19
Total Contribution Limit to Participants' Accounts 20
Minimum Vesting Requirements 22
Nondiscrimination, Top-Heavy, and Anti-Abuse Rules 23
Nondiscrimination Requirements 24
Top-Heavy Requirements 26
Anti-Abuse Requirements for S Corporation ESOPs 26
Voting Rights 27
Diversification Requirements 28
PPA's Diversification Requirement for DC Plans with Publicly Traded Stock 28
Benefit Distributions 29
When Benefits Begin 30
Form and Frequency of Benefit Distributions 31
Tax Treatment of Distributions 32
Tax Advantages of ESOPs 33
Tax Advantages for Selling Shareholders 34
Tax Advantages for Companies that Sponsor ESOPs 35
Tax Advantages for ESOPs Holding C Corporation Stock 35
Tax Advantages for ESOPs Holding S Corporation Stock 37
Tax Advantages for ESOP Participants 38
Benefits, Costs, and Planning Considerations for Companies Sponsoring ESOPs 38
Costs and Planning Requirements for Companies 39
The Repurchase Obligation 39
Stock Allocation Disparities 39
Benefits and Risks for ESOP Participants 40
Risks for Participants 41
Data on ESOP Companies' Sponsorship of Other Retirement Plans 42
Selected Policy Issues 43
Valuation of Employer Securities 43
Defining Adequate Consideration 45
EBSA's Enforcement of ESOP Violations 48

ESOP Valuation as Investment Advice under ERISA 50
Facilitating ESOP Sponsorship 52
Contribution Limits 52
Legislative History of the ESOP 54
Legislation in the 1970s Following ERISA 55
Legislation in the 1980s 56
Legislation in the 1990s and Early 2000s 59
Recent ESOP Legislation 60
Proposed Legislation in the 119th Congress 64

Figures

Figure 1. Illustrative Example of Leveraged ESOP Mechanics 8
Figure 2. Illustrative Example of Nonleveraged ESOP Mechanics 10

Tables

Table 1. Selected Characteristics of ESOPs in 2023 13
Table 2. Distribution of ESOPs, by Number of Participants 14
Table 3. Defined Contribution Plan Limits in 2026 21
Table 4. Diversification Requirements for ESOPs 29
Table 5. Deductible Expenses for ESOPs Sponsored by C Corporations 36
Table 6. ESOPs Based on Whether the Sponsoring Employer Sponsors Additional Retirement Plans 43

Table A-1. Twenty Largest Plans Indicating Having ESOP Features in Plan Year 2023 68
Table A-2. Ten Largest ESOPs with 50% or More of Plan Assets Invested in Employer Securities in Plan Year 2023 70

Appendixes

Appendix. Largest Plans in DOL ESOP Data 68

Contacts

Author Information 71

Overview of ESOPs

An Employee Stock Ownership Plan (ESOP) is a type of defined contribution (DC) retirement plan that is designed to invest primarily in shares of stock issued by the sponsoring employer, called *qualifying employer securities*. In DC plans, workers are provided individual accounts funded by their own contributions, contributions from their employers, or both. Contributions and any investment earnings accrue to a participant's account, which can provide a source of income in retirement. The 401(k) plan is the most common type of DC plan. However, unlike 401(k) plans, which permit employees to defer compensation to fund their own accounts, ESOPs are primarily or solely funded by employers—employees typically do not contribute to ESOPs to purchase shares of employer securities for their accounts.[1] ESOPs, like all tax-qualified private-sector DC plans, are governed by the Employee Retirement Income Security Act of 1974 (ERISA, P.L. 93-406) and provisions in the Internal Revenue Code (IRC).

To establish ESOPs, companies set up ESOP trusts, which acquire shares of employer securities sold by shareholders, by the company, or on the open market. In some cases, companies or ESOP trusts use loans to finance the purchase of shares. The value of such shares acquired by the ESOP trust, which may increase if the value of the company sponsoring the ESOP increases, is allocated to employees' individual accounts as they work for the sponsoring company. Upon separating from employment or retiring, employees receive the cash value of their shares, or the shares themselves, which can be used as part of their retirement income. Participants are taxed on the value of their account when distributed, as they are with other tax-deferred retirement plans.

ESOPs are commonly used to transfer business ownership. An owner of a private company might sell part or all of his or her company to the ESOP, where it becomes owned by employees, as an alternative to selling the company to an outside buyer (e.g., another individual or a private equity firm), a management buyout, or going public. As the United States undergoes a demographic trend in which the Baby Boomer generation—comprising those born between 1946 and 1964—reaches retirement age (a trend sometimes referred to as the "silver tsunami"), ESOPs may become increasingly relevant as a business transition tool. Many older individuals own businesses: The Census Bureau's 2019 Annual Business Survey found that 51% of business owners were aged 55 and older in 2018.[2] Some stakeholders have indicated that many older Americans who own businesses lack exit planning strategies.[3] ESOPs represent one option for certain business owners looking to transition out of their businesses.[4]

Selling part or all of a private company to an ESOP is a way for an owner to reward their employees and promote the continuity of the business. In some cases, the outgoing company owner might have long-standing relationships with employees and seek to promote their

[1] In certain cases, employees might be given a choice to purchase employer stock for the ESOP by, for example, transferring their 401(k) plan assets to the ESOP. This practice is likely rare. See National Center for Employee Ownership (NCEO), "Can funds from other retirement funds be used for an ESOP purchase?," https://www.nceo.org/employee-ownership-faq/can-funds-from-other-retirement-funds-be-used-for-an-esop.

[2] See U.S. Census Bureau, *Business Owners' Ages: Over Half of U.S. Business Owners Were Age 55 and Over*, https://www.census.gov/content/dam/Census/library/visualizations/2020/comm/business-owners-ages.pdf.

[3] See, for example, Alison Coleman, "The 'Silver Tsunami' Is Reshaping Small Business: Why Exit Planning Can't Wait," *Forbes*, January 14, 2026, https://www.forbes.com/sites/alisoncoleman/2026/01/14/the-silver-tsunami-is-reshaping-small-business-why-exit-planning-cant-wait/; and Doug Lepiso, "Baby Boomers Are Retiring in Droves. Private Equity is Waiting," *New York Times*, October 28, 2026, https://www.nytimes.com/2026/10/28/opinion/private-equity-baby-boomers-investors.html.

[4] See Cindy Perman, "Employee ownership can help weather the 'silver tsunami'," *Harvard Business School*, October 9, 2025, https://www.hbs.edu/bigs/silver-tsunami-employee-ownership.

continued financial well-being. In addition, selling to an ESOP provides a company owner with liquidity—by creating a market for the company's stock shares—and a way to diversify the company owner's investment portfolio.

While most ESOPs are sponsored by privately held companies and have fewer than 250 participants, most ESOP participants are in KSOPs—hybrid retirement plans that combine ESOPs with 401(k) features. Many KSOP participants are in plans sponsored by large publicly traded companies. In some cases, these companies match employees' 401(k) contributions with employer stock into the ESOP portion of the plan. Corporations with ESOPs benefit from several tax advantages, such as the ability to deduct dividends paid on employer stock held in an ESOP when meeting certain requirements. Publicly traded companies also use ESOPs to go private, spin off a division or subsidiary, execute management buyouts, or facilitate corporate acquisitions.[5] In the 1980s, a number of corporations created ESOPs as a means of preventing corporate takeover attempts that were prevalent and, perhaps more importantly, as a result of favorable tax provisions enacted in legislation at the time.[6]

Some research suggests that ESOP-owned companies have better company performance and higher retention rates compared with other companies, because employees might be more productive when their retirement accounts are tied to the value of their employer's stock.[7] Knowing that investing primarily in one company carries a degree of risk, many companies with ESOPs sponsor additional retirement plans, which enable employees to diversify their retirement holdings. In addition, ESOPs must allow participants to diversify a portion of their accounts after meeting tenure and age requirements.

Though the core purpose of an ESOP is to provide retirement benefits for employees through employee ownership of the company sponsoring the plan, an ESOP can also function as a tool of corporate finance. Unlike other retirement plans, ESOPs are permitted to borrow money from certain related parties to purchase stock shares to hold in the ESOP, and the company sponsoring the ESOP makes tax-preferred contributions to the ESOP to pay off the loan. Companies that sell their stock to an ESOP can use the cash they receive for corporate activities such as expanding operations, acquiring other companies, or paying off debt.

Senator Russell Long—who advocated for ESOPs in Congress in the 1970s as then-Chair of the Senate Finance Committee—argued that ESOPs gave individuals the ability to build wealth without having to first accumulate sufficient assets. In statements on the Senate floor in 1983, he remarked, "If we continue to rely solely on traditional techniques of finance, those techniques will continue to allocate productive credit primarily to the already wealthy. With that approach, the concentrated ownership of newly created capital is virtually assured, and the rich-get-richer legacy of U.S. capitalism will continue unabated."[8] He later stated, "By encouraging widespread

[5] As a recent example, BDO USA created an ESOP in 2023, following its shift from a partnership to a professional-services corporation. BDO's partners sold about 42% of their shares to the ESOP. See BDO, "Together We Thrive, as an ESOP Company," https://www.bdo.com/about/esop. See also M. Maurer, "BDO to Establish Employee Stock Ownership Plan as Part of U.S. Restructuring," *Wall Street Journal*, August 14, 2023, https://www.wsj.com/articles/bdo-to-establish-employee-stock-ownership-plan-as-part-of-u-s-restructuring-ddfd267f.

[6] See, for example, Michael Hiltzik, "ESOPs Now a Boon for Management: Playing Key Roles in Buy-Outs, Takeover Defenses, Refinancing," *Los Angeles Times*, December 30, 1984, retrieved from https://www.proquest.com/hnplatimes/docview/154025171/7312D6FFECE441A7PQ/1?accountid=12084&sourcetype=Newspapers.

[7] See NCEO, "What the Research Says: The Impact of Employee Ownership," https://www.nceo.org/research/research-findings-on-employee-ownership; and SES ESOP Strategies, "Introduction to ESOPs," https://sesesop.com/introduction-to-esops/.

[8] Sen. Russell Long, remarks in the Senate, *Congressional Record*, vol. 129, part 24 (November 17, 1983), p. 33818.

employee ownership in the United States, we would be making good on our promise of a better life for our people and challenging other nations to do likewise."

Who Can Sponsor an ESOP?

In the United States, major business types include sole proprietorships, partnerships, C corporations, and S corporations.[9] ESOPs are available only to C and S corporations because they are the corporate forms that issue stock.[10]

C corporations, also known as ordinary corporations, are named for Subchapter C of the IRC, which details their tax treatment. A C corporation is considered to be an entity that is separate from its owners (shareholders) for legal purposes. C corporations are taxed once at the corporate level and again at the individual shareholder level. The corporation pays tax on profits; shareholders pay tax on dividends. C corporations can issue multiple classes of stocks. Some C corporations are publicly traded, though most are privately held.[11]

S corporations are named for Subchapter S of the IRC, which details their tax treatment. S corporations are pass-through entities (i.e., they generally do not pay corporate-level income tax and operating income and loss are computed at the corporate level and passed through to the shareholders), can only issue one class of stock, and must have no more than 100 shareholders, and those shareholders must be either eligible individuals or one of a limited number of eligible entities.[12] S corporation earnings are allocated among shareholders, who pay tax on the earnings at their own individual tax rates in the year earned, regardless of whether the income is distributed to shareholders. S corporations are often "closely held" businesses, in which the business is owned by a limited number of owners.[13] S corporation stock is not publicly traded.

Most ESOPs are sponsored by privately held companies, and most privately held companies that sponsor ESOPs are S corporations. According to the National Center for Employee Ownership (NCEO), a nonprofit organization that supports employee ownership initiatives, about 93% of the 6,609 retirement plans identifying as having ESOP features in 2023 were sponsored by private

[9] For more information on business types, see CRS Report R43104, *A Brief Overview of Business Types and Their Tax Treatment*.

[10] Governmental plans cannot be ESOPs because they do not issue employer stock.

[11] In 2022, according to Internal Revenue Service (IRS) data, about 1.5 million corporations filed Form 1120, indicating that they were C corporations. See IRS, *Statistics of Income, Corporation Income Tax Returns Complete Report, 2022*, p. 9, https://www.irs.gov/pub/irs-pdf/p16.pdf. In that same year, a Dartmouth study indicated that there were "less than 4,000" publicly traded companies in the United States. See Kirk Kardashian, "Where Did All the Publicly traded companies Go?," September 26, 2024, https://tuck.dartmouth.edu/news/articles/where-did-all-the-public-companies-go.

[12] The formal requirements for S corporation status are at IRC §1361. While operating income and loss are computed at the corporate level and passed through to the shareholders, other items with special tax attributes are passed through separately. See CRS Report R43104, *A Brief Overview of Business Types and Their Tax Treatment*.

[13] Definitions of a *closely held* business vary, but all emphasize private ownership (in this context, meaning not publicly traded) and the limited number of owners of the business. For one formal definition, the IRS defines a closely held corporation as one that (1) is not a personal service corporation, and (2) at any time during the last half of the tax year, more than 50% of the value of its outstanding stock is, directly or indirectly, owned by or for five of fewer individuals (which includes certain trusts and private foundations). See IRS*, Publication 542 (01/2024), Corporations*, https://www.irs.gov/publications/p542#en_US_202401_publink1000257747. Not all S corporations will meet this formal definition. Conversely, although C corporations can have an unlimited number of shareholders and can be publicly traded, some C corporations are closely held businesses if they are privately owned and have a limited number of shareholders. Additionally, other business forms, including many partnerships and all sole proprietorships, are closely held businesses (but not closely held corporations under the IRS definition, since they are not corporations).

companies.[14] Among privately held companies sponsoring ESOPs, two-thirds of ESOPs were sponsored by S corporations in 2023.[15]

ESOPs sponsored by publicly traded companies are less common but cover more participants: In 2023, the 511 ESOPs that the NCEO identified as being sponsored by publicly traded companies accounted for 12.2 million (81.0%) of the 15.1 million participants covered by ESOPs in that year.[16]

How Does an ESOP Work?

First, a company creates an ESOP trust. An ESOP must be structured as a stock bonus plan or a combination stock bonus/money purchase plan.[17] The ESOP trust acquires company stock—with or without the use of a loan from a lender—and allocates the value of company stock shares to participants' individual accounts over time.[18] The shares of stock may increase in value as the value of the company increases.[19] When employees separate from the employer, they typically receive the cash value of the company shares allocated to their accounts (though some plans might distribute the shares themselves). The following sections provide more detail on how companies set up and fund ESOPs.

Establishing an ESOP Trust

First, a company establishes an ESOP trust. The ESOP trust must be maintained pursuant to a written document. The trust primarily holds shares of company stock but can also hold cash or other investments. Once the ESOP trust holds shares of employer stock, the ESOP is considered a legal shareholder of the corporation.[20]

The ESOP trust is governed by a trustee, appointed by the sponsoring company's board of directors, who manages the trust for the exclusive benefit of plan participants. An ESOP trustee can be an individual or an entity (such as a bank or trust company) and can be internal or independent. An internal ESOP trustee is a company employee who might be a member of a management team, on the company board, or an ESOP participant.[21] An independent trustee is not affiliated with the company. ESOP trustees typically serve as the plan's fiduciary, though any individual who exercises discretion over plan decisions is considered a fiduciary under ERISA.[22]

[14] See NCEO, Employee Ownership by the Numbers, https://www.nceo.org/research/employee-ownership-by-the-numbers.

[15] See NCEO, Employee Ownership by the Numbers.

[16] See NCEO, Employee Ownership by the Numbers. Most of these participants were in KSOPs, which combine an ESOP with a 401(k) plan (as discussed below).

[17] See IRC §4975. A stock bonus plan is a type of defined contribution (DC) plan under which the plan may provide, or the employer may determine, how much employer stock is contributed to employees' accounts each year (similar to a profit-sharing plan, except that employer contributions in a profit-sharing plan are made in cash). A money purchase plan is a type of DC plan in which the employer is required to make contributions to employees' accounts based on the plan's contribution formula. For information on the types of DC plans, see CRS Report R47152, *Private-Sector Defined Contribution Pension Plans: An Introduction*.

[18] Company stock is also referred to as *employer stock* or *employer securities* throughout this report.

[19] Conversely, the shares of stock may decrease in value as the value of the company declines.

[20] The ESOP is considered one shareholder regardless of the number of participants in the plan.

[21] The individual selling employer securities to the ESOP is permitted to be the internal trustee.

[22] See CRS Report RL34443, *Summary of the Employee Retirement Income Security Act (ERISA)*.

An ESOP can exist as a stand-alone retirement plan or can be combined with another type of DC retirement plan. The most common type of hybrid plan is a *KSOP*, which is a single plan that combines an ESOP with a 401(k) feature.[23]

KSOPs: Combining ESOPs with 401(k) Features

An ESOP can exist as a stand-alone retirement plan or can be combined with another type of DC retirement plan. The most common type of hybrid plan is a *KSOP*, which is a single plan that combines an ESOP with a 401(k) feature. CRS analysis of data from the U.S. Department of Labor (DOL) indicates that a number of 401(k) plans, particularly those sponsored by large corporations, are technically KSOPs, even if the name of the plan is, for example, "Company A's 401(k) Plan," because the plan contains an ESOP.[24]

The ESOP portion of the plan contains only employer contributions and is invested primarily in employer stock. Employees typically do not contribute to the ESOP portion of a KSOP to purchase employer stock shares. The 401(k) portion of a KSOP permits employees to contribute to their own accounts and typically allows participants to invest their contributions among a range of investment options. This means that KSOP participants are likely to have a mix of employer stock investments and other diversified investments. Both stand-alone ESOPs and KSOPs are included in DOL ESOP data: most plans are stand-alone ESOPs, though most participants are in KSOPs (see **Table 1**).

Some employers sponsor only a stand-alone ESOP or a KSOP. Others sponsor additional retirement plans for their employees for which the ESOP or KSOP participants might be eligible, including 401(k) plans or defined benefit (DB) plans.[25] Employers might choose to sponsor a KSOP instead of an ESOP and a separate 401(k) plan to reduce administrative burdens and associated costs (e.g., the plan sponsor would have one plan document and be required to file one annual Form 5500 filing instead of two). Employers might choose to sponsor two separate plans if, for example, they want to cover different groups of employees or find separate plans advantageous for compliance testing purposes.

Publicly traded companies are more likely than privately held companies to sponsor KSOPs. Research indicates that in 2023, approximately 8.4 million active participants were in 399 ESOPs sponsored by publicly traded companies.[26] Of the 399 ESOPs sponsored by publicly traded companies, 304 were KSOPs that held a total of $211 billion in employer stock, corresponding to an average of $19,000 in company stock held per employee. The other 95 ESOPs sponsored by publicly traded companies were stand-alone ESOPs with 174,000 participants and held $28 billion in company stock, corresponding to an average of $121,000 in company stock per participant.

ESOP Trust Acquires Company Shares to Allocate to Participants' Accounts

ESOP trusts acquire company stock shares from a selling shareholder, such as a company founder or other existing private shareholders, or—in the case of publicly traded shares—the open

[23] The term "KSOP" is not found in statute. Though the KSOP is the most common hybrid ESOP plan, an ESOP can also be combined with a profit-sharing plan or a money purchase pension plan. Combinations of ESOPs and money purchase plans are not common: prior to 1981, some corporations combined them to raise the deductible limits on employer contributions from 15% to 25%. Enactment of P.L. 97-34 eliminated the need for this strategy. CRS analysis of DOL Form 5500 data for plan year 2023 found that 0.4% of ESOPs were structured as money purchase plans.

[24] For example, plans sponsored by Walmart, Target, The Home Depot, CVS, Lowes, and JPMorgan Chase indicated having ESOP features in publicly available Department of Labor data (see **Table A-1**).

[25] In defined benefit (DB) plans (sometimes referred to as traditional pension plans), participants typically receive monthly payments in retirement based on a formula that uses either (1) a combination of length of service, accrual rate, and average of final years' salary, or (2) a flat dollar amount times the number of months or years in the plan. Some plans offer participants the option to receive their benefits as a lump-sum amount.

[26] See Joseph Blasi and Douglas Kruse, "Employee Ownership and ESOPs: What We Know From Recent Research," May 2026, at https://www.aspeninstitute.org/wp-content/uploads/2026/05/Employee-Ownership-and-ESOPs-What-We-Know-from-Recent-Research.pdf

market.[27] Companies can also issue new shares or treasury shares to the ESOP trust.[28] ESOPs are permitted to take out loans from related third parties to finance the purchasing of qualifying employer securities, and many companies with ESOPs choose to do so. An ESOP trustee may not pay more than fair market value for shares sold to an ESOP (see the "Valuation " section of this report).

The ESOP trust owns a portion or all of the company's stock; if the trust owns 100% of the employer stock, the company is referred to as a 100% ESOP-owned corporation. Similarly, if the trust owns 50% of the employer's stock, the company is referred to as a 50% ESOP-owned corporation. A 30% initial purchase of employer stock is common, as this is the percentage at which shareholders selling closely held C corporation stock receive special tax treatment (see "Tax Advantages for Selling Shareholders"). Some companies might stay 30% ESOP-owned for periods of time, while others might gradually increase the percentage owned by the ESOP by selling additional shares to the ESOP over time.

The ESOP trust holds legal ownership of all company shares. As employees work for the company sponsoring the ESOP, the value of shares is allocated to their individual accounts in the ESOP trust based on a formula that considers, for example, relative pay. The participants in the plans are the *beneficial owners* of their allocated stock shares and are treated as if they own the assets, though the ESOP trustee is the legal owner of all shares held in the ESOP.

Leveraged ESOPs

Many companies borrow money to fund their ESOPs. In general, tax-qualified retirement plans are not permitted to borrow money from certain related parties.[29] However, ESOPs have an exemption that permits them to borrow money from certain related parties to purchase company stock if specific conditions are met (e.g., that the loan is primarily for the benefit of plan participants and that the collateral consists only of qualifying employer securities).[30]

An ESOP trust can borrow money from the company, a selling shareholder, or a third-party lender (such as a bank or a private equity group). In practice, third-party lenders generally do not loan directly to ESOP trusts. Instead, they loan money to the company sponsoring the ESOP (this loan is referred to as the *outside loan*). The company then uses that money to make a loan to the ESOP (this loan is referred to as the *inside loan*). Outside loan repayment schedules are negotiated between the third-party lender and the company. The inside loan term is between the company and the ESOP and might be structured to have a longer repayment schedule.

Once the ESOP trust holds the loan proceeds (either because the ESOP took out a loan or the company sponsoring the ESOP took out a loan and then loaned money to the ESOP), it purchases shares of company stock from the company, from shareholders, or, for publicly traded shares, on the open market.[31] Loans used to purchase employer securities are referred to as *acquisition*

[27] In some cases, ESOPs use funds from other retirement plans, such as 401(k) plans, to fund the ESOP. This can be a complex decision and is not common practice. See, NCEO, "Can funds from other retirement funds be used for an ESOP purchase?," https://www.nceo.org/employee-ownership-faq/can-funds-from-other-retirement-funds-be-used-for-an-esop.

[28] Treasury shares are the company's own shares that have been repurchased from the market and are held by the company.

[29] See ERISA Section 406 (29 U.S.C. §1106) and IRC §4975(c)(1)(B).

[30] See ERISA Section 408(b)(3) (29 U.S.C. §1108(b)(3)) and IRC §4975(d)(3).

[31] Another way to create a leveraged ESOP is for the company to take out a loan, set up a separate nonleveraged ESOP, and make stock contributions to the nonleveraged ESOP that are equal to the amount of the loan payment.

loans. In some cases, a selling shareholder can loan the money to the company or ESOP so that it can purchase the shareholder's shares (known as *seller financing*).[32]

Shares purchased with a loan are held in a *suspense account* within the ESOP trust. The collateral for the acquisition loan is the unreleased shares held in the suspense account.[33] Each year, the employer makes fixed, mandatory contributions to the ESOP trust to cover that year's principal and interest payments based on the loan term.[34] The shares in the ESOP's suspense account are allocated to participants' accounts at the same rate that the loan is paid off based on the plan's loan release formula.[35] Companies with internal loans often structure the internal loan repayment schedule to align with the rate at which the company wants to allocate the value of shares to participants' accounts.

For example, a plan might make loan payments corresponding to the release of 100 shares from the suspense account in a year. The total compensation of all employees eligible to receive contributions is $500,000. Employee A made $100,000 this year, so Employee A's individual account would receive an allocation equal to the value of one-fifth of the withdrawn shares (20 shares). **Figure 1** provides an illustrative example of how a leveraged ESOP using an outside/inside loan structure works.

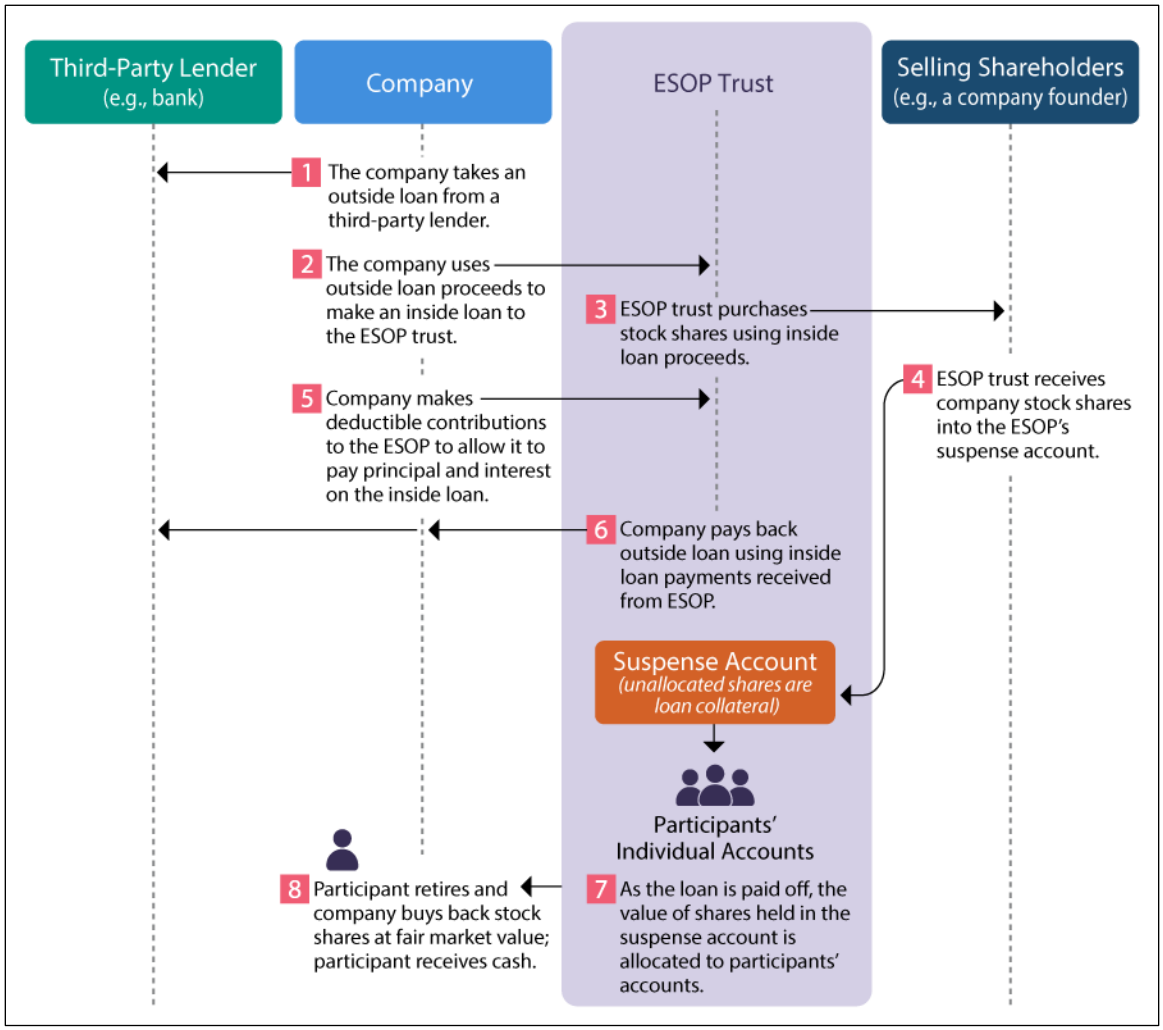
[32] In some cases, a bank loan may be insufficient to buy 100% of the company's shares and the company may need additional sources of financing, such as mezzanine or seller financing. See NCEO, "Can a seller finance an ESOP loan?," https://www.nceo.org/employee-ownership-faq/can-a-seller-finance-an-esop-loan. Mezzanine financing is a type of financing that combines debt and equity characteristics. See Adam Hayes, "Understanding Mezzanine Financing: How It Works and Its Uses," April 4, 2026, https://www.investopedia.com/terms/m/mezzaninefinancing.asp.

[33] If the ESOP defaulted on its loan, the lender could take the collateral from the suspense account. Shares that have been allocated to participants' accounts are not permitted to be used as collateral. Lenders generally prefer lending directly to companies because ESOPs can offer only stock as collateral, compared with a company's ability to offer other assets.

[34] Dividends on employer securities held in the ESOP can also be used to repay the loan.

[35] The percentage of shares released each year is based on (1) the percentage of loan principal that is paid off that year or (2) the percentage of loan principal and interest paid off that year.

Figure 1. Illustrative Example of Leveraged ESOP Mechanics



Source: Congressional Research Service (CRS).

Notes: This figure is an example of how a leveraged ESOP works. ESOP mechanics vary in practice. For example, instead of the company buying back a departing participant's shares, the company might contribute funds to the ESOP, and the ESOP would buy back the departing participant's shares. In addition, some ESOPs take out loans directly from a lender, though this is not as common as the company taking out a loan and then making an inside loan to the ESOP.

ESOPs can become leveraged at any point if the company sponsoring the ESOP (or the ESOP itself) takes out a loan to purchase employer securities for the ESOP or refinance existing loans used to acquire shares. Leveraged ESOPs that pay off their loans are no longer considered leveraged.

ESOPs can go between phases of being leveraged and nonleveraged. For example, an ESOP might acquire stock shares with a loan to fund an initial purchase of 30% of the company stock from a founder seeking to transition his or her business, pay off the loan in full, and then take out another loan to purchase the rest of the company stock shares when the founder decides to sell the rest of the business. Some ESOPs might become leveraged so that the company can address a "have" versus "have not" employee situation in which older employees hold most of the company stock shares compared with newer employees.

Other companies might use ESOP leveraging to accomplish goals such as acquiring competitors or funding capital expenditures. ESOP loans are permitted to be used only for the purchase of employer securities for an ESOP. However, a company can take out an outside loan and then make an inside loan from the company to the ESOP. The ESOP uses the inside loan proceeds to purchase newly issued stock shares from the company. The company can use the cash it receives from the ESOP for its business goals, while the ESOP has a debt to the company for loaning it money to purchase the newly issued stock shares. The company pays off the ESOP's debt by making tax-deductible contributions to the ESOP to repay the loan principal (and any interest accrued on the loan).[36] This can be a tax-advantaged strategy compared with a company taking out a traditional loan from a bank to finance business activities.

Nonleveraged ESOPs

Nonleveraged ESOPs, or the companies sponsoring them, do not borrow money from certain related parties to acquire employer securities for the ESOP.[37] Nonleveraged ESOPs acquire company stock in the following ways:

- A company contributes shares directly or issues new shares to the ESOP.
- The company makes cash contributions to the ESOP trust.[38] The ESOP uses the cash to purchase shares from the existing owner(s) or shareholders. The selling shareholder receives cash from the ESOP in exchange for the company shares.[39]

Employers make fixed contributions or discretionary contributions to the ESOP trust, typically on an annual basis. Employers might choose to make discretionary contributions based on the company's performance in a year, though IRS requires that employers maintain "substantial and recurring" contributions to maintain the plan's tax-qualified status.[40]

NCEO noted the following:

> A significant minority of ESOPs are funded by the company making annual discretionary cash contributions to the plan. The ESOP uses these contributions to buy shares from the owner(s) year-by-year. The company might continue this way until all shares that are to be sold are sold, or the ESOP may at some point borrow funds to acquire the remaining shares.[41]

The value of stock shares is allocated to participants' accounts based on the total amount that the employer contributes to the ESOP trust that year and, typically, the employee's relative pay (though some allocation formulas take an employee's tenure into account).

To illustrate, a company contributes $50,000 to its ESOP to purchase 1,000 stock shares in a year. As in the previous example for a leveraged ESOP, Employee A made one-fifth of the total

[36] Contributions used to repay ESOP loans are deductible up to a limit. In addition, C corporations sponsoring leveraged ESOPs can deduct 100% of the contributions used to repay interest on the ESOP loan.

[37] Nonleveraged ESOP trusts do not have a suspense account.

[38] ESOPs can hold cash contributions until they reach a sufficient level to purchase the desired number of shares. ESOPs cannot hold only cash indefinitely; otherwise, the IRS might question the ESOP's plan status. See NCEO, *Selling to an ESOP and Financing the Deal: 12th Edition* (NCEO, 2023), p. 19.

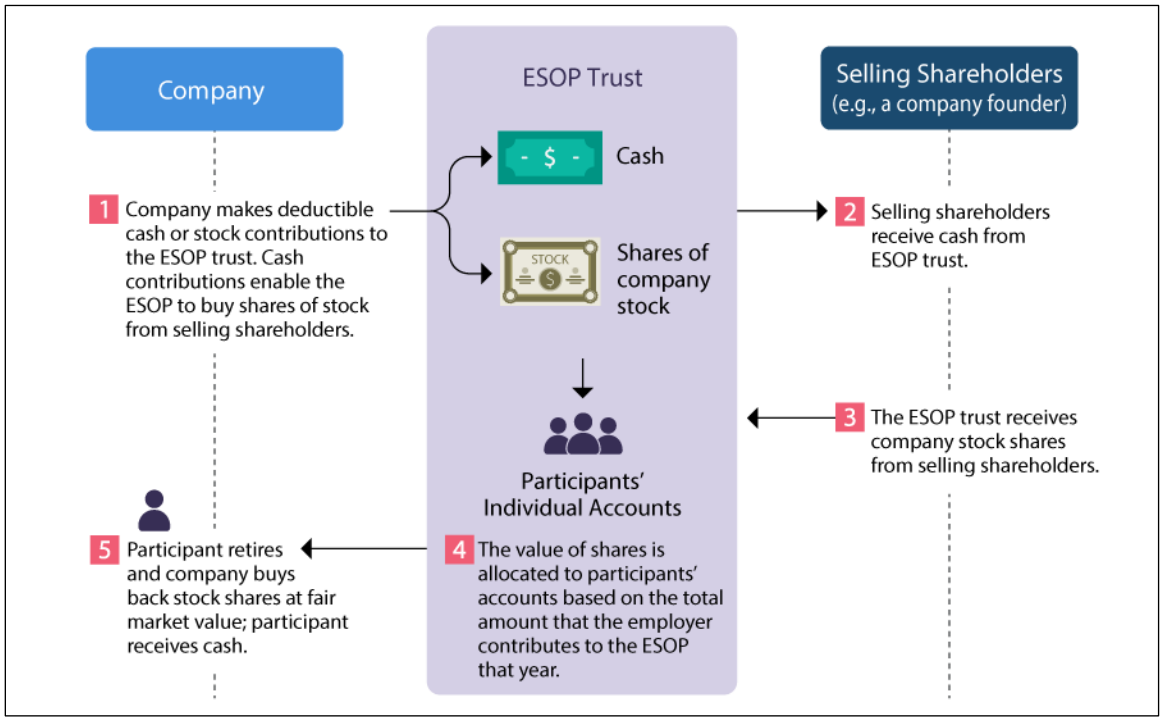
[39] If a company has multiple owners, the individual owners can decide whether they want to sell their shares to the ESOP (i.e., the company can be partially owned by the ESOP and partially owned by other shareholders).

[40] See IRS, *No Contributions to your Profit Sharing 401(k) Plan for a While Complete Discontinuance of Contributions and What You Need to Know*, https://www.irs.gov/retirement-plans/no-contributions-to-your-profit-sharing-401-k-plan-for-a-while-complete-discontinuance-of-contributions-and-what-you-need-to-know.

[41] See NCEO, *An Introduction to ESOPs: 22nd Ed.*, (NCEO, 2026).

compensation paid to employees in that year, so Employee A would receive one-fifth of the stock shares purchased with the company contribution, 200 shares, to his or her individual account that year. **Figure 2** provides an example of nonleveraged ESOP mechanics.

Figure 2. Illustrative Example of Nonleveraged ESOP Mechanics



Source: Congressional Research Service (CRS).

Notes: This figure is an example of how a nonleveraged ESOP works. ESOP mechanics vary in practice. For example, instead of the company buying back a departing participant's shares, the company might contribute funds to the ESOP, and the ESOP would buy back the departing participant's shares.

Other Investments in an ESOP Trust

In addition to employer stock shares, ESOP trusts might have other holdings, such as cash, mutual funds, or exchange-traded funds (ETFs). ESOPs holding C corporation stock may receive dividends on such stock shares. ESOPs holding S corporation stock may receive distributions on S corporation shares (which are similar to dividends on C corporation shares) into the trust.

Dividends in C Corporations. C corporations may pay dividends on company stock shares. Dividends are a portion of a company's profit that is paid to shareholders. Dividends can be paid in stock, in cash, or a mixture of stock and cash.

Companies with ESOPs that pay dividends on company stock shares receive a tax advantage: The company may deduct these dividends from its taxable income if certain conditions are met.[42] To be deductible, these dividends must be

- paid in cash directly to the ESOP participants,

[42] See IRC §404(k). See NCEO, "ESOP Tax Incentives and Contribution Limits," https://www.nceo.org/articles/esop-tax-incentives-contribution-limits.

- paid to the ESOP and then distributed in cash from the ESOP to the ESOP participants no later than 90 days after the end of the plan year in which the dividend is paid,
- paid to the ESOP and reinvested in company stock (at the election of the ESOP's participants), or
- used to repay a loan used to acquire company stock.[43]

Dividends paid in cash to ESOP participants, either directly or via the ESOP, are included in a participant's taxable income in the year that the dividend is paid. Cash payments of dividends are not eligible to be rolled over to another retirement account; are not subject to the 10% early distribution penalty typically applied to withdrawals from retirement accounts taken before age 59½, death, or disability; and are not subject to the mandatory 20% withholding otherwise applicable to retirement plan distributions.[44]

Dividends reinvested in company stock held within the ESOP are no longer treated as dividends but instead as earnings in the ESOP. Like other earnings on ESOP shares, dividends reinvested in the ESOP are taxed at normal income tax rates when participants take withdrawals.

Dividends used to repay an ESOP loan can come from allocated shares (i.e., those allocated to participants' accounts) or unallocated shares (i.e., those held in a suspense account and not yet allocated to participants' accounts).

Distributions on S Corporation Shares. S corporations that sponsor ESOPs might pay distributions on S corporation shares. S corporations that pay distributions must do so on a pro rata basis among all shareholders (which, in an S corporation with an ESOP, includes the ESOP trust and any other shareholders).[45] S corporation distributions paid on stock held in an ESOP are not deductible to the corporation.[46]

S corporation distributions can be used to pay ESOP administrative expenses, purchase additional shares from selling shareholders, buy back shares from separating employees, or repay an ESOP loan.[47] Like dividends on C corporation stock used to repay loans, distributions on S corporation stock used to repay loans can come from allocated shares or unallocated shares.[48]

Employees' Shares in ESOP Can Accrue Investment Returns

The contributions made to an employee's account are credited with a share of the trust fund's investment earnings or losses. These investment returns include any appreciation or depreciation that occurs on the value of the company stock shares, and any earnings and losses attributable to

[43] Only dividends on the shares bought with the loan can be used to make loan repayments.

[44] See IRC §72(t)(2)(A)(vi) and IRC §3405(e)(1)(B)(iv).

[45] As an example, if an ESOP owns 30% of the company's stock, and another shareholder owns 70%, the ESOP must receive 30% of the S corporation distribution and the other shareholder must receive 70% of the distribution.

[46] See IRC §4975(f)(7).

[47] See NCEO, "Does an ESOP in an S corporation have to receive its share of earnings distributions paid to other owners?," https://www.nceo.org/employee-ownership-faq/does-an-esop-in-an-s-corporation-have-to-receive-its. When an ESOP repays a loan using S corporation distributions, the loan being paid off must be the one used to acquire the shares that the distributions are being paid on. S corporation distributions can also be passed through to employees as part of in-service distributions, but certain other rules might make this impractical.

[48] See NCEO, "When S corporation distributions are used to repay an ESOP debt in an S corporation, can they be paid on both allocated and unallocated shares?" https://www.nceo.org/employee-ownership-faq/when-s-corporation-distributions-are-used-to-repay-an-esop-debt.

other investments. For example, dividends paid on C corporation stock that are reinvested in the ESOP are considered earnings.

Any growth that occurs on the holdings in an employee's account is tax deferred. A participant's ownership of their account balance vests over time, subject to requirements in law (see "Minimum Vesting Requirements").[49]

Employees Receive Value of Account at Retirement

When employees retire or otherwise leave the company sponsoring the ESOP, in many cases, the company buys back the stock in the employees' accounts at fair market value, and the employees receive that value in cash. Plans typically provide that the fair market value of an employee's stock shares is based on the most recent valuation.[50] Some plans make distributions of stock shares rather than repurchase the stock shares with cash.

If an employee receives a cash distribution that is an *eligible rollover distribution*, he or she can roll it over to another employer-sponsored retirement plan or an Individual Retirement Account (IRA) at job change or retirement.[51] (For more information about distribution forms and timing, see the "Benefit Distributions" section of this report.)

Data on ESOPs in 2023

ESOPs, like nearly all private-sector retirement plans, are required to file an annual publicly available disclosure called a Form 5500 Series report with DOL, IRS, and the Pension Benefit Guaranty Corporation (PBGC). This disclosure includes information such as plan features, number of participants, and assets. DOL produces an annual publication summarizing private-sector pension data found in Form 5500 reports.[52]

Selected Characteristics of ESOPs

Table 1 shows that, in 2023, DOL estimated that 6,525 ESOPs covered 15.1 million participants and held $2.0 trillion in total assets. KSOPs—plans that combine an ESOP with a 401(k) feature—represented 15.1% of all ESOPs but covered 87% of all ESOP participants.

The Form 5500 filings do not provide information about the percentage of an ESOP-sponsoring company that is owned by the ESOP (and thus, participants). Some research shows that, among the 5,940 ESOPs identified as being sponsored by privately held or closely held companies, about 3,400 were estimated to be majority ESOP owned or 100% ESOP owned.[53]

---

[49] For vesting schedules, see IRS, *Retirement topics – Vesting*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-vesting.

[50] See NCEO, "For allocations, deductions, distributions, and ESOP purchases, when must stock be valued in an ESOP?," https://www.nceo.org/employee-ownership-faq/for-allocations-deductions-distributions-and-esop-purchases-when-stock-valued.

[51] Eligible rollover distributions are distributions other than those that are not permitted to be rolled over, such as required minimum distributions (RMDs) and hardship distributions. See IRS, *Rollovers of retirement plan and IRA distributions*, https://www.irs.gov/retirement-plans/plan-participant-employee/rollovers-of-retirement-plan-and-ira-distributions.

[52] See Department of Labor (DOL), Employee Benefits Security Administration (EBSA), *Private Pension Plan Bulletins*, https://www.dol.gov/agencies/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan.

[53] See Joseph Blasi and Douglas Kruse, "Employee Ownership and ESOPs: What We Know from Recent Research," (continued...)

Other findings from **Table 1** include the following:

- among stand-alone ESOPs, about 62% were leveraged;
- among KSOPs, about 28% were leveraged;
- 80% of all ESOP participants were in nonleveraged KSOPs, many of which likely represented employees working for larger corporations sponsoring KSOPs; and
- 12% of ESOP assets were held by stand-alone ESOPs.

Table 1. Selected Characteristics of ESOPs in 2023

Type	Number of Plans	Participants (in millions)	Assets (in billions of dollars)
All ESOPs	6,525	15.1	$2,048
Leveraged	*3,722*	*2.0*	*$358*
Nonleveraged	*2,803*	*13.1*	*$1,690*
Stand-Alone ESOPs (i.e., no 401(k) feature)	5,540	2.0	$252
Leveraged	*3,451*	*1.0*	*$150*
Nonleveraged	*2,089*	*1.0*	*$102*
KSOPs	985	13.1	$1,796
Leveraged	*271*	*1.0*	*$208*
Nonleveraged	*714*	*12.1*	*$1,589*

Source: Employee Benefits Security Administration (EBSA), *Private Pension Plan Bulletin, Abstract of 2023 Form 5500 Annual Reports*, January 2026, Tables D10 and D12, https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf.

Notes: DOL notes that some totals do not equal the sum of the components due to rounding. The amount of assets held by ESOPs does not represent the amount of assets held in employer stock for several reasons. For example, plans with ESOP components report the value for non-ESOP and ESOP assets on a combined basis (and plans might even invest some of the non-ESOP portion of the plan in employer securities). In addition, plans are permitted to include investment options other than employer stock. Not all participants in these plans hold employer stock through the ESOP component, as some plans have a legacy ESOP component that is no longer offered to current participants.

The asset amounts in **Table 1** should not be interpreted as the amount of assets invested in employer securities, nor should the number of participants be interpreted as employees invested primarily in employer stock. This is because the data capture plans that feature a range of investments in employer securities, ranging from stand-alone ESOPs with 100% of plan investments in employer stock, to KSOPs, in which the employer stock investments held in the ESOP portion of the plan represent a fraction of total plan assets.[54] KSOPs report the value for

May 2026, https://www.aspeninstitute.org/wp-content/uploads/2026/05/Employee-Ownership-and-ESOPs-What-We-Know-from-Recent-Research.pdf.

[54] Furthermore, some plans that indicate having ESOP features list zero assets invested in employer securities on their Form 5500 filings. This is because some employers—typically larger employers—commingle the assets of the multiple plans that they sponsor into a master trust for investment and administrative purposes. These master trusts must also submit annual Form 5500 filings and indicate how much of the trust assets are invested in employer securities. As a result, it is not possible to determine the amount of employer securities held in an ESOP compared with the amount of employer securities held in other plans sponsored by the same company when the assets are held in a separate master trust.

401(k) and ESOP assets on a combined basis.[55] In addition, plans are permitted (or required, in certain cases) to offer investment options other than employer stock.[56]

The appendix in this report provides two tables analyzing the publicly available Form 5500 datasets: **Table A-1** shows the 20 largest plans, by number of total participants, that indicated having ESOP features in 2023. Nineteen of those 20 plans were KSOPs. **Table A-2** shows the 10 largest plans, by number of total participants, that indicated having ESOP features and indicated that 50% or more of plan assets were invested in employer securities. The largest plan in **Table A-1** was the Walmart 401(k) Plan; the largest plan in **Table A-2** was the Publix Super Markets, Inc. ESOP & Trust.

ESOP Distribution by Number of Participants

Table 2 shows the distribution of ESOPs and KSOPs by the number of participants in 2023. Most stand-alone ESOPs had smaller numbers of participants: About 79% of stand-alone ESOPs had fewer than 250 participants. KSOPs represented less than one-fifth of the total number of ESOPs but were more evenly distributed by number of participants: About 46% had fewer than 250 participants, and about 54% had 250 or more participants.

Table 2. Distribution of ESOPs, by Number of Participants

in 2023

Number of Total Participants	Stand-Alone ESOPs	KSOPs	Total
0 to 50[a]	1,736	172	1,909
50 to 99	1,348	126	1,474
100 to 249	1,302	157	1,459
250 to 499	569	86	655
500 to 999	310	54	364
1,000 to 4,999	229	131	359
5,000 to 19,999	40	136	176
20,000 or more	5	124	129
Total	5,540	985	6,525

Source: CRS presentation of data in Employee Benefits Security Administration (EBSA), *Private Pension Plan Bulletin, Abstract of 2023 Form 5500 Annual Reports*, Table D11, January 2026, https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf.

Notes: DOL noted that some totals do not equal the sum of the components due to rounding.

a. Category includes plans that did not report the number of participants.

[55] For example, the Lockheed Martin Corporation Salaried Savings Plan indicated having an ESOP feature. Its 2023 Form 5500 filing listed $47.2 billion in total assets, $8.6 billion of which was invested in the company's common stock and held in the ESOP fund.

[56] For example, the 401(k) portion of a KSOP is required to offer a range of investment options, and participants in ESOPs who meet age and tenure requirements are required to be able to diversify a portion of their retirement assets.

Large Corporations in Form 5500 ESOP Data

A number of plans sponsored by large corporations (e.g., Boeing, International Business Machines [IBM], Bank of America, and Raytheon Technologies) are included in the Department of Labor's ESOP data. These corporations are not typically thought of as sponsoring the type of ESOP in which employees own some or all of the company and their retirement savings are invested primarily in employer stock. In most of these cases, the corporation sponsors a KSOP, which is a single plan that combines an ESOP with a 401(k) plan.

Some of these corporations added an ESOP component to their plans during the 1980s, a period when leveraged buyouts (LBOs) were common. At the time, tax law changes turned ESOPs into tax-advantaged tools for financing these buyouts, to protect companies from takeover attempts or for corporate refinancing purposes.

ESOPs were sometimes mentioned in news articles describing takeover attempts. A 1984 article noted that workers holding their own employer stock "tend to vote to keep their own company independent," which could help prevent buyouts from other corporations.[57] The 1984 article discussed two companies that created ESOPs in the 1980s that are still identified as having ESOP features in the 2023 DOL data. First, it discussed how Phillips Petroleum Company established an ESOP as part of its takeover settlement with Mesa Petroleum Company (and later became ConocoPhillips, which later spun off and went public as Phillips 66). Both ConocoPhillips and Phillips 66 are identified as having ESOP features in the 2023 DOL data. Second, it mentioned that the Parsons Corporation created an ESOP that acquired 100% of the company's stock in 1984 to take itself private.

A 1989 article referenced Lockheed, which put $500 million worth of employer stock into an ESOP in 1989. This gave employees 17% ownership of the company and may have prevented a corporate takeover.[58]

On occasion, Form 5500 data filings provide additional detail on when ESOP components were added to plans. For example, the Procter & Gamble Profit Sharing Trust and Employee Stock Ownership Plan notes in its 2023 Form 5500 filing that the employee stock ownership trust (ESOT) "was established by resolution of the Board of Directors of the Company on January 10, 1989."[59] An article from 1989 noted that Procter & Gamble's ESOP formation "was widely viewed on Wall Street as a defense against a possible takeover attempt."[60]

However, some stakeholders have indicated that the majority of publicly traded companies with ESOPs did not incorporate them into their plans for takeover purposes, but rather as a result of the favorable tax law changes Congress enacted in the 1980s.[61] A provision in the Deficit Reduction Act of 1984 (P.L. 98-369) permitted banks to deduct 50% of the interest on loans made to ESOPs, resulting in lenders granting lower interest rates to ESOP borrowers. In addition, a provision in the Tax Reform Act of 1986 (P.L. 99-514) permitted dividends paid on stock held by a C corporation's ESOP to be deducted from the company's taxable income. The decline in ESOPs sponsored by publicly traded companies coincided with the repeal in 1996 of the provision permitting income on ESOP loans to be 50% tax-exempt (P.L. 104-188).

Other corporations might use, or have previously used, ESOPs to provide employees with company stock. In addition, the employer stock held in an ESOP might be a vestige of a time when a corporation's profit-sharing contributions were invested primarily in employer stock. For example, the summary plan description (SPD) for Walmart's 401(k) Plan states, "Because the Company Funded Profit Sharing Account is an Employee Stock Ownership Plan, all or a significant portion of Walmart's profit-sharing contribution was invested in Walmart stock for Plan years ending prior to January 31, 2006. If you were a participant in the Plan prior to that date, you

[57] See Michael Hiltzik, "ESOPs Now a Boon for Management: Playing Key Roles in Buy-Outs, Takeover Defenses, Refinancing."

[58] See James Flanigan, "Lockheed Has Powerful New Weapon: ESOP," *Los Angeles Times*, April 5, 1989, retrieved from https://www.proquest.com/hnplatimes/docview/1150293924/592D404A3074FA5PQ/20?accountid=12084&sourcetype=Newspapers.

[59] See plan year 2023 Form 5500 filing for the Procter & Gamble Profit Sharing Trust and Employee Stock Ownership Plan at https://www.efast.dol.gov/5500Search/. For a news article from the time, see Floyd Norris, "P&G Plans to Add $1 Billion to Its Employee Stock Plan," *New York Times*, January 12, 1989, https://timesmachine.nytimes.com/timesmachine/1989/01/12/747389.html?pageNumber=81.

[60] See "Briefly," *Los Angeles Times (1923-1995)*, January 12, 1989, https://www.proquest.com/newspapers/briefly/docview/1149954611/se-2.

[61] Joseph Blasi and Douglas Kruse, *The New Owners: The Mass Emergence of Employee Ownership in Publicly traded companies and What It Means to American Business* (HarperBusiness, 1991), p. 46.

may have Walmart stock in your Company Funded Profit Sharing Account. For Plan years ending January 31, 2007, or later, Walmart's profit-sharing contribution was not invested in Walmart stock."[62]

Note that many of these companies also offer Employee Stock Purchase Plans (ESPPs), which allow employees to buy company stock—sometimes at a discount—with after-tax dollars.[63] ESPPs are distinct from ESOPs and are not discussed in this report.

Selected ESOP Requirements

As private-sector employee benefit plans, ESOPs are subject to ERISA's provisions in Title 29 of the *U.S. Code*.[64] In addition, ESOPs must meet many of the same IRC requirements that apply to other tax-qualified plans (such as 401(k) plans) to maintain their tax-qualified status. Failure to meet the IRC's requirements can result in plan disqualification or excise taxes; failure to meet ERISA's requirements can result in civil penalties and fiduciary liability.

One of ERISA's standards requires that, in general, employee benefit plan fiduciaries must diversify the investments of a plan "so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so."[65] Because ESOPs are designed to be invested primarily in employer stock, this diversification requirement does not apply.[66]

Neither statute nor regulations specify the percentage of plan assets that must be invested in qualifying employer securities to be considered "primarily" invested in qualifying employer securities. DOL Advisory Opinion 1983-06A stated that "an employee benefit plan that is required under the plan documents to have more than 50 percent of its assets invested in qualifying employer securities" would not "contravene" ERISA's requirement that the ESOP be designed to invest primarily in qualifying employer securities.[67] An IRS document designed for IRS determination specialists to understand ESOPs for the purposes of issuing favorable determination letters noted that "the term generally requires at least 50% of the ESOP assets to be invested in employer securities" but also that "in actuality however, facts and circumstances would have to be taken into account, such as the investment performance of the securities."[68]

The following sections provide an overview of ESOP rules relating to participation, contributions, vesting, nondiscrimination and anti-abuse provisions, voting rights, diversification requirements, and distributions.

Minimum Participation and Coverage Standards

ERISA establishes participation requirements by which time an employee must be permitted to participate in the plan.[69] Plans may implement participation standards that are more generous than

[62] See Walmart, *2026 Associate Benefits Book Summary Plan Descriptions*, effective January 1, 2026, p. 330, https://one.walmart.com/content/dam/themepage/pdfs/AssociateBenefitsBook-2026.pdf.

[63] See Fidelity, *A guide to employee stock purchase plans (ESPPs)*, https://www.fidelity.com/stock-plan-services/employee-stock-purchase-plans.

[64] Title 29 is sometimes referred to as Labor Code.

[65] ERISA Section 404 (29 U.S.C. §1104(a)(1)(C)).

[66] ERISA Section 404 (29 U.S.C. §1104(a)(2)).

[67] See DOL, *Advisory Opinion 1983-06A*, January 24, 1983, at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/1983-06a.

[68] See IRS, *Chapter 8: Employee Stock Ownership Plans (ESOPs), Including S Corporation ESOPS and Anti Abuse Measures*," https://www.irs.gov/pub/irs-tege/epchd804.pdf.

[69] ERISA Section 202 (29 U.S.C. §1052) and IRC §410.

ERISA's requirements. In general, employees who reach age 21 or complete one year of service must be eligible to participate in their employers' ESOPs. Long-term, part-time employees—those with at least 500 hours of service in two consecutive years—must be eligible to make contributions to their employers' KSOPs. Stand-alone ESOPs typically do not allow for employee contributions, so the long-term, part-time employee participation requirement does not apply.

ESOPs, like 401(k) plans, must be available to a nondiscriminatory cross-section of employees, referred to as the *minimum coverage* standard.[70] For the purposes of minimum coverage, employees are classified as highly compensated employees (HCEs) or non-highly compensated employees (NHCEs). In 2026, HCEs are owners with at least 5% ownership, employees with compensation greater than $160,000, or the top 20% of employees by compensation.[71] To pass the coverage test, plans must meet either (1) the *ratio-percentage test* or (2) both the *nondiscriminatory classification test* and the *average benefit percentage* (ABP) *test*:[72]

- A plan passes the *ratio-percentage test* if the percentage of NHCEs eligible to make elective contributions or receive employer contributions (i.e., benefit from the plan) is no less than 70% of the percentage of HCEs who are eligible to benefit from the plan.
- A plan passes the *nondiscriminatory classification test* if the plan benefits a class of employees that is both "reasonable and non-discriminatory."[73] Reasonable and nondiscriminatory classifications include job category (such as accountant or press operator), nature of compensation (such as hourly or salaried), and geographic location (such as headquarters or field office).[74] A plan passes the ABP test if the average percentage of compensation NHCEs receive as employer contributions (referred to as the *actual benefit percentage*) divided by the actual benefit percentage for HCEs is higher than 70%.[75]

ESOPs generally cannot be aggregated with other plans for the purposes of meeting minimum coverage requirements, and plans with an ESOP component generally must test the ESOP component separately to ensure it meets the minimum coverage standards.[76]

Contribution Types and Limits

Employers make contributions to ESOPs. Employees can make contributions to their own 401(k) account within KSOPs (employee contributions are typically not permitted in stand-alone

[70] IRC §410(b).

[71] IRC §410(b). For the purposes of minimum coverage and other nondiscrimination tests, employee classifications each year are based on the prior year's compensation. For example, in 2026, HCEs include those who made more than $160,000 in 2025. The highly compensated limit is adjusted annually. Certain employees are not included in nondiscriminatory tests. These exempted employees include (1) employees covered by a collective bargaining agreement with retirement benefits reached in good faith, (2) air pilots covered by a Railroad Labor Act Title II collective bargaining agreement, and (3) nonresident aliens who receive no income. See Treas. Reg. §1.410(b)-6.

[72] Treas. Reg. §1.410(b)-2.

[73] Treas. Reg. §1.410(b)-4.

[74] A classification is deemed automatically nondiscriminatory if the *ratio percentage* is greater than 50% minus 0.75% for each percentage point of NHCE concentration (the percentage of employees who are NHCEs) above 60%. The *ratio-percentage* is the percentage of NHCEs eligible to benefit from the plan divided by the percentage of HCEs eligible to benefit from the plan. See Treas. Reg. §1.410(b)-4.

[75] Treas. Reg. §1.410(b)-5.

[76] Exceptions apply when an ESOP and the other plan sponsored by the employer were both in existence prior to November 1, 1977, and when a company sponsors two or more ESOPs that have substantially the same proportion of qualifying employer securities to total plan assets. See Treas. Reg. §1.410(b)-7 and Treas. Reg. §54.4975-11.

ESOPs). Congress has authorized tax advantages to encourage employers to contribute to their employees' retirement accounts and employees to contribute to their own accounts (where permitted).

Employer Contributions

The three types of employer contributions to ESOPs include the following:

- *discretionary contributions* that the employer can make based on the company's performance in a year (for ESOPs structured as stock bonus plans, which is the most common type of ESOP),[77]
- *mandatory contributions* equal to a specified percentage of employees' compensation (for ESOPs structured as money purchase plans),[78] and
- *matching contributions* based on the amount that an employee contributes to their 401(k) account within a KSOP or to a separate 401(k) plan sponsored by the employer.

Employer contributions can be made in stock or cash. When companies make contributions in stock, the fair market value of the stock shares is used to determine the dollar value of these contributions. Employer contributions made in cash are used for purchasing employer stock for the ESOP from shareholders or to build a cash reserve before purchasing employer stock, or for making loan principal and interest payments in a leveraged ESOP.

Deductibility of Employer Contributions

Employer contributions to DC plans, including ESOPs, are deductible from an employer's taxable income, up to a limit. This limit is 25% of participants' compensation in a year (up to a compensation limit) and applies across all DC plans sponsored by an employer.[79]

For example, if an employer that sponsors only an ESOP pays $400,000 in aggregate eligible compensation to all employees in a year, the maximum amount of ESOP contributions that could be deducted from the company's taxable income in that year would be $100,000.[80] If that employer sponsored a separate 401(k) plan that covered the same participants as the ESOP, the maximum dollar amount of contributions that could be deducted from the company's taxable income would still be $100,000, but the employer could split its contributions between the ESOP and the 401(k) plan. Contributions that exceed the deductible limit are subject to an excise tax.[81]

[77] Since most ESOPs are structured as stock bonus plans, most contributions are discretionary. Contributions used to repay loans are required from a contractual standpoint between the lender and the borrower but are still considered discretionary for retirement plan purposes.

[78] ESOPs structured as money purchase plans are rare.

[79] IRC §404. The maximum amount of compensation paid to a single participant for the purpose of the limit is set in statute (IRC §404(l)) and indexed for inflation. In 2026, the compensation limit is $360,000. This means that in determining the total compensation paid by an employer to participants in a plan, compensation in excess of $360,000 paid to any participant is not included in calculating the aggregate compensation. If an employer makes contributions in excess of the deductible limit, the employer must pay an excise tax equal to 10% of the nondeductible amount.

[80] If the employer sponsors more than one DC plan, the deductibility limit applies across plans (e.g., all plans are treated as a single plan for the purposes of the limit).

[81] IRC §4972.

A special rule applies to leveraged ESOPs sponsored by C corporations: Contributions used to pay interest on the acquisition loan may be deducted without regard to the deductibility limit (i.e., these contributions are 100% deductible).[82]

In addition, private letter rulings from the IRS have indicated that leveraged ESOPs sponsored by C corporations can separately deduct, up to 25% of participants' compensation, (1) employer contributions to repay the loan principal and (2) other employer contributions (e.g., those made to a separate 401(k) plan or contributions to the nonleveraged portion of the ESOP), creating a total deduction limit of 50% of participants' compensation.[83] However, because private letter rulings apply to the taxpayer's specific set of facts and "may not be relied on as precedent by other taxpayers," it is unclear whether this applies to all ESOPs.[84]

Employee Contributions to KSOPs

KSOPs permit employee contributions via elective deferrals, catch-up contributions, or after-tax (non-Roth) contributions to the 401(k) portion of the plan.[85] An *elective deferral* is the portion of an employee's salary that he or she contributes to their DC plan. In 2026, the elective deferral limit is the lesser of (1) an employee's compensation or (2) $24,500.[86]

Employees make elective deferrals on a pretax or Roth basis (depending on what the plan allows):

- Contributions made on a pretax basis are excluded from taxable income; withdrawals are included in taxable income.
- *Designated Roth contributions* are made with after-tax income but qualified distributions—those made after reaching age 59½, becoming disabled, or death, and made at least five years after the first Roth contribution is made—are not included in taxable income.[87]

Participants aged 50 and older may make *catch-up contributions*, which permits those nearing retirement age to make additional contributions beyond the elective deferral limit.[88] Catch-up contributions can also generally be made on a pretax or Roth basis, though a provision in SECURE 2.0 (P.L. 117-328) requires that those with prior-year income that exceeds $150,000 (for 2026, reflecting 2025 income) make such contributions on a Roth basis.[89] In 2026, the catch-up contribution limit is $8,000, and those aged 60 to 63 are permitted to make "super" catch-up contributions of $11,250 (rather than $8,000).[90]

---

[82] IRC §404(a)(9).

[83] See IRS, Private Letter Ruling 200436015, September 3, 2004, at https://www.irs.gov/pub/irs-wd/0436015.pdf; and IRS, Private Letter Ruling 200732028, August 10, 2007, at https://www.irs.gov/pub/irs-wd/0732028.pdf.

[84] See IRS, Understanding IRS guidance – A brief primer, https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer.

[85] ESOPs that are not KSOPs do not allow employee contributions.

[86] IRC §402(g).

[87] See IRS, *Retirement topics – Designated Roth account*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-designated-roth-account.

[88] IRC §414(v).

[89] See IRS, *Retirement topics – Catch-up contributions*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-catch-up-contributions.

[90] A special rule permits those aged 60 to 63 to make catch-up contributions that exceed normal catch-up contribution limits. See IRC §414(v) and IRS, Retirement topics – 401(k) and profit-sharing plan contribution limits, (continued...)

Some DC plans permit participants to contribute more than the elective deferral and catch-up contribution limits, so long as total contributions to a participant's DC accounts do not exceed the overall contribution limit (discussed below). These contributions are referred to as *after-tax (non-Roth) contributions*: Contributions are not excluded from taxable income but any associated investment earnings grow on a tax-deferred basis and are included in taxable income when withdrawn.

Total Contribution Limit to Participants' Accounts

In addition to the deductibility limit for employer contributions and the limits on elective deferrals and catch-up contributions for employee contributions, another limit applies to the total contributions (referred to as *annual additions*) made to individuals' DC accounts in a year.

In 2026, total contributions (i.e., annual additions) made to an individual's DC plan accounts in a year may not exceed $72,000 (or 100% of the employee's compensation, whichever is less).[91] If an employee participates in an ESOP and a 401(k) plan, total contributions across both accounts may not exceed the limit.

Contributions that count toward this limit include the following types of employee and employer contributions: elective deferrals and after-tax non-Roth contributions (in the case of KSOPs or other tax-qualified plans permitting employee contributions), employer contributions (made in stock or cash), and *reallocated forfeitures*. Reallocated forfeitures are shares that are reallocated to remaining plan participants when an employee separates from employment before becoming fully vested in the plan.

In a stand-alone ESOP sponsored by an employer that does not offer another retirement plan, only the value of employer contributions made to the ESOP and allocated to an employee's account and reallocated forfeitures count toward the limit.

Dividends paid on C corporation shares and distributions paid on S corporation shares held in an ESOP are treated as earnings and do not count toward the limit.

Special contribution rules apply to certain ESOPs. The following types of contributions are not counted toward the annual additions limit:

- Contributions made by C corporations with leveraged ESOPs that are used to pay interest on the acquisition loan, if no more than one-third of the contributions made to the ESOP to repay the loan are allocated to HCEs.[92]
- Forfeitures of C corporation stock that was acquired with a loan, if no more than one-third of the contributions made to the ESOP to repay the loan are allocated to HCEs.[93]

In addition, in leveraged ESOPs, the value of the company stock shares when the contributions are made may be higher or lower than when the loan was taken out. Treasury regulations specify

https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits.

[91] IRC §415. The total limit for individuals making catch-up contributions is higher. For example, in 2026, total additions to a 50-year-old individual's account would be $80,000 (reflecting $8,000 of catch-up contributions), and total additions to a 61-year-old individual's account would be $83,250 (reflecting $11,250 in catch-up contributions). See IRS, *2026 Amounts Relating to Retirement Plans and IRAs, as Adjusted for Changes in Cost-of-Living*, https://www.irs.gov/pub/irs-drop/n-25-67.pdf.

[92] IRC §415(c)(6) and Treas. Reg. §1.415(c)-1(f)(3).

[93] IRC §415(c)(6) and Treas. Reg. §1.415(c)-1(f)(3).

that the value of the share price at the time that the loan was taken is used to determine annual additions to a participant's account.[94] If companies with stock shares that have increased in value since the time of the loan instead used the current value of shares released from the suspense account and allocated to participants' accounts for calculating annual additions, the contribution limit might be exceeded.[95]

Alternatively, companies with share prices that have decreased since the time the loan was taken may prefer to use the current value of shares to calculate the annual additions to a participant's account. These plans must specify, in advance in the plan document, that the contribution will be based on the lesser of (1) the contribution made to the ESOP to repay the principal and interest of the loan or (2) the fair market value of the shares when they are allocated to a participant's account.[96]

Limits applicable to ESOPs are summarized in **Table 3**.

Table 3. Defined Contribution Plan Limits in 2026

with a focus on employee stock ownership plan (ESOP) rules

Limit in Internal Revenue Code	Description	2026 Limit
Employee Contributions		
26 U.S.C. §402(g)	Limits the amount of elective deferrals made by an employee to a DC plan (including a KSOP). Applies across all of an individual's DC accounts.	$24,500 (or 100% of the employee's compensation, whichever is less)
26 U.S.C. §414(v)	Limits the amount of catch-up contributions and "super" catch-up contributions made by individuals aged 50 and older to DC plans (including KSOPs) in excess of the elective deferral limit. Applies across all of an individual's DC accounts.	$8,000, or $11,250 for those aged 60-63

[94] Treas. Reg. §1.415(c)-1(f)(2)(i).

[95] To illustrate this scenario, imagine that a company took out a $1,000 loan to buy 10 shares of stock valued at $100 each two years ago. These 10 shares of stock are held in the ESOP's suspense account and released to participants' accounts as the loan is paid off. Each year, the company contributes cash to pay the principal and interest on the loan—which is based on that $100 share price—and is allocated toward each participant's account based on, for example, the participant's prorated share of earnings. Since the time of the loan purchase, the company's share price has increased from $100 to $120. This $120 figure represents the value of the shares released from the suspense account and into participants' accounts as the loan is paid off. If the value of employer contributions made to a participant's account were based on the $120 price, and the employer were to contribute the maximum amount to an employee's account ($72,000 in 2026)—ignoring the employer deductibility limit for the purposes of this example—the maximum number of shares that could be allocated to an employee's account would be 600 ($72,000/$120 per share). Because the employer contribution is based on the share price at the time the loan was taken out, the employer could contribute up to 720 shares to an employee's account ($72,000/$100 per share).

[96] Treas. Reg. §1.415(c)-1(f)(2)(ii). To illustrate this option, imagine that a company took out a $1,000 loan to buy 10 shares of stock valued at $100 each two years ago. These 10 shares of stock are held in the ESOP's suspense account and released to participants' accounts as the loan is paid off. Each year, the company contributes cash to pay the principal and interest on the loan—which is based on that $100 share price—and is allocated toward each participant's account based on, for example, the participant's prorated share of earnings. Since the time of the loan purchase, the company's share price has fallen from $100 to $80. This $80 figure represents the value of the shares released from the suspense account and into participants' accounts as the loan is paid off. Because the employer contributions for purposes of the contribution limit were based on the higher share price ($100), but the employees will receive shares with a value of only $80 when they are released into their accounts, plans are permitted to choose the lower of those two values when calculating the contributions made to a participant's account.

Limit in Internal Revenue Code	Description	2026 Limit
Employer Contributions		
26 U.S.C. §404	Limits the amount of employer contributions that may be deducted from the company's taxable income. Employer contributions include those made to an ESOP in stock or cash (via discretionary contributions, money purchase plan contributions, or matching contributions). Does not include (1) contributions used to pay interest on an ESOP loan (for C corporations that maintain leveraged ESOPs), (2) dividends on C corporation shares, or (3) distributions on S corporation shares. Applies across all DC plans sponsored by an employer.	Up to 25% of participants' compensation in a year See notes for C corporations.
Total Contributions (also referred to as annual additions)		
26 U.S.C. §415	Limits the amount of *annual additions* that may be made to a participant's DC accounts in a year. Annual additions include employee elective deferrals (i.e., pretax and designated Roth account contributions), employee after-tax non-Roth contributions, company contributions to an ESOP made in stock or cash (via discretionary contributions, money purchase plan contributions, or matching contributions), employer matching or other company contributions to other DC plans, and reallocated forfeitures. Does not include (1) employee catch-up contributions, (2) dividends on C corporation shares, (3) distributions on S corporation shares, and (4) for C corporations with leveraged ESOPs, contributions used to pay interest on the ESOP loan and forfeitures of C corporation stock that was acquired with a loan, if no more than one-third of the contributions made to the ESOP to repay the loan are allocated to highly compensated employees.	$72,000 (or 100% of the employee's compensation, whichever is less)

Source: Congressional Research Service (CRS).

Notes: Reallocated forfeitures are shares that are reallocated to remaining plan participants when an employee separates from employment before becoming fully vested in the plan.

Leveraged ESOPs sponsored by companies for which the company stock share price has decreased in value since the time that the loan was taken out can specify that the employer contribution will be based on the lesser of (1) the contribution made to the ESOP to repay the principal and interest of the loan or (2) the fair market value of the shares when they are allocated to a participant's account.

Private letter rulings from the IRS have indicated that leveraged ESOPs sponsored by C corporations can separately deduct, up to 25% of participants' compensation, (1) employer contributions to repay the loan principal and (2) other employer contributions (e.g., contributions made to a separate 401(k) plan or contributions made to the nonleveraged component of the ESOP). See IRS, PLR 200436015, at https://www.irs.gov/pub/irs-wd/0436015.pdf, and IRS, PLR 200732028, at https://www.irs.gov/pub/irs-wd/0732028.pdf. However, because private letter rulings apply to the taxpayer's specific set of facts and "may not be relied on as precedent by other taxpayers," it is unclear whether this applies to all ESOPs sponsored by C corporations.

Minimum Vesting Requirements

ERISA establishes vesting requirements that define when an employee must have a legal right to the benefit accrued in their account.[97] Employees are immediately 100% vested in their own

[97] ERISA Section 203 (29 U.S.C. §1053) and IRC §411.

contributions made to a retirement account (e.g., a 401(k) plan account or the 401(k) portion of a KSOP) but may have to work for several years before they are vested in the employer contributions made to their accounts.

Plan sponsors choose from two vesting schedules for employer contributions.[98] Employees must be either 100% vested in employer contributions upon three years of employment (referred to as *cliff vesting*) or 20% vested for each year starting after the first year (referred to as *graded vesting*).

For example, an ESOP participant receives allocations of the value of employer stock to his or her account each year. If this participant works for a plan sponsor that has chosen the cliff vesting schedule and separates from the employer in the second year of employment, the participant would not be vested in the stock shares in his or her account and would not receive the value of such shares as part of his or her retirement income.[99] If the participant instead separated after three years of employment, the participant would be vested in the value of the stock shares allocated to his or her account and would receive the value of these shares as part of his or her retirement income.

If the plan sponsor had instead chosen a graded vesting schedule, the participant would be 20% vested after two years of service (so if they separated from service, they would receive 20% of the value of the employer contributions made to his or her account), 40% vested after three years, and continuing up to 100% vested after six years. In this case, the participant would have to work for the company sponsoring the ESOP for six years to receive the full value of the employer contributions made to his or her account.

Plans can implement vesting standards that are more generous than ERISA's requirements. For example, a plan can provide that participants are immediately vested in any employer contributions as soon as they are made to a participant's account.

In addition, participants must be fully vested (i.e., have a right to 100% of the value of employer contributions made to their accounts) upon attaining the plan's retirement age or when the plan is terminated, regardless of how many years of service the participants have.

Nondiscrimination, Top-Heavy, and Anti-Abuse Rules

In addition to the minimum coverage requirements, ESOPs—like other DC plans—are subject to nondiscrimination and top-heavy requirements, which are in place to ensure that a wide range of employees, from rank-and-file employees to upper management employees, benefit from their plans.

In addition, ESOPs sponsored by S corporations must meet anti-abuse requirements that apply specifically to such plans. These requirements were put into place after S corporations were permitted to sponsor ESOPs, which resulted in some ESOPs being structured in a way that primarily benefited HCEs.

[98] See DOL, *FAQs about Retirement Plans and ERISA: How soon do you have a right to your accumulated benefits?*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa, and IRS, *Retirement topics – Vesting*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-vesting.

[99] This represents an example of when a plan could have *reallocated forfeitures*. The shares forfeited by the employee who was not vested in employer contributions could be reallocated to remaining plan participants' accounts.

Nondiscrimination Requirements

ESOPs, like other tax-qualified retirement plans, must provide that plan contributions and benefits do not discriminate in favor of HCEs.[100] To do so, plans must satisfy annual nondiscrimination tests, which are intended to ensure that *nonelective contributions*, elective deferrals, and matching contributions are not concentrated among HCEs. [101]

Not all of these tests will apply to all ESOPs. For example, stand-alone ESOPs sponsored by companies that do not operate separate DC plans would be subject only to the tests measuring nonelective contributions.

In addition, ESOPs generally cannot be aggregated with other plans for the purposes of nondiscrimination testing, and plans with ESOP and non-ESOP components (e.g., KSOPs) must test them separately.[102]

Testing Nonelective Employer Contributions

Plans must meet requirements to ensure that nonelective contributions are distributed among a broad range of participants. *Nonelective contributions* are contributions that do not depend on an employee making contributions to his or her own account (i.e., nonmatching contributions). In an ESOP that does not provide matching contributions, all employer contributions are nonelective contributions.

The IRS provides a safe harbor that, if adopted, permits plans to avoid further nondiscrimination testing.[103] To meet this safe harbor, an ESOP must allocate contributions using a *uniform allocation formula* based on (1) the same percentage of compensation for the plan year, (2) the same dollar amount, or (3) the same dollar amount for each unit of service (e.g., hour or day worked).[104] Most ESOPs provide employer contributions based on participants' relative compensation, which would generally qualify them for the safe harbor.

ESOPs that do not use a uniform allocation formula to allocate employer contributions may satisfy the requirement by satisfying a separate test called the general test, which tests whether the benefits provided to HCEs and NHCEs are nondiscriminatory. The general test compares allocations based on "rate groups" of employees and is typically more complicated than using a safe harbor allocation formula.

Though 401(k) plans may be excused from having to meet the uniform allocation formula by taking into account employer Social Security contributions in combination with nonelective contributions, ESOPs are generally not permitted to do so.[105]

---

[100] IRC §401(a)(4).

[101] IRC §401(a)(4).

[102] Treas. Reg. §1.410(b)-7(c)(1) and Treas. Reg. §1.410(b)-7(c)(2). Exceptions apply when an ESOP and the other plan sponsored by the employer were both in existence prior to November 1, 1977, and when a company sponsors two or more ESOPs that have substantially the same proportion of qualifying employer securities to total plan assets. See Treas. Reg. §54.4975-11(e). See IRS, Chapter 8: Examining ESOPs, Including New Developments, p. 8-22.

[103] Treas. Reg. §1.401(a)(4)-2(b).

[104] Treas. Reg. §1.401(a)(4)-2(b)(2). ESOPs are not permitted to use the safe harbor uniform points allocation formula used by other types of plans that provide greater benefits to older or longer-service participants (described in Treas. Reg. §1.401(a)(4)-2(b)(3)).

[105] Because HCEs' incomes are likely to exceed the maximum taxable income for Social Security payroll taxes ($168,600 in 2024), the employer Social Security contributions as a percentage of income for HCEs are likely to be less than those for NHCEs. Because of this disparity, 401(k) plans may provide HCEs with additional nonelective (continued...)

Testing Elective Deferrals and Matching Contributions

ESOPs that permit elective deferrals (e.g., KSOPs) or provide matching contributions (e.g., based on the amount that a participant contributes to a separate 401(k) plan sponsored by the employer) must demonstrate that such contributions do not differ too greatly between HCEs and NHCEs in favor of HCEs by passing the ADP and the ACP tests:

- The ADP test compares the average elective deferrals as a percentage of compensation—referred to as the *average deferral percentage* (ADP)—for HCEs to that of NHCEs.[106]
- The ACP test compares the average matching and after-tax non-Roth contributions as a percentage of compensation—referred to as the *actual contribution percentage* (ACP)—for HCEs to that of NHCEs.[107]

The ADP or ACP for HCEs may not exceed that of NHCEs by the greater of (1) the lesser of (a) 100% or (b) two percentage points or (2) 25%.[108]

Each plan sponsor conducts the ADP and ACP tests using contributions from the prior plan year unless it elects to use the current plan year's contributions.[109] If an HCE is eligible for multiple plans sponsored by the same employer, then the HCE's contributions to all plans are included in the ADP and ACP tests for all plans that the HCE participates in sponsored by the employer.[110] If a plan fails either the ADP test or the ACP test, the plan can avoid losing tax-qualified status by taking corrective actions that reduce the difference between the test percentages.

KSOPs, which permit employee contributions, must pass the ADP test and, depending on whether the employer provides matching contributions or nonelective contributions, the ACP test. KSOPs are permitted to aggregate their ESOP and 401(k) features for the purposes of the ADP and ACP tests.[111] Stand-alone ESOPs sponsored by companies that do not operate separate DC plans are not subject to these tests.

contributions. An exception applies for ESOPs that were integrated with Social Security before November 1, 1977. See Treas. Reg. §54.4975-11(a)(7)(ii). For more information about permitted disparities, see IRS, *Explanation No. 5B Permitted Disparity*, revised June 2021, https://www.irs.gov/pub/irs-pdf/p4964.pdf, and Treas. Reg. §1.401(l)-1. For more information about the maximum taxable income for Social Security taxes, see CRS In Focus IF12360, *Social Security Taxable Earnings Base: An Overview*.

[106] Treas. Reg. §1.401(k)-2.

[107] Treas. Reg. §1.401(m)-2.

[108] For example, if the ADP of the NHCEs is 3%, then the ADP of HCEs must be no more than 5%, because that is the lesser of 6% (1a) and 5% (1b) and the greater of 3.75% (2) and 5% (1). For more information, see IRS, *401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests*, https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-the-plan-failed-the-401k-adp-and-acp-nondiscrimination-tests.

[109] Once a plan sponsor elects to use current plan year, it cannot switch to testing the prior year for a period of five years. In a plan's first year, the ADP and ACP for NHCEs is considered to be 3%. See Treas. Reg. §1.401(k)-2(a)(2)(ii), (c)(1), (c)(2).

[110] If HCEs in a plan participate in another plan sponsored by the same employer, then the elective contributions and employer contributions to that plan must be included in both the ADP and ACP. A plan sponsor can choose to include only those employees who are above the age of 21 and have at least one year of service in the tests, referred to as *disaggregation*. See Treas. Reg. §1.401(k)-2(a); Treas. Reg. §1.401(k)-6.

[111] Treas. Reg. §§1.401(k)-1(b)(4)(v); 1.401(m)-1(b)(4)(v).

Top-Heavy Requirements

A DC plan is top-heavy if *key employees* (i.e., certain officers and business owners) have aggregate account balances that exceed 60% of all employees' balances.[112] ESOPs that meet the definition of a top-heavy plan must comply with special rules to ensure that rank-and-file employees are also benefiting from the plan.[113]

If a plan is deemed to be top-heavy, the employer must make contributions equal to at least 3% of compensation for each non-key employee. Employer matching contributions, if provided, are considered for the purposes of this contribution.

In cases where the highest percentage at which employer contributions are made for a key employee is less than 3%, the employer contribution made for non-key employees may not exceed that percentage. For example, if the highest percentage at which employer contributions are made for a key employee is 2%, then the employer would not have to make contributions on behalf of non-key employees in excess of 2%.

Anti-Abuse Requirements for S Corporation ESOPs

ESOPs were originally limited to C corporations. After Congress permitted S corporations to sponsor ESOPs in the late 1990s, several S corporation ESOPs were developed that benefited only a few highly compensated employees. The Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA; P.L. 107-16) required that ESOPs holding S corporation stock must comply with anti-abuse rules.[114] These rules are intended to prevent S corporation ESOPs from being used as tax shelters and to ensure that a broad range of rank-and-file employees benefit from the plan.[115]

In general, these rules require that during years in which certain individuals own 50% or more of the employer stock in the S corporation ESOP, the employer cannot allocate additional employer stock to their accounts (or their family members' accounts).[116] Specifically, it prohibits any portion of the assets of an S corporation ESOP attributable to employer stock from going to a *disqualified person* during a *non-allocation year.* A *disqualified person* includes

- an individual who owns, or whose family members own, at least 20% of the total S corporation shares held by the ESOP,[117] or
- an individual who owns at least 10% of the total S corporation shares held by the ESOP and who is not described above.

A *non-allocation year* is any plan year during which, at any time, (1) the ESOP holds S corporation employer stock and (2) disqualified persons own at least 50% of the outstanding

[112] See IRS, *Is my 401(k) top-heavy?* https://www.irs.gov/retirement-plans/is-my-401k-top-heavy. ESOPs that are part of a *top-heavy group* of plans must be aggregated to satisfy other nondiscrimination or coverage testing requirements. See IRC §416.

[113] IRC §416.

[114] Section 656 of P.L. 107-16 added IRC §409(p).

[115] See IRS, *Issue Snapshot – Preventing the occurrence of a nonallocation year under Section 409(p)*, https://www.irs.gov/retirement-plans/issue-snapshot-preventing-the-occurrence-of-a-nonallocation-year-under-section-409p.

[116] IRC §409(p).

[117] Family members include an individual's spouse, ancestors or lineal descendants of the individual or the individual's spouse, the brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, or the spouse of any of the aforementioned relatives.

shares of the S corporation. Ownership of shares includes (1) stock allocated to an individual's account within the ESOP and (2) an individual's share of unallocated stock (e.g., stock held in a leveraged ESOP's suspense account that would be allocated to the individual's account if all the unallocated stock were allocated to participants).[118]

Voting Rights

ESOP participants have the right to vote the shares held in their accounts.[119] Technically, the ESOP participants' voting rights are "pass-through," and the ESOP trustee votes the ESOP shares based on how the participants direct the trustee to vote.

In companies sponsoring ESOPs with *registration-type classes of securities* (e.g., common stock and preferred stock required to be registered with the Securities and Exchange Commission [SEC]), ESOP participants must have the right to direct the ESOP on how to vote their shares for all matters that are subject to a shareholder vote.[120]

Most companies sponsoring ESOPs do not have registration-type classes of securities. In this case, ESOP participants may be limited to voting on major corporate events (e.g., mergers, recapitalizations, liquidations). The NCEO found that these issues typically do not come up in most ESOP companies.[121]

Leveraged ESOPs have both allocated shares (allocated to participants' accounts) and unallocated shares (which are held in a suspense account within the ESOP trust). Plans may allow participants to vote the shares allocated to their accounts or provide for a one-vote-per-participant arrangement. [122] In plans with unallocated shares, trustees may vote such shares without regard to participants' directions. Publicly traded companies with ESOPs commonly have "mirror voting," in which participants are permitted to vote unallocated shares in proportion to allocated shares.

Plans may be more generous in conferring voting rights to participants. For example, closely held corporations may permit participants to vote on additional issues not specified in law or regulations.

---

[118] Whether someone is determined to be a disqualified person for the purposes of IRC §409(p) also depends on ownership of any *synthetic equity* (defined as any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future). See IRC §409(p)(6)(B). Regulations expanded the definition of synthetic equity to include, for example, nonqualified deferred compensation. See IRS, "Prohibited Allocations of Securities in an S Corporation," 71 *Federal Register* 76134, December 20, 2006. Treasury and IRS issued Revenue Ruling 2004-4 "to identify certain business structures which will be treated by the IRS as avoiding or evading section 409(p) of the IRC," noting that it treats interests in entities related to the S corporation as synthetic equity and "prohibits using stock options on a subsidiary to drain value out of the ESOP for the benefit of the S Corporation's former owners or key employees." See IRS, *Revenue Ruling 2004-4*, https://home.treasury.gov/system/files/136/archive-documents/js1114attachment1.pdf.

[119] IRC §409(e).

[120] Registration-type classes of securities are those required to be registered under Section 12 of the Securities Exchange Act of 1934 and those that would be required to be registered if not for the exemption in subsection (g)(2)(H) of section 12.

[121] See NCEO, "What voting rights do ESOP participants have?," https://www.nceo.org/employee-ownership-faq/what-voting-rights-do-esop-participants-have. In addition, participants typically do not have the right to vote on the sale of stock.

[122] These companies can satisfy the voting requirements if the ESOP permits each participant to cast one vote with respect to the voting issue (regardless of how many shares the participant has in their account), and if the ESOP trustee votes the shares held by the ESOP in proportion to the participants' voting instructions.

Diversification Requirements

ESOPs are designed to be primarily invested in employer stock. Primarily investing in one company's stock carries inherent risk, as an ESOP participant who works for a company that goes bankrupt could lose a portion or all of his or her retirement savings and job at the same time.

To address this risk, a provision in the Tax Reform Act of 1986 (P.L. 99-514) requires that certain ESOPs permit individuals who reach age 55 with 10 years of participation in the plan to diversify a portion of their account.[123] This diversification requirement applies for six years (the first year occurring at age 55 with 10 years of service). During the 90-day period following the end of each of the six years, a participant may diversify up to a cumulative total of 25% of the account, reduced by the portion of the account diversified in prior years.[124] Following the sixth year, the participant may diversify up to a cumulative total of 50% of the account balance.

These rules apply to ESOPs sponsored by privately held companies. They also apply to ESOPs sponsored by publicly traded companies if the ESOP (1) is stand-alone, (2) does not permit employee contributions or provide matching contributions (based on the amount that an individual contributes to a separate plan sponsored by the employer), and (3) is a separate plan from any other DB plan or DC plan maintained by the same employer.

Plans must provide at least three investment options for participants diversifying their accounts. Instead of diversifying their investments, these participants may choose to receive an in-service distribution of the portion of their account eligible for diversification. (Plans are generally limited in providing in-service distributions; ESOPs have an exception in this case.)

Some employers that sponsor 401(k) plans in addition to ESOPs permit employees who are eligible to diversify their accounts to transfer diversification-eligible amounts to the company's 401(k) plan instead of diversifying within the ESOP.[125] This can be advantageous for ESOP sponsors because it provides a way to ensure that the ESOP remains primarily invested in employer stock.

PPA's Diversification Requirement for DC Plans with Publicly Traded Stock

Following the collapse of Enron, a large energy and commodities corporation, in 2001, in which employees' 401(k) accounts were invested heavily in employer stock that lost effectively all value, the Pension Protection Act of 2006 (PPA; P.L. 109-280) added diversification requirements for DC plans with publicly traded employer stock.[126] Compared with the ESOP diversification requirements, these diversification rules allow participants to diversify their assets more rapidly.

This requirement applies to DC plans that hold publicly traded employer stock. An exception applies to ESOPs sponsored by publicly traded companies that (1) are stand-alone plans, (2) do not permit employee contributions or provide matching contributions (based on the amount that an individual contributes to a separate plan sponsored by the employer), and (3) are separate plans

[123] IRC §401(a)(28). This provision applies to employer securities acquired after December 31, 1986.

[124] For example, if a participant diversified 10% of their account balance after the first year, he or she would be able to diversify only up to 15% in the subsequent years.

[125] See IRS, *Notice 88-56*, Q13, https://www.taxnotes.com/research/federal/irs-guidance/notices/service-provides-temporary-guidance-on-esop-diversification-requirements/1ftd5.

[126] IRC §401(a)(35). For more information about private pension considerations following the Enron collapse, see U.S. GAO, *Private Pensions: Key Issues to Consider Following the Enron Collapse, Testimony before the Senate Finance Committee*, February 27, 2002, at https://www.gao.gov/assets/gao-02-480t.pdf.

from any other DB plan or DC plan maintained by the same employer. These plans are instead subject to the ESOP diversification requirements.

To satisfy PPA's requirement, plans with publicly traded employer stock must allow participants to divest the portion of their DC accounts attributable to employee contributions (e.g., elective deferrals, catch-up contributions, and after-tax non-Roth employee contributions) invested in employer stock into other investment options.

These plans must also permit a *qualifying individual* to divest the portion of their account attributable to employer contributions invested in employer stock. A *qualifying individual* is one who (1) has completed three years of service or (2) is a beneficiary of an individual who has completed three years of service or has died.

Plans can satisfy this requirement by offering at least three types of investments, each of which is diversified and has materially different risk and return characteristics, to these participants, or by permitting a plan-to-plan transfer of diversification-eligible amounts to a non-ESOP DC plan sponsored by the same employer. Plans typically provide investment options such as a range of mutual funds and collective investment trusts.

Table 4. Diversification Requirements for ESOPs

Diversification Requirement and IRC Reference	Description	Applicability
ESOP diversification requirement in IRC §401(a)(28)	Requires that ESOPs permit individuals who reach age 55 with 10 years of participation in the plan to diversify a portion of their account. Applies for six years (the first year occurs at age 55 with 10 years of service). A participant may diversify up to 25% of the account, reduced by the portion of the account diversified in prior years. Following the sixth year, the participant may diversify up to 50% of the account balance.	• ESOPs sponsored by privately held companies • ESOPs sponsored by publicly traded companies, if the ESOP (1) is stand-alone, (2) does not permit employee contributions or provide matching contributions (based on the amount that an individual contributes to a separate plan sponsored by the employer), and (3) is a separate plan from any other DB plan or DC plan maintained by the same employer
Defined contribution (DC) plan diversification requirement in IRC §401(a)(35)	Requires that plans allow participants to divest the portion of their DC accounts attributable to employee contributions invested in employer stock into other investment options. Requires that plans permit *qualifying individuals* to divest the portion of their accounts attributable to employer contributions invested in employer stock.	• ESOPs sponsored by publicly traded companies, other than those subject to the ESOP diversification requirement. For example, KSOPs sponsored by publicly traded companies, or an ESOP sponsored by a public company that matches contributions based on the company's separate 401(k) plan, are subject to this requirement.

Source: Congressional Research Service (CRS).

Notes: A qualifying individual for the purpose of the DC plan diversification requirement is one who (1) has completed three years of service or (2) is a beneficiary of an individual who has completed three years or service or died.

Benefit Distributions

Like other DC plans, the ability of ESOP participants to access their account balances prior to retirement is limited. ESOPs are allowed—but are not required—to permit hardship distributions,

in which distributions are made to participants in the case of financial hardship, but some stakeholders indicate that this practice is rare.[127] Individuals who reach age 59½ while still working for the employer sponsoring the ESOP may receive in-service distributions if permitted by the plan.

When Benefits Begin

As a type of DC plan, ESOPs are subject to distribution requirements that apply to DC plans generally. They are also subject to a provision in the *U.S. Code* that applies exclusively to ESOPs and is intended to allow ESOPs to speed up benefit distributions compared with other DC plans. Together, these provisions govern when ESOPs are permitted, or required, to distribute benefits to participants.

ESOPs must allow participants (with the consent of their spouses, if applicable) to choose to receive their ESOP benefits no later than (1) one year following the end of the plan year in which the participant dies, separates from service due to disability, or reaches the ESOP's normal retirement age, or (2) the sixth plan year that occurs after the plan year in which the participant separated from employment for any other reason (e.g., switching to a new job).[128] For example, for a plan that follows the calendar year, a participant who retires at age 62 in 2026 could begin receiving their benefits no later than December 31, 2027. A participant who separates from service at age 30 (for reasons other than death or disability) in 2026 could begin receiving benefits no later than December 31, 2032 (i.e., the sixth plan year after the plan year in which the participant separated).[129] These rules typically result in ESOPs commencing benefit payments earlier than DC plans would generally begin doing so (as described in the next two paragraphs).[130]

The latest date by which DC plans must begin paying benefits is 60 days after the latest of the end of the plan year in which (1) the participant reaches age 65 or the normal retirement age of the plan, (2) the 10th anniversary of the participant's participation in the plan occurs, or (3) the participant separates from employment.[131]

The latest date by which participants in tax-qualified retirement plans (i.e., DC or DB plans) must begin taking annual distributions, called *required minimum distributions (RMDs)*, occurs after a participant reaches his or her *required beginning date (RBD)*.[132] RMDs must begin by the RBD, which is April 1 of the year following the year in which the individual reaches the later of his or her (1) applicable RMD age (ranging from 70½ to 75, depending on date of birth) or (2) retirement year (in the case of participants whose plans allow for this delay).[133] Participants in the

[127] See A. Juckett, "In-Service Distributions for ESOPs: Exploring Plan Design Options," February 13, 2024, https://www.esoppartners.com/blog/in-service-distributions.

[128] IRC §409(o). These rules apply only to distributions of stock shares acquired by the ESOP after December 31, 1986, though ESOPs that fail to separately account for stock shares based on this date may apply these rules to their plans.

[129] If a participant is reemployed by the company before distributions must begin, this rule does not apply.

[130] DC plans are required to begin distributing benefits no later than the participant's required beginning date, which ranges from age 70½ to 75 depending on the participant's date of birth. Many individuals retiring from employers prior to their required beginning date begin taking withdrawals from the DC plan or roll over their savings to an IRA.

[131] IRC §401(a)(14).

[132] IRC §401(a)(9).

[133] For more information about RMDs, see CRS In Focus IF12750, *Required Minimum Distribution (RMD) Rules for Original Owners of Retirement Accounts*.

plan who are 5% owners of the company sponsoring the plan must begin taking distributions after reaching their RMD age even if not yet retired.[134]

If applicable, the RMD rules supersede the benefit distribution rules specific to ESOPs. For example, a participant who separates from service at age 74 in 2026 (but who is not considered retired under the plan's rules) is not able to wait until one year after the fifth anniversary of separation to receive benefits but rather must begin receiving benefits immediately to satisfy the RMD requirement.

Leveraged ESOPs sponsored by C corporations have some flexibility in distributing benefits: These plans may delay distribution payments until their loans are fully paid off.[135] Once the loan payments are completed, outstanding distributions must be provided by the later of (1) the end of the plan year in which the loan is repaid or (2) the end of the plan year in which the distribution would have otherwise been provided. This flexibility does not apply to plans with participants who have reached RMD age, which means that a participant who reaches RMD age in a leveraged ESOP must still begin to receive distributions.

Form and Frequency of Benefit Distributions

Distributions from ESOPs are made in cash, shares of employer stock, or both.[136] In many cases, the company (or the ESOP) repurchases the shares owned by the employee and the employee receives a cash payment for the value of such shares.

If the company's stock is publicly traded, participants who are entitled to distributions have a right to require that their benefits are distributed in the form of stock.[137] If the company's stock is privately held, participants who are entitled to distributions have a right to require that the employer repurchase the company stock at fair market value.[138] The value of stock repurchased by the employer is determined based on the most recent annual valuation.[139]

Certain situations permit ESOPs to require that distributions be made in cash: if (1) the employer is an S corporation, (2) the employer's charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees and/or to the ESOP or another tax-qualified plan, (3) the employer is a bank that is prohibited from purchasing its own securities, or (4) the participant has chosen to diversify a portion of his or her account balance.[140]

If a company distributes shares of closely held stock, it must offer its employees a *put option*, in which the employee can resell the shares back to the company.[141] This option prevents employees from being required to hold employer stock that cannot be publicly traded. The put option must

[134] See IRS, *Retirement plan and IRA required minimum distributions FAQs*, https://www.irs.gov/retirement-plans/retirement-plan-and-ira-required-minimum-distributions-faqs.

[135] IRC §409(o)(1)(B). This provision applies to C corporations that sponsor ESOPs. However, some uncertainty exists as to whether it also applies to S corporations that sponsor ESOPs. See NCEO, "A company can defer the start of its ESOP distributions until after its loan is repaid. Does this even apply in death, retirement, or disability?," https://www.nceo.org/employee-ownership-faq/can-defer-the-start-of-its-esop-distributions-death-retirement-disability.

[136] The non-ESOP portion of a plan (e.g., the 401(k) portion of a KSOP) can distribute cash, while the ESOP portion distributes stock.

[137] IRC §409(h)(1).

[138] IRC §409(h)(1)(B).

[139] Treas. Reg. §54.4975-11.

[140] IRC §409(h)(2)(B), IRC §409(h)(7), and IRC §409(h)(3).

[141] IRC §409(h)(4) and Treas. Reg. §54.4975-7(b)(10). This is called a *put option* because the shares are being "put" back to the employer.

be available during two periods: (1) the 60-day period immediately following a distribution or (2) during a 60-day period in the plan year following the year of the distribution. An employee might decide to wait a year to resell the stock to the company if he or she expects the stock to increase in value.[142]

If a separating employee receives a distribution of their entire account balance within one taxable year and exercises the put option, the company (or ESOP) can pay them the cash value of their account in substantially equal installment payments over a period of up to five years, starting no later than 30 days after the exercise of the put option.[143]

Unless a participant chooses otherwise, ESOP distributions can be made in a lump sum payment or in substantially equal annual payments over a period that does not exceed five years. Participants with account balances over a specified threshold may receive payments over a longer period based on the amount that their account balance exceeds the threshold.[144] The cash value of a lump sum payment (including when the company [or ESOP] makes installation payments when a participant exercises the put option) is generally determined based on the fair market value determined on the most recent valuation.[145] If a participant chooses to receive distributions in substantially equal annual payments over a period not exceeding five years, the cash value of each distribution payment is determined when each payment is made (which could result in different installment payments depending on whether the value of the company has increased or decreased).

Tax Treatment of Distributions

Most ESOP participants receive their benefits in cash, and distributions are included in their taxable income at normal income tax rates. ESOP distributions made in cash are subject to 20% withholding for federal income tax purposes. Distributions made in stock are not subject to withholding. Individuals who receive distributions prior to reaching age 59½, death, or disability are subject to a 10% early withdrawal penalty unless an exception applies.[146] Dividends on C corporation stock paid directly to participants are also not subject to withholding or the early withdrawal penalty.

ESOP participants who receive *eligible rollover distributions* from the plan may roll over these amounts to another employer's retirement plan or to an IRA, preserving the tax-deferred status of their savings.[147] Most distributions, other than RMDs and hardship distributions, are eligible

[142] The value of the shares repurchased under the put option is determined based on the most recent independent appraisal. See Treas. Reg. §54.4975-11(d)(5).

[143] In this case, the company (or ESOP) must pay reasonable interest on the unpaid balance. See IRC §409(h)(5).

[144] IRC §409(o)(1)(C). If a participant's account balance exceeds a specified threshold—in 2026, this threshold is $1,455,000—then the distribution period may be extended by one year (but no more than five years) for each $290,000 over the $1,455,000 account balance threshold. See IRS, *2026 Amounts Relating to Retirement Plans and IRAs, as Adjusted for Changes in Cost-of-Living*, https://www.irs.gov/pub/irs-drop/n-25-67.pdf.

[145] Treas. Reg. §54.4975-11(d)(5).

[146] See IRS, *Retirement topics – Exception to tax on early distributions*, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-exceptions-to-tax-on-early-distributions.

[147] Generally, IRAs are not permitted to be shareholders of S corporation stock. However, the IRS has indicated that IRAs may temporarily hold qualifying employer securities distributed from an ESOP so long as the securities are immediately sold back to the ESOP or the company sponsoring the ESOP. See IRS, *Private Letter Ruling 200122034*, February 28, 2001, at https://www.irs.gov/pub/irs-wd/0122034.pdf.

rollover distributions.[148] Direct rollovers (i.e., transfers of assets directly from the ESOP to another retirement plan or IRA) are not subject to withholding.

Some participants that receive distributions from their ESOPs in the form of company stock may be eligible for a *net unrealized appreciation (NUA)* treatment of a portion of their stock distributions. The portion of the stock distribution eligible for NUA treatment is the appreciation (or depreciation) that accrued on the shares between the time that the participant's employer contributed the shares to their ESOP account (referred to as the *basis*) and the time of distribution. Instead of being taxed at normal income tax rates (which applies to the basis of a stock distribution and any cash distribution from the account), the share of stock distributions eligible for NUA treatment is taxed at capital gains rates when participants later sell the company stock.[149] To be eligible for NUA treatment, a participant must

- receive a lump-sum distribution of their entire ESOP balance;
- have attained age 59½, separated from the employer, or died; and
- not have rolled over the shares of stock (to an IRA, for example).

Capital gains tax rates are typically lower than normal income tax rates. In 2026, the tax rates on long-term capital gains are 0%, 15%, or 20% (depending on taxable income and filing status), which are typically lower than the normal income tax rates paid on cash distributions from the ESOP.

Tax Advantages of ESOPs

Congress has authorized various tax advantages to encourage the formation and maintenance of ESOPs. These tax advantages are available to certain selling shareholders, the companies that sponsor ESOPs, and ESOP participants.

The Joint Committee on Taxation (JCT) estimated in its federal tax expenditures report that the special tax provisions for ESOPs are projected to be $51.1 billion (consisting of $10.2 billion for corporations and $40.9 billion for individuals) from FY2025 through FY2029.[150] Tax expenditures represent "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."[151] For comparison, JCT estimated that the net exclusion of DC plan contributions and earnings was $1.2 trillion from FY2025 through FY2029.[152]

[148] Dividends of C corporation stock are also not eligible rollover distributions. See IRS, *Rollovers of retirement plan and IRA distributions*, at https://www.irs.gov/retirement-plans/plan-participant-employee/rollovers-of-retirement-plan-and-ira-distributions. See also Treas. Reg. §1.402(c)-2.

[149] The long-term or short-term capital gains tax rate applies, depending on how long the shares of stock were (1) held by the ESOP and (2) held by the participant after receiving the stock distribution and later selling them. See Fidelity, "Make the most of company stock in your 401(k)," March 10, 2026, https://www.fidelity.com/learning-center/personal-finance/retirement/company-stock.

[150] See Joint Committee on Taxation (JCT), *Estimates of Federal Tax Expenditures for Fiscal Years 2025-2029*, December 3, 2025, JCX-45-25, p. 40, https://www.jct.gov/publications/2025/jcx-45-25/. JCT noted that the ESOP estimates now include the effect of leveraged and/or privately held employer contributions to an ESOP. Previously, they were included only in the defined contribution plan estimate.

[151] See JCT, *Estimates of Federal Tax Expenditures for Fiscal Years 2025-2029*, p. 2.

[152] See JCT, *Estimates of Federal Tax Expenditures for Fiscal Years 2025-2029*, p. 42. JCT's estimate for the net exclusion of DB plan contributions and earnings for FY2026 through FY2029 was $758 billion.

Tax Advantages for Selling Shareholders

Some company owners sell a portion, or the entirety, of their company to an ESOP as a succession planning tool or to diversify their own assets. An ESOP provides a readily available market to purchase shares from an owner.

A selling shareholder (e.g., a company owner) of closely held C corporation stock receives tax advantages if that stock is sold to an ESOP: Taxation of capital gains that occurs when a shareholder sells stock to an ESOP that would normally be due at the time of sale can be deferred when meeting certain requirements.[153] This is referred to as a *Section 1042 transaction*.[154] Requirements include, for example, that the seller files written statements of election and purchase with the IRS, that the sale proceeds be reinvested into *qualified replacement property (QRP)* (e.g., stocks and bonds of other U.S. corporations), and that the ESOP owns at least 30% of the company stock following the sale. Capital gains taxes may be due when the shareholder later sells the QRP.

To be eligible for a Section 1042 transaction, the securities that are sold by the shareholder to the ESOP cannot have been readily tradable on an established securities market (i.e., publicly traded) for at least one year prior to the sale, and such securities must have been held by the selling shareholder for at least three years prior to the sale to the ESOP.[155]

As an example, consider a shareholder who owns 100 shares of closely held C corporation stock with a basis of $200,000. This shareholder sells his or her shares of company stock to an ESOP for $1,000,000, representing a gain of $800,000. Normally, the shareholder would be taxed on this $800,000 of capital gains in the year of the sale to the ESOP. However, since the shareholder is eligible for and chooses Section 1042 treatment, he or she can reinvest the $1,000,000 into QRP. The QRP's basis is $200,000, rather than $1,000,000, because it was reduced by the $800,000 of gain deferral for selling to an ESOP. When the shareholder later sells the QRP, the gain is calculated based on the $200,000 basis, so if the investment grows to $2,000,000, the shareholder would then owe taxes on $1,800,000 in capital gains.

Shareholders selling stock to an ESOP must sell at the stock's fair market value. Other methods of selling company ownership could result in higher payouts for the selling stockholder because they can be negotiated (e.g., selling to another individual or to a private equity firm).

Some owners selling closely held C corporation stock to ESOPs might consider the inheritance benefit of the transaction. If the selling shareholder dies while holding the QRP, the QRP receives a "step-up" in basis to fair market value, which allows heirs to inherit the QRP and pay little to no capital gains tax on any appreciation that occurred.

Starting in 2028, selling shareholders of S corporation stock will also begin to receive tax advantages for selling their shares to an ESOP. Section 114 of SECURE 2.0 (P.L. 117-328) expanded the Section 1042 transaction provision—with a 10% limit—to shareholders that sell S corporation stock to ESOPs, effective for sales to ESOPs after 2027.

For example, a shareholder that sold $1 million of S corporation stock to an ESOP in 2026 received no special tax advantages for this sale; sale proceeds were taxed at capital gains tax

[153] This provision also applies to stock sold to a worker cooperative.

[154] The term is named for the authorizing provision in the IRC. See IRC §1042. For questions and answers relating to Section 1042 transactions, see https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFRbf83dcc4bd89326/section-1.1042-1T.

[155] This means that, for example, a shareholder selling publicly traded stock would not be eligible for the tax advantage in section 1042 of the IRC.

rates. Under the provision in SECURE 2.0, a shareholder selling $1 million of S corporation stock to an ESOP in 2028 will be able to defer capital gains tax on 10% of the sale—$100,000 in this example—when meeting the Section 1042 requirements (e.g., reinvestment in QRP and that the ESOP owns at least 30% of the company stock following the sale).

Tax Advantages for Companies that Sponsor ESOPs

Employer contributions to an ESOP are deductible from the company's taxable income up to the deduction limit for contributions to qualified plans, generally 25% of participants' compensation in a year.[156] These contributions include those made in cash or stock and used for purchasing employer securities or making loan payments. As noted above, a special rule applies to leveraged ESOPs sponsored by C corporations: Contributions used to pay interest on the acquisition loan may be deducted without regard to the deductibility limit (i.e., these contributions are 100% deductible).[157] In addition, private letter rulings from the IRS have indicated that leveraged ESOPs sponsored by C corporations can separately deduct, up to 25% of participants' compensation, (1) employer contributions to repay the loan principal and (2) other employer contributions (e.g., those made to a separate 401(k) plan or other contributions to the ESOP).[158] However, because private letter rulings apply to the taxpayer's specific set of facts and "may not be relied on as precedent by other taxpayers," it is unclear whether this applies to all ESOPs.[159]

This ability to make tax-deductible contributions to pay off ESOP loans can be advantageous for a company. Compared with contributing cash directly to the ESOP to purchase shares, using a loan can free up company resources for other business goals. In addition, companies can finance capital expenditures or acquisitions by taking out a loan, structuring an inside loan to an ESOP to allow it to purchase company stock shares, and using the cash received from the ESOP for its business goals. To pay back the ESOP's debt to the company, the company makes tax-deductible contributions to the ESOP.

In addition, ESOPs receive special tax advantages unavailable to other C or S corporations.

Tax Advantages for ESOPs Holding C Corporation Stock

ESOPs holding C corporation stock have tax advantages that are not available to other C corporations:

- Normally, only interest payments on business loans are deductible to a company.[160] A C corporation with a leveraged ESOP can deduct 100% of the interest payments on the ESOP loan, in addition to the portion of the contribution

[156] IRC §404. The maximum amount of compensation paid to a single participant for the purpose of the limit is set in statute (IRC §404(l)) and indexed for inflation. In 2026, the compensation limit is $360,000. This means that in determining the total compensation paid by an employer to participants in a plan, compensation in excess of $360,000 paid to any participant is not included in calculating the aggregate compensation. If an employer makes contributions in excess of the deductible limit, the employer must pay an excise tax equal to 10% of the nondeductible amount.

[157] IRC §404(a)(9).

[158] See IRS, *Private Letter Ruling 200732028* (August 10, 2007), and IRS, *Private Letter Ruling 200436015* (September 3, 2004).

[159] See IRS, *Understanding IRS guidance – A brief primer*, https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer.

[160] See Chase, "Are your business loans tax deductible?" https://www.chase.com/business/knowledge-center/manage/are-your-business-loans-tax-deductible.

used to pay the loan principal (up to the employer contribution deduction limit).[161]

- Normally, C corporations may not deduct dividends paid to shareholders from the company's taxable income.[162] However, C corporations may deduct dividends paid on employer stock held in an ESOP from the company's taxable income when meeting any of the following requirements: the dividends are (1) paid in cash directly to the ESOP participants, (2) paid to the ESOP and then distributed in cash from the ESOP to the ESOP participants no later than 90 days after the end of the plan year in which the dividend is paid, (3) paid to the ESOP and reinvested in company stock (at the election of the ESOP's participants), or (4) used to repay a loan used to acquire company stock.[163]

Table 5 describes deductible expenses for C corporations that sponsor ESOPs.

Table 5. Deductible Expenses for ESOPs Sponsored by C Corporations

deductible from company's taxable income

Expense	Type of ESOP	Description	Internal Revenue Code Reference
Contributions of stock or cash made to an ESOP (and allocated to participants' accounts, or used for purchasing employer stock that is allocated to participants' accounts)	Leveraged or nonleveraged	Deductible up to 25% of employees' compensation	IRC §404(a)
The portion of company contributions used to pay principal on an ESOP loan	Leveraged	Deductible up to 25% of employees' compensation[a]	IRC §404(a)(9)(A)
The portion of company contributions used to pay interest on an ESOP loan	Leveraged	100% deductible	IRC §404(a)(9)(B)
Dividends paid in cash directly to the ESOP participants, paid to the ESOP and then distributed in cash from the ESOP to the ESOP participants no later than 90 days after the end of the plan year in which the dividend is paid, paid to the ESOP and reinvested in company stock (at the election of the ESOP's participants), or used to repay a loan used to acquire company stock	Leveraged or nonleveraged	100% deductible	IRC §404(k)

Source: Congressional Research Service (CRS).

Notes: The maximum amount of compensation paid to a single participant for the purpose of the limit is set in statute (IRC §404(l)) and indexed for inflation. In 2026, the compensation limit is $360,000. This means that in determining the total compensation paid by an employer to participants in a plan, compensation in excess of $360,000 paid to any participant is not included in calculating the aggregate compensation

a. Private letter rulings from the IRS have indicated that leveraged ESOPs sponsored by C corporations can separately deduct, up to 25% of participants' compensation, (1) employer contributions to repay the loan principal and (2) other employer contributions (e.g., those made to a separate 401(k) plan or other

[161] IRC §404(a)(9).

[162] See IRS, *Forming a corporation*, https://www.irs.gov/businesses/small-businesses-self-employed/forming-a-corporation.

[163] Only dividends on the shares bought with the loan can be used to make loan repayments.

contributions to the ESOP). However, because private letter rulings apply to the taxpayer's specific set of facts and "may not be relied on as precedent by other taxpayers," it is unclear whether this applies to all ESOPs.

Tax Advantages for ESOPs Holding S Corporation Stock

ESOPs holding S corporation stock have tax advantages that are not available to other S corporations:

- Federal (and often state) income tax is deferred on an ESOP's share of company earnings. This allows the full pretax value of the ESOP's share of company's income to grow tax-deferred within the ESOP until it is distributed to participants. The participants will generally pay tax on the value of their distribution, which represents the company's earnings from earlier years.[164]
- ESOPs holding company stock issued by S corporations are exempt from unrelated business income tax (UBIT).[165] Without this exemption, an ESOP trust—which is a tax-exempt entity that holds qualified retirement plan assets—that holds S corporation stock would be subject to UBIT because it would be treated as holding an interest in an unrelated trade or business.[166]

Some advocates describe this combination of tax benefits as a tax exemption for ESOPs owning S corporation stock.[167] Whether this is a tax deferral or exemption depends upon the parties and time period examined. ESOPs are unique compared with many other S corporation shareholders because the ESOP does not pay tax itself. At the shareholder level and over a short period, this functions as a tax exemption: While most shareholders report S corporation income on their individual income tax return and pay taxes, the ESOP does not. This can offer advantages, particularly for S corporations that are 100% owned by an ESOP. In that case, the S corporation does not need to make annual distributions to cover its owners' tax responsibilities, since its only owner (the ESOP) does not pay tax. However, the income of an S corporation owned by an ESOP is not exempt from taxation indefinitely. Later (potentially up to the length of a full career), the S corporation's income will be taxed on the employee-owner's individual income tax return when it is distributed as retirement income.[168]

[164] The exclusion of contributions to the ESOP and the deferral of tax until the income is distributed is equivalent (from a tax perspective) to including the contribution in income and excluding earnings on the contribution, if tax rates are constant. This is similar to traditional versus Roth IRAs.

[165] IRC §512(e)(3). UBIT are taxes owed by tax-exempt entities (such as charities or ESOP trusts) on income received from operations that are not substantially related to the basis of the organization's tax exemption. For example, the advertising revenue that a charity receives from selling advertising space in its magazine would be subject to UBIT.

[166] The general UBIT rule for most tax-exempt entities is at IRC §512(e)(1). See IRS, *Unrelated business income tax*, at https://www.irs.gov/charities-non-profits/unrelated-business-income-tax.

[167] For example, NCEO stated that "S corporations sponsoring ESOPs do not have to pay federal (and usually state) income tax on the percentage of their profits attributable to the ESOP. No other type of corporation has this kind of blanket exemption from taxation." See NCEO, "ESOPs in S Corporations," accessed October 9, 2026, https://www.nceo.org/what-is-employee-ownership/esops/esops-s-corporations. Similarly, the accounting firm Kreischer Miller stated, "In an S corporation, income is passed through to shareholders. When an ESOP—a tax-exempt trust—owns shares, the income attributable to those shares is not subject to federal income tax. If the ESOP owns 100% of the S corporation, the company can operate federal income tax-free, allowing for greater reinvestment, faster debt repayment, and enhanced employee benefits." See Andrew Berger, "ESOP Tax Benefits for Your Business," Kreischer Miller, January 14, 2026, https://www.kmco.com/insights/esop-tax-benefits-for-your-business/.

[168] See Scott Rodrick, *An Introduction to ESOPs*, 22nd ed. (The National Center for Employee Ownership, 2026), pp. 44-45.

Tax Advantages for ESOP Participants

Participants who accrue benefits in an ESOP can defer taxation until such benefits are distributed, rather than including the benefits in their taxable income in each year that they are earned. This can represent a significant tax benefit, as any appreciation on stock shares allocated to a participant's account or other investment earnings will accrue on a tax-deferred basis.

Individuals include distributions from ESOPs in their taxable income, which are taxed at normal income tax rates. However, some ESOP participants might be eligible for an additional tax benefit: NUA treatment of employer stock appreciation, in which distributions are taxed at capital gains tax rates, which are typically lower than normal income tax rates (see "Tax Treatment of Distributions").

Benefits, Costs, and Planning Considerations for Companies Sponsoring ESOPs

Researchers examining ESOPs point to several benefits for sponsoring companies: increased employee productivity, higher retention rates, and improved morale.[169] In addition, selling a company to an ESOP can preserve its legacy and keep it tied to its community.

Recent research compared manufacturing establishments with ESOPs to non-ESOP manufacturing establishments and found that the adoption of an ESOP was associated with 5.65% to 6.72% increase in labor productivity over 2010 to 2015 when controlling for management and organizational practices.[170] In addition, a review of earlier studies on a variety of different formats of employee ownership found a small but positive relationship to firm performance. [171]

A study examining how employee compensation and managerial personnel practices affect employee well-being and firm performance looked at firms that applied to a competition to be included on the Fortune magazine's "100 Best Places to Work For in America" list in 2005 through 2007.[172] It found that companies with more shared capitalism (defined by the researchers as combinations of employee ownership and profit sharing) had more employees engaged in employee empowerment practices. It also found that firm-reported voluntary turnover decreased from 17.7% to 6.3% among workers who had both shared capitalism and more employee empowerment practices.

---

[169] See NCEO, "What the Research Says: The Impact of Employee Ownership," https://www.nceo.org/research/research-findings-on-employee-ownership, and SES ESOP Strategies, "Introduction to ESOPs," https://sesesop.com/introduction-to-esops/.

[170] Researchers used 2010 and 2015 Annual Survey of Manufacturers restricted-use microdata (ASM), the U.S. Census's 2010 and 2015 Longitudinal Business Database (LBD), the U.S. Census Management and Organizational Practices Survey (MOPS), and the DOL's Form 5500 pension data. This study was conducted at the Federal Statistical Research Data Center (FSRDC) under Project Number 3061 by a Rutgers team with security clearances to access confidential Census data. See Fidan Ana Kurtulus et al., "Employee Share Ownership, Management Practices, and Labor Productivity: An Analysis Using Establishment Level Micro-Data from the U.S. Census," March 30, 2026, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6490798

[171] See, for example, Ernest H. O'Boyle et al., "Employee ownership and firm performance: a meta-analysis," 2016, *Human Resource Management Journal*, 26: 425-448, https://doi.org/10.1111/1748-8583.12115.

[172] See Joseph Blasi, Richard Freeman, and Douglas Kruse, "Do Broad-based Employee Ownership, Profit Sharing and Stock Options Help the Best Firms Do Even Better?" *British Journal of Industrial Relations*, vol. 54, no. 1 (March 2016), pp. 55-82. The authors used confidential data from the Great Place to Work Institute that surveyed the winners and nonwinners of the Fortune magazine's annual competition from 2005 to 2007.

Costs and Planning Requirements for Companies

Certain companies might be better suited than others for ESOPs. One ESOP firm noted that companies with stable cash flow, reliable profitability, at least 20-25 or more employees, and a culture that promotes accountability and engagement are typical candidates for an ESOP.[173]

Companies considering ESOPs often conduct feasibility studies to determine whether an ESOP aligns with the company's goals. Feasibility studies assess, among other things, how different plan designs might affect cash flow, tax savings, financing, employee benefits, the repurchase obligation, shareholder impacts, and coordination with other employer-sponsored benefit plans.[174]

Aside from feasibility studies, other ESOP costs include those related to setup and implementation, as well as annual (or more frequent) appraisals. The NCEO stated that setup costs ranged from $150,000 to $500,000 in 2026 but noted that "selling a business through any method is almost always both complex and costly."[175] A company with 100 or fewer employees that starts an ESOP may be eligible for a federal tax credit to offset a portion of retirement plan startup costs.[176]

In addition, some stakeholders identified litigation risk as a consideration for companies sponsoring ESOPs.[177] For example, an ESOP trustee who pays more than fair market value for company stock shares to be acquired by the ESOP could be sued by DOL or plan participants for violating fiduciary duties (see the "Valuation of Employer Securities" section).

The Repurchase Obligation

Companies with ESOPs must ensure that they have sufficient cash flow to finance the *repurchase obligation*, which occurs when companies buy back stock shares at fair market value from separating employees. Successful companies might have large increases in the value of their stock shares, and companies must consider this when planning to buy back employees' shares in the future. Because the repurchase obligation can represent a challenging issue, many ESOPs conduct sustainability studies, which, among other things, assess the company's future cash flow requirements and determine a management succession plan.

In addition, lenders to companies with ESOPs often require periodic repurchase obligation studies, which provide the lender with estimates of the liabilities that the company owes when buying back departing employees' stock shares.[178]

Stock Allocation Disparities

Some ESOPs, particularly mature ones, must consider the sponsoring company's ability to issue additional stock to newer employees. Some plans might no longer have additional stock to

[173] See SES ESOP Strategies, "Who is a good ESOP candidate?" at https://sesesop.com/resources/who-is-a-good-esop-candidate/.

[174] See Kevin Long, "Demystifying the ESOP Feasibility Study," Employee Benefits Law Group, October 25, 2023, https://www.employeebenefitslawgroup.com/demystifying-the-esop-feasibility-study/.

[175] See NCEO, "How much does setting up an ESOP cost?," https://www.nceo.org/employee-ownership-faq/how-much-does-setting-up-an-esop-cost.

[176] See IRS, *Retirement plans startup costs tax credit*, https://www.irs.gov/retirement-plans/retirement-plans-startup-costs-tax-credit.

[177] See Corey Rosen, "Assessing the Risks of ESOPs for Employees, Managers, and Business Owners: What the Research Tells Us," NCEO, 2025, https://www.nceo.org/hubfs/Assessing-the-Risks-of-ESOPs.pdf.

[178] NCEO, *Selling to an ESOP and Financing the Deal: 12th Edition* (NCEO, 2023), Chapter 7.

allocate to employees' accounts, and longer-tenured employees might end up with more company stock shares in their accounts compared with newer employees. This typically occurs when an ESOP borrowed money to purchase employer stock in the past, which led to large allocations of the value of employer stock to employee's accounts while the loan was being paid off. Employees hired since the loan was paid off might receive only the value of stock shares reallocated to their accounts from terminating employees who have unvested shares (i.e., reallocated forfeitures).

This stock allocation disparity between longer-tenured employees and newer employees could result in differing levels of motivation regarding the company's success. It might also require the company to plan for a large repurchase of employer stock in a short time if a group of longer-tenured employees were to retire around the same time.

To alleviate stock allocation disparities, ESOPs have several possible solutions, among others:

- Increasing the loan term.[179]
- *Reshuffling*, which involves a mandatory, usually annual, exchange of employer stock and cash or other investments between participants' accounts (typically between former employees' and current employees' accounts). This allows ESOPs to recycle shares of stock from longer-tenured employees to newer employees. Plans that reshuffle accounts must do so based on a predetermined formula specified in the plan document.
- *Rebalancing*, which involves a mandatory, typically annual, transfer of employer securities into and out of participant plan accounts, designed to result in all participant accounts having the same proportion of employer securities.[180] Plans that rebalance accounts must do so based on a predetermined formula specified in the plan document.[181]
- Buying additional shares of stock.[182]
- Creating and contributing new shares.[183]
- Permitting plan participants to diversify their accounts earlier than ERISA's requirement.[184]

Benefits and Risks for ESOP Participants

ESOPs give workers ownership in the company and a direct financial stake in the company's success. As a result, proponents note positive effects on workplace culture and employee engagement. Research on employee retirement outcomes in ESOPs versus other retirement plans

[179] An outside loan is negotiated between the company sponsoring the ESOP and a lender and might be inflexible. An inside loan is negotiated between the company and the ESOP, which could result in a longer repayment schedule.

[180] See memorandum from JoAnna H. Weber, Acting Director, Employee Plans Rulings and Agreements, IRS, to Daniel R. Jones, Manager, EP Determinations Quality Assurance, April 3, 2009, https://www.irs.gov/pub/irs-tege/esop_tar4_022310.pdf. This feature could conflict with a company's goal to reward longer-tenured employees with greater shares of stock.

[181] For example, the plan could specify that all participants' accounts would be rebalanced so that they included equal shares of stock and cash.

[182] This is an option for ESOPs that do not already own 100% of the shares of stock.

[183] This would result in a share price dilution.

[184] See Martin Staubus, "Sustaining Employee Ownership for the Long Term: The Challenge of the Mature ESOP Company," https://cleo.rutgers.edu/wp-content/uploads/2019/05/Sustaining-EO-for-the-Long-Term.9.15.pdf.

is limited, though some has found that retirees who participated in an ESOP during their career had greater wealth in retirement compared with non-ESOP retirees.[185]

Depending on how successful a company is, ESOP participants may accumulate retirement account balances that are sufficient (or more than sufficient) to finance spending in retirement. Research examining DOL's Form 5500 filings found that stand-alone ESOPs distributed a total of $141.8 billion to participants and beneficiaries from 2009 through 2024.[186] Distributions from stand-alone ESOPS increased from about $4.5 billion in 2009 to $14.9 billion in 2024. Nearly $28.7 billion in distributions came from terminating stand-alone ESOPs. ESOPs can terminate for a variety of reasons, ranging from the company being bought by a third party (which can represent a significant payout for ESOP participants) to bankruptcy or a change in ownership structure.

Risks for Participants

ESOP participants who are primarily invested in employer stock are potentially at greater risk of losing their savings. When much of an ESOP participant's retirement savings are invested in their employer's stock, both their employment and retirement savings are tied to one company. If the company experiences financial difficulties or goes bankrupt, participants could lose their jobs and some, most, or all of their retirement savings at the same time.[187]

However, most employers that sponsor stand-alone ESOPs sponsor additional retirement plans for which their ESOP participants might be eligible (see **Table 6**). In addition, research indicates that employee-owned companies are less likely to fail than traditional companies and that these companies have higher retention rates during economic downturns.[188] Furthermore, ESOPs sponsored by privately held companies (and certain ESOPs sponsored by publicly traded companies) must allow participants who reach age 55 with at least 10 years of plan participation to diversify their investments in assets other than employer securities (see "Diversification Requirements").[189]

The principal way that most ESOPs address risk is by not having the employees purchase the stock with their own savings or cash—instead, the sponsoring company contributes cash to the ESOP or finances the purchase of stock shares with a loan that the company repays. Several

[185] One study used data from the federal government's Health and Retirement Survey from 2008 to 2018 and found that "retirees who, in their past work lives, ever reported participating in an ESOP have significantly greater wealth in retirement than non-ESOP retirees, even after taking into account their pre-retirement earnings and demographic characteristics." See Matt Mazewski, "ESOPs and Retiree Wealth: Evidence from the Health and Retirement Study," Rutgers Institute for the Study of Employee Ownership and Profit Sharing, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Institute_Employee_Ownership/ResearchBriefs/January2024_RB_ESOPs_Retiree_Wealth.pdf. See also EY, "Contribution of S ESOPs to participants' retirement security and employee-owner benefits," April 2022, https://esca.us/wp-content/uploads/2022/04/EY-ESCA-S-ESOP-Analysis-2022.04.2257.pdf.

[186] See Steve Storkan, "More Than What Remains: Measuring the Wealth ESOPs Have Already Delivered," Employee Ownership Expansion Network, October 2026, downloaded from https://www.eoxnetwork.org/esopstudy2026. The author noted that because he excluded distributions from KSOPs, the distribution amount should be seen as a conservative estimate of distributed ESOP wealth.

[187] See William Bortz, "Employee Stock Ownership Plans: Are They Worth the Risks?," https://pensionrights.org/wp-content/uploads/2020/10/esops_-_are_they_worth_the_risks_0.pdf.

[188] See, for example, Fidan Ana Kurtulus and Douglas Kruse, "How Did Employee Ownership Firms Weather the Last Two Recessions? Employee Ownership, Employment Stability, and Firm Survival: 1999-2011," W.E. Upjohn Institute for Employment Research, January 1, 2017, https://doi.org/10.17848/9780880995276. See also NCEO, "New Study Shows ESOP Companies Have Lower Turnover Rates," July 8, 2026, https://www.nceo.org/employee-ownership-blog/new-study-shows-esop-companies-have-lower-turnover-rates.

[189] IRC §401(a)(28).

publicly traded companies set up KSOPs and use the leveraged ESOP component to purchase company stock that is then used to match employees' contributions to their 401(k) accounts. Some stakeholders believe that matching employee 401(k) contributions with employer stock into an ESOP is less risky than having employees directly purchase company stock with their 401(k) contributions.[190] In addition, following the collapse of Enron, Congress added diversification requirements for DC plans holding publicly traded employer securities. These requirements apply to KSOPs sponsored by publicly traded companies that permit employee contributions into the 401(k) portion or that provide matching contributions into the ESOP based on the employee's 401(k) contributions (within the KSOP or a separate 401(k) plan): These plans must permit *qualifying individuals* to divest the portion of their account attributable to employer contributions that are invested in employer stock.[191] Prior to this provision being enacted, companies could freeze the ability of employees to sell their company stock shares.

Data on ESOP Companies' Sponsorship of Other Retirement Plans

Table 6 provides data on the number of participants in stand-alone ESOPs and KSOPs, based on whether the plan is the sole plan sponsored by the employer or one of multiple plans sponsored by the employer. The data suggest that most ESOP participants might not be solely invested in employer stock: 97.7% of the 15 million ESOP participants included in DOL data for plan year 2023 either (1) participated in KSOPs or (2) worked for an employer that sponsored other retirement plans.[192] These participants' retirement savings are more likely to be diversified than participants in stand-alone ESOPs that are the only plan sponsored by the employer, either because they make contributions to the 401(k) portion of the plan—which is required to allow them to diversify that portion of their accounts—or because they also participate in the separate non-ESOP plan sponsored by the employer and can diversify their retirement savings held in that plan.[193]

However, ESOP participants whose employers sponsor additional retirement plans may or may not be eligible to participate in those plans. In addition, employers might contribute different amounts to each plan (or contribute only to the ESOP), which could affect participants' savings behavior.

In plan year 2023, about 74% of stand-alone ESOPs were sponsored by employers that sponsored additional retirement plans. Nearly 350,000 participants were in stand-alone ESOPs that were the sole plans of the sponsoring employers—representing 2.3% of all ESOP participants in DOL data. These participants might be at risk of insufficient diversification (though participants who reach

[190] See, for example, Hunton Andrews Kurth, "Should a Publicly-Traded Company Sponsor an ESOP: Pros and Cons," https://www.hunton.com/assets/htmldocuments/76297.pdf. Currently, most 401(k) plans do not offer investments in employer stock, and most 401(k) participants are not invested in employer stock. The amount of company stock in 401(k) plans has "declined sharply" over the past two decades. See Alicia Munnell, "The Saga of Company Stock in 401(k) Plans—Some Problems Solve Themselves," September 19, 2023, https://crr.bc.edu/the-saga-of-company-stock-in-401k-plans-some-problems-solve-themselves/. The Plan Sponsor Council of America (PSCA) found that, of the companies in its annual 401(k) plan benchmarking survey reflecting 2024 plan experience, 11.3% of plans offered company stock as an investment option. See PSCA, *68th Annual Survey Reflecting 2024 Plan Experience*, Table 107, https://www.psca.org/industry-content/surveys/annual-401k-survey/.

[191] As described in "Diversification Requirements," a *qualifying individual* is one who (1) has completed three years of service or (2) is a beneficiary of an individual who has completed three years of service or died.

[192] Note that ESOP participants may or may not be eligible to participate in the other plans sponsored by the employer; the other plans sponsored by the employer could cover separate groups of workers.

[193] In addition, individuals typically work for a number of employers throughout their careers and might have accumulated retirement savings in other plans. These other retirement savings, perhaps held in a former employer's plan or an IRA, are likely to hold a variety of investments.

age 55 with at least 10 years of plan participation are required to be able to diversify a portion of their accounts).

Table 6. ESOPs Based on Whether the Sponsoring Employer Sponsors Additional Retirement Plans

for all ESOPs, stand-alone ESOPs, and KSOPs in plan year 2023

	Number of Plans (% of all ESOPs)	Number of Participants (% of all ESOP participants)
All ESOPs	6,525 (100%)	15,069,667 (100%)
Stand-alone ESOP	5,540 (84.9%)	1,958,285 (13.0%)
Only plan sponsored by employer	1,468 (22.5%)	349,455 (2.3%)
One of multiple plans sponsored by employer	4,072 (62.4%)	1,608,830 (10.7%)
KSOP	985 (15.1%)	13,111,381 (87.0%)
Only plan sponsored by employer	693 (10.6%)	4,916,900 (32.6%)
One of multiple plans sponsored by employer	291 (4.5%)	8,194,481 (54.4%)

Source: Employee Benefits Security Administration (EBSA), *Private Pension Plan Bulletin, Abstract of 2023 Form 5500 Annual Reports*, January 2026, Tables D10 and D11, https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf, and CRS analysis of DOL Form 5500 filings.

Notes: ESOP participants whose employers sponsor additional retirement plans may or may not be eligible to participate in those plans.

Selected Policy Issues

ESOPs are complicated structures that intersect with a variety of policy issues. Among these issues, valuation, facilitating ESOP sponsorship, and contribution limits have recently received congressional attention.

Valuation of Employer Securities

An ESOP trustee is a fiduciary who is, among other duties, responsible for the valuation of employer securities when sold to an ESOP and subsequently on a regular, typically annual, basis. Regular valuations of employer securities held by an ESOP ensure that participants can receive periodic statements of their account balances, companies can plan for their repurchase obligations, and companies or ESOPs can make cash distributions.

An ESOP trustee can be an individual or an entity (such as a bank or trust company) and can be internal or independent. An internal ESOP trustee is a company employee who might be a member of a management team, on the company board, or an ESOP participant.[194] An independent trustee is not affiliated with the company.

[194] The individual selling employer securities to the ESOP is permitted to be the internal trustee.

ESOP trustees must ensure that the valuation of employer securities purchased by an ESOP is accurate.[195] Trustees typically hire independent valuation advisors to conduct valuations.[196] Conflicts of interest between various parties, such as the trustee and the company sponsoring the ESOP, might create incentives that could lead to incorrect valuations. An overvaluation or undervaluation of employer securities could harm ESOP participants. For example, an ESOP that pays more than fair market value for employer securities would benefit the selling shareholder at the expense of plan participants. When participants separate from the company sponsoring the ESOP, the company (or the ESOP) pays the participant the fair market value of their shares (based on the most recent valuation). If the most recent valuation had undervalued the securities, the separating participant's retirement assets would be undervalued, which could threaten his or her financial security in retirement.

ERISA and the IRC have requirements intended to mitigate or avoid conflicts of interest. DOL, the IRS, and the Pension Benefit Guaranty Corporation (PBGC) administer various parts of ERISA. DOL administers Title I, which contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct, and civil enforcement. The IRS administers Title II of ERISA, which makes conforming amendments to the IRC for tax-qualified plans.[197] In addition, the IRC has a number of separate requirements for plans to maintain their tax-qualified status (e.g., adhering to contribution limits). ESOP fiduciaries must comply with both ERISA and IRC requirements to avoid penalties, excise taxes, fiduciary liability, and plan disqualification. While most ESOPs adhere to both sets of requirements, it is possible for a plan to run afoul of one but not the other.[198]

ERISA, and its parallel provisions in the IRC, place restrictions on certain transactions between plans and parties-in-interest (these transactions are referred to as *prohibited transactions*).[199] One

[195] Trustees must ensure that the valuation is accurate when the ESOP initially purchases employer securities and in any subsequent purchases. Securities held by an ESOP must also be valued at least annually for administrative purposes. The IRC requires that ESOPs that acquire securities not readily tradable on an established securities market be valued by an independent appraiser to maintain their tax-qualified status. See IRC §401(a)(28)(C). IRS regulations in 26 C.F.R. §54.4975-11(d)(5) state that the valuation must be made in good faith and based on all relevant factors for determining fair market value. In the case of a transaction involving the plan and a disqualified person, the value must be determined as of the date of the transaction. For all other purposes, the fair market value must be determined as of the most recent valuation date under the plan. In addition to maintaining a plan's tax-qualified status under the IRC, annual valuations of ESOP assets are used in complying with ERISA's annual reporting requirements (ERISA Section 103). Additionally, ESOP trustees must administer plans prudently and in accordance with plan documents, which typically provide for annual valuations.

[196] It is permitted for the trustee to conduct the valuation. While ERISA does not require that ESOP trustees use an independent appraiser to determine adequate consideration of employer securities sold to or from an ESOP, in practice, it is likely that nearly all ESOP trustees choose to use an independent appraiser to help prevent conflicts of interest that might cause them to breach their fiduciary duties.

[197] Prior to a 1978 reorganization, there was overlapping responsibility for administration of the parallel provisions of Title I of ERISA and the tax code by DOL and the IRS, respectively. As a result of this reorganization, DOL has primary responsibility for reporting, disclosure, and fiduciary requirements, and the IRS has primary responsibility for participation, vesting, and funding issues. However, DOL may intervene in any matters that materially affect the rights of participants, regardless of primary responsibility. In addition, DOL retains interpretive authority over the portions of the IRC found in Title II of ERISA dealing with prohibited transactions and prohibited transaction exemptions.

[198] For an example of an ESOP violating IRC requirements, see TaxNotes, "Eighth Circuit Affirms IRS's Disqualification of ESOP," May 9, 2017, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-irss-disqualification-of-esop/x9xf.

[199] ERISA Section 406 and IRC §4975(c)(1). ERISA refers to "parties-in-interest," while the IRC refers to "disqualified persons." For more information, see DOL, *Exemption Procedures under Federal Pensions Law*, https://www.dol.gov/node/63366. Examples of parties-in-interest include the employer, plan fiduciaries, service providers, and statutorily defined owners, officers, and relatives of parties-in-interest. See DOL, ERISA Fiduciary Advisor, https://webapps.dol.gov/elaws/ebsa/fiduciary/q4d.htm.

such prohibited transaction under ERISA is the acquisition or sale of qualifying employer securities between a plan and individuals connected to the plan, such as the plan sponsor, certain shareholders, and any individuals providing services to the plan.[200] However, because ESOPs are designed to invest primarily in employer securities, they need a way to purchase those shares from parties-in-interest. To do so, they rely on exemptions in ERISA and the IRC. These exemptions, referred to as *prohibited transaction exemptions,* allow certain transactions—such as the ESOP's purchase of employer securities from a party-in-interest—to occur, so long as the transaction meets a number of requirements.[201] Under Section 408(e) of ERISA, which provides the exemption for ESOPs to purchase qualifying employer securities, ESOPs may not pay more than *adequate consideration* for the acquisition of the qualifying employer securities.[202]

Defining Adequate Consideration

ERISA's definition of the term *adequate consideration* depends on whether the employer securities being acquired or sold have a generally recognized market.[203]

For employer securities with a generally recognized market (e.g., publicly traded securities), ERISA defines adequate consideration as the price prevailing on a national securities exchange registered with the Securities and Exchange Commission (e.g., the New York Stock Exchange, Nasdaq).[204]

For securities without a generally recognized market (i.e., non-publicly traded securities), ERISA defines adequate consideration as "the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary."[205]

In the absence of a final regulation defining *adequate consideration*, ESOP practitioners have relied on IRS resources and DOL guidance, such as process agreements, in valuing employer securities. In 1959, years prior to ERISA's authorization of ESOPs in 1974 (P.L. 93-406), the IRS issued Revenue Ruling 59-60 to assist appraisers in determining the fair market value of assets for estate tax purposes.[206] In 1988, DOL issued a proposed regulation that would have defined adequate consideration.[207] The proposal outlined two requirements: that the determination of adequate consideration reflect the asset's fair market value and that an assessment of adequate

[200] ERISA Section 406(a)(1)(A) and IRC §4975(c)(1)(A). Other prohibited transactions particularly relevant to ESOPs are the acquisition of any employer security in violation of ERISA Section 407(a) (in ERISA Section 406(a)(1)(E)) and the lending of money or other extension of credit between the ESOP and a party in interest (in ERISA Section 406(a)(1)(B)).

[201] ERISA Section 408 and IRC §4975(d). Prohibited transaction exemptions (PTEs) can be individual exemptions, class exemptions, or statutory exemptions. DOL grants individual PTEs to specific applicants with respect to specific transactions. DOL grants class PTEs to broader groups of individuals or entities for certain transactions. Anyone who meets the conditions outlined in the class exemption may rely on it. Statutory exemptions are enacted in law.

[202] ERISA Section 408(e).

[203] ERISA Section 3(18)(A).

[204] ERISA Section 3(18)(A) provides that, "in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 78f of title 15, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest."

[205] ERISA Section 3(18).

[206] See TaxNotes, IRS, *Rev. Rul. 59-60*, https://www.taxnotes.com/research/federal/irs-guidance/revenue-rulings/rev-rul-59-60/d30t.

[207] See Pension and Welfare Benefits Administration, "Proposed Regulation Relating to the Definition of Adequate Consideration," 53 *Federal Register* 17632, May 17, 1988.

consideration be the product of a determination made in good faith by an independent fiduciary or a fiduciary acting pursuant to the report of an independent appraiser. The 1988 proposed regulation included a special rule that DOL noted was modeled after IRS Revenue Ruling 59-60, with certain additions and changes. The 1988 proposed regulation was neither finalized nor withdrawn, but ESOP fiduciaries have since relied on it as unofficial guidance, along with IRS Revenue Ruling 59-60.[208]

In addition, DOL has entered into multiple Fiduciary Engagements and Process Requirements Agreements with different ESOP trustees since 2014. These process agreements, which were the result of lengthy negotiations, outline best practices for complying with ERISA's obligations regarding the determination of value of non-publicly traded stock for the purpose of purchase or sale by an ESOP. Some of the agreements occurred as part of litigation settlements in which DOL alleged that the trustees had caused ESOPs to pay more than fair market value for company stock shares.[209] While the agreements apply specifically to the trustee with whom DOL has entered into an agreement, DOL has indicated that the steps in such agreements can help other ESOP trustees understand DOL's expectations regarding a trustee's obligations related to the sale or purchase of employer stock under ERISA.[210]

Section 346 of the SECURE 2.0 Act of 2022 (P.L. 117-328) required DOL to issue guidance for acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an ESOP. In 2025, DOL transmitted proposed regulations that would clarify the term adequate consideration to the Office of the Federal Register with a date of January 16, 2025, but they were not published in the *Federal Register* before January 20, 2025, and were suspended as part of the incoming second Trump Administration's freeze of all pending regulations. Most recently, DOL indicated that it intended to issue a notice of proposed rulemaking relating to the definition of adequate consideration in late 2026.[211]

In the 119th Congress, the Retire through Ownership Act (P.L. 119-124), enacted October 15, 2026, amended the provision in ERISA defining adequate consideration. The law now allows ESOP fiduciaries to rely on an independent appraiser's fair market valuation of non-publicly traded securities, provided it follows IRS Revenue Ruling 59-60 methodology.[212] P.L. 119-124

[208] In a fact sheet published by DOL, which described a 2025 notice of proposed rulemaking relating to the definition of adequate consideration, DOL, referring to the 1988 proposed regulation, stated that "interested parties and courts have frequently referred to its terms for guidance." See DOL, Fact Sheet: Notice of Proposed Rulemaking Relating to Application of the Definition of Adequate Consideration, January 16, 2025, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/notice-of-proposed-rulemaking-relating-to-application-of-the-definition-of-adequate-consideration. The ESOP Association, referring to Rev. Rul. 59-60, stated, "It is a longstanding, widely accepted foundation for valuing privately held company stock, including ESOP stock." See The ESOP Association, "Frequently Asked Questions about the Retire Through Ownership Act (RTOA, P.L. 119-124)," October 23, 2026, https://www.esopassociation.org/articles/frequently-asked-questions-about-retire-through-ownership-act-rtoa-pl-119-124.

[209] For examples of these process agreements, see DOL, EBSA, *ESOPs for Employee Ownership Initiative*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/programs-and-initiatives/employee-ownership-initiative/tools-and-resources/esops.

[210] DOL stated, "Although the linked agreements set out some best practices for complying with ERISA's obligations in ESOP stock purchase transactions, it is important to remember that the Department entered into them in the context of specific cases involving specific issues and problems. Depending on the unique facts of their particular transactions, plan fiduciaries may need to take additional actions not included in these agreements." See DOL, EBSA, *ESOPs for Employee Ownership Initiative.*

[211] See Office of Information and Regulatory Affairs, Office of Management and Budget, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=1210-AC20.

[212] See TaxNotes, IRS, *Rev. Rul. 59-60*, https://www.taxnotes.com/research/federal/irs-guidance/revenue-rulings/rev-

(continued...)

also included language that did not preclude the Secretary of Labor from promulgating regulations related to the definition of *adequate consideration*.

Stakeholder Responses to the Retire through Ownership Act

The ESOP Association, an organization that advocates on behalf of ESOP companies, supported the enactment of P.L. 119-124, noting that the organization was "heavily involved at every step of the legislative process."[213] It stated that "perhaps the most important consequence of the Retire Through Ownership Act is that ESOPs are no longer a special niche or obscure class of businesses with separate valuation standards," and that the law "makes it much easier for businesses considering an ESOP transition." The organization noted that the law was not a safe harbor and "does not absolve ESOP trustees and fiduciaries of any of their responsibilities to act with loyalty and prudence in the best interests of plan participants, the employee owners."

NCEO asked members of its task force on ESOP valuation and the repurchase obligation about the impact of the new law. NCEO found that:

> There was unanimous agreement that it is a step forward but does not address the most common issues in litigation (overoptimistic projections, deal structure, control, and cases where ESOP shares were bought by insiders who then sold the company for a much higher price). These will need to be addressed by future DOL regulations if they are not to remain a subject of varying court opinions.[214]

In addition, in a separate report, NCEO's task force noted that IRS Revenue Ruling 59-60, while addressing the determination of share price, does not address whether a transaction is fair for ESOP participants.[215]

Authors from Bradley, a law firm, noted that the Act, in permitting ESOP fiduciaries to rely on independent valuation experts or business appraisers who use methodologies in Revenue Ruling 59-60 "codifies existing practice rather than establishing a new standard, although it arguably removes other requirements in the proposed regulations that have been relied upon in valuations." In addition, the authors noted the following:

> Whether the act truly functions as a "safe harbor" is debatable. The statute confirms that a fiduciary may rely on a valuation expert or business appraiser who follows IRS Revenue Ruling 59-60, but it does nothing to reduce the fiduciary's independent obligation to select a qualified, independent appraiser to oversee the engagement and to conduct a substantive review of the resulting valuation. Those process obligations—including appraiser independence, freedom from referral relationships, and documented oversight—have been the focus of DOL enforcement actions, private litigation, and DOL process agreements for over a decade, and

rul-59-60/d30t. ESOPs have relied on Rev. Rul. 59-60 for valuation purposes in the absence of clear federal guidance specifically applicable to ESOPs. IRS Revenue Ruling 59-60 provides guidance for appraising the value of securities "where market quotation are either lacking or too scarce to be recognized." See Rev. Rul. 59-60, 1959-1 C.B. 237. While the ruling addresses how to value shares of stock of closely held corporations for estate and gift tax purposes, IRS and the courts have used the factors to determine the value of ESOP assets. See Rev. Rul. 68-609, 1968-2 C.B. 327 ("The general approach, methods, and factors, outlined in Revenue Ruling 59-60, as modified, are equally applicable to valuations of corporate stocks for income and other tax purposes."); Capital City Excavating Co. v. Comm'r, T.C.

[213] See James Bonham, "The Retire Through Ownership Act is Law. Now What?" The ESOP Association, October 23, 2026, https://www.esopassociation.org/articles/retire-through-ownership-act-law-now-what.

[214] See Corey Rosen, "Will the Retire Through Ownership Act Reduce ESOP Fiduciary Risk?" NCEO, October 23, 2026, https://www.nceo.org/employee-ownership-blog/will-the-retire-through-ownership-act-reduce-esop-fiduciary-risk.

[215] See Corey Rosen, Report of the ESOP Task Force on Valuation and the Repurchase Obligation," NCEO, 2026, pp. 8-9, https://www.nceo.org/hubfs/Report%20of%20the%20NCEO%20Task%20Force%20on%20ESOP%20Valuation%20and%20the%20Repurchase%20Obligation%20(2026).pdf. The report stated that, "If the Retire through Ownership Act becomes law, trustees must still determine whether a transaction is fair for participants. Fairness looks at all the terms of a transaction discussed above, not just the price of the shares that Revenue Ruling 59-60 addresses. Trustees could then say that they relied on an independent appraisal following the guidelines for the determination of share price but still must look at all of the terms of the transaction and document their work. The Retire through Ownership Act states that the Secretary of Labor can issue additional guidance for ESOP transactions. That arguably leaves the ESOP community in much the same place where it is now, namely that Revenue Ruling 59-60 is used as a guideline for determining how valuations for shares should be done but not providing specific guidance on the many issues that come up concerning the overall fairness of the transaction."

> the act leaves them fully intact. Revenue Ruling 59-60 also leaves considerable room for professional judgment on the very issues that have generated ESOP valuation litigation: control premiums, treatment of warrants and synthetic equity, and below-market seller financing. The act does not resolve those questions. And because the DOL retains authority to issue new regulations, employers, sellers, trustees, and their advisors should not assume that the act will be the last word. Until new regulations are issued, the proposed regulation and the DOL's process agreements will likely continue to be referenced as informal benchmarks.[216]

EBSA's Enforcement of ESOP Violations

In 2005, DOL's Employee Benefits Security Administration (EBSA) began to maintain an ESOP National Enforcement Project to identify and correct ERISA violations in connection with ESOPs.[217] In the overview to DOL's 2010 proposed regulation that would have classified ESOP valuation as investment advice (described in the next section), DOL stated the following:

> [A] common problem identified in the Department's recent ESOP national enforcement project involves the incorrect valuation of employer securities. Among these are cases where plan fiduciaries have reasonably relied on faulty valuations prepared by professional appraisers. The Department believes that application of the proposal to appraisals and fairness opinions rendered in connection with plan transactions may directly or indirectly address these issues, and align the duties of persons who provide these opinions with those of fiduciaries who rely on them. [218]

As mentioned, DOL has entered into multiple Fiduciary Engagements and Process Requirements Agreements with different ESOP trustees since 2014.[219] These process agreements, which apply specifically to the trustee with whom DOL has entered into an agreement, outline best practices for complying with ERISA's obligations regarding the determination of value of non-publicly traded stock for the purpose of purchase or sale by an ESOP. DOL has indicated that the steps in such agreements can help other ESOP trustees understand DOL's expectations regarding a trustee's obligations related to the sale or purchase of employer stock under ERISA.[220]

Stakeholders have a range of opinions regarding DOL's enforcement of ESOPs.

In his June 2025 confirmation hearing to be Assistant Secretary of Labor for EBSA under the second Trump Administration, Daniel Aronowitz pledged to end the "war on ESOPs," stating,

> The valuation companies have all been sued by the Department of Labor. Some—that can't be right that every single one of them are doing it wrong. What the department is doing is nitpicking the professional judgment of the valuation professionals. I'm going to put an end

[216] See B. David Joffe and Gordon Earle Nichols, "Effect of the Retire through Ownership Act on ESOP Transactions," Bradley, October 19, 2026, https://www.bradley.com/insights/publications/2026/10/effect-of-the-retire-through-ownership-act-on-esop-transactions.

[217] See DOL, EBSA, *Enforcement*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement.

[218] DOL, EBSA, "Definition of the Term 'Fiduciary,'" 75 *Federal Register* 65263, October 22, 2010.

[219] For examples of these process agreements, see DOL, EBSA, *ESOPs for Employee Ownership Initiative*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/programs-and-initiatives/employee-ownership-initiative/tools-and-resources/esops.

[220] DOL stated, "Although the linked agreements set out some best practices for complying with ERISA's obligations in ESOP stock purchase transactions, it is important to remember that the Department entered into them in the context of specific cases involving specific issues and problems. Depending on the unique facts of their particular transactions, plan fiduciaries may need to take additional actions not included in these agreements." See DOL, EBSA, *ESOPs for Employee Ownership Initiative.*

> to that because I think unless there is a clear conflict of interest, then the valuation is appropriate when done by an independent valuation firm.[221]

In an undated 2025 article, Ali Khawar, former Deputy Assistant Secretary and Acting Assistant Secretary for EBSA under the Biden Administration and long-time EBSA employee, wrote that "a significant focus of the Department's work has been the ESOP's initial acquisition of company stock—investigations into the ongoing operation of ESOPs are comparatively less frequent," noting that "the conflict of interest between a selling owner and the ESOP is most acute at the time of the initial purchase/sale transaction."[222] In the article, Khawar also noted that characterizing EBSA's enforcement activity as a "war on ESOPs" was "unfortunate and misleading," citing an example of how EBSA's investigative work identified a case where an owner selling stock to an ESOP hired an appraiser that inflated the stock price to benefit the owner rather than the plan.[223]

EBSA has published data on the monetary recoveries paid directly to ESOP plans, participants, and their beneficiaries resulting from a correction of an ERISA breach. For example, the unpublished 2025 proposed regulations noted the following regarding EBSA's ESOP National Enforcement Project:

> The [ESOP] cases pertaining to valuation—including issues related to purchase transactions, sales transactions, and annual valuations—from fiscal year 2014 through fiscal year 2024 resulted in $440.8 million in monetary results, of which approximately $424 million were related to purchase transactions.[224]

In addition, publicly available announcements about ESOP-related settlements sometimes provide specific information about the results of DOL's enforcement efforts. For example, a 2007 article about Marriott International's settlement with the IRS regarding issues raised during the IRS and DOL's examination of the leveraged ESOP feature of Marriott's retirement plan stated that "as a result of the settlement, the company will make cash payments to the U.S. Treasury and state tax jurisdictions of approximately $220 million."[225] In addition, DOL news releases describe settlements with specific corporations. For example, in 2022, DOL announced that it had reached a settlement with Wells Fargo and Company and Wells Fargo Bank and GreatBanc Trust Company that "recovers more than $131.8 million for the retirement plan's participants after a

---

[221] See U.S. Senate Committee on Health, Education, Labor and Pensions, *Nomination Hearing: Nominations of Penny Schwinn to be Deputy Secretary of Education, Department of Education, Kimberly Richey to be Assistant Secretary for Civil Rights, Department of Education, Daniel Aronowitz to be Assistant Secretary of Labor for the Employee Benefits Security Administration, Department of Labor and David Keeling to be Assistant Secretary of Labor for the Occupational Safety and Health Administration*, June 5, 2025, at https://www.help.senate.gov/hearings/nominations-of-penny-schwinn-to-be-deputy-secretary-of-education-department-of-education-kimberly-richey-to-be-assistant-secretary-for-civil-rights-department-of-education-daniel-aronowitz-to-be-assistant-secretary-of-labor-for-the-employee-benefits-security-administration-department-of-labor-and-david-keeling-to-be-assistant-secretary-of-labor-for-the-occupational-safety-and-health-administration.

[222] See Ali Khawar, "The Perils and Promise of Employee Stock Ownership Plans (ESOPs)," Georgetown University Center for Retirement Initiatives, https://cri.georgetown.edu/the-perils-and-promise-of-esops/.

[223] See Ali Khawar, "The Perils and Promise of Employee Stock Ownership Plans (ESOPs)."

[224] EBSA also noted that "many cases do not result in a finding of abusive transactions." See DOL, "Proposed Regulation Relating to Application of the Definition of Adequate Consideration." The document is not available on a federal website because it was not published in the *Federal Register* before January 20, 2025, when the second Trump Administration froze all pending regulations. The document can be accessed at https://www.mcdermottlaw.com/pdf/proposed-regulation-relating-to-application-of-the-definition-of-adequate-consideration/. CRS does not have additional details on the number of cases corresponding to the monetary results.

[225] See Marriott, "Marriott International Announces Settlement with the Internal Revenue Service," June 8, 2007, https://marriott.gcs-web.com/news-releases/news-release-details/marriott-international-announces-settlement-internal-revenue.

department investigation found that, from 2013 through 2018, the fund overpaid for company stock purchased from the plan."[226]

In January 2026, EBSA announced the removal of ESOPs from its national project enforcement project list.[227] The ESOP Association supported the removal, stating that it had "been requesting an end to this decades-long and unnecessary effort at EBSA as part of its effort to reverse what has long been perceived as its anti-ESOP bias."[228]

EBSA's Field Assistance Bulletin (FAB) No. 2026-01, issued on April 14, 2026, outlined new governing principles regarding investigatory and enforcement priorities that EBSA investigators and staff must follow.[229] FAB 2026-01 applies broadly to all EBSA enforcement activity but states that "until EBSA complies with the Congressional directive to provide 'acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan, all pending and proposed ESOP valuation investigations must be reviewed against this guiding principle of fairness."

ESOP Valuation as Investment Advice under ERISA

An individual who is a fiduciary under Title I of ERISA is required, among other duties, to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries." ERISA identifies four standards of conduct: (1) a duty of loyalty, (2) a duty of prudence, (3) a duty to diversify investments, and (4) a duty to follow plan documents to the extent that they comply with ERISA.[230] ERISA established situations in which a person qualifies as a fiduciary.[231] One of these situations is when an individual renders *investment advice* for a fee or other compensation.

Following the enactment of ERISA, DOL issued regulations in 1975 that defined *investment advice* using a five-part test. Individuals who provide recommendations that meet the definition of investment advice to pension plans (and their participants) covered by pensions law are held to ERISA's fiduciary standard. The fiduciary standard is a higher standard of conduct than that for individuals who provide recommendations that do not meet the definition.[232] Individuals who are held to the fiduciary standard are required to act solely in the interests of plan participants and beneficiaries.

[226] See DOL, "US Department of Labor Recovers $131.8M for Wells Fargo 401(k) Participants After Investigation Finds Plan Overpaid for Company Stock," September 12, 2022, https://www.dol.gov/newsroom/releases/ebsa/ebsa20220912. For another example of a news release describing a DOL settlement with Sherwin-Williams Co., see DOL, "US Labor Department Obtains $80 Million for Participants in Sherwin-Williams Employee Stock Purchase and Savings Plan," February 21, 2013, https://www.dol.gov/newsroom/releases/ebsa/ebsa20130221-0.

[227] See DOL, "US Department of Labor's Employee Benefits Security Administration Updates National Enforcement Projects for Employee Benefits Plans," January 15, 2026, https://www.dol.gov/newsroom/releases/ebsa/ebsa20260115.

[228] See The ESOP Association, "EBSA Ends ESOP National Enforcement Project, Signaling a Brighter Path Forward for Employee Ownership," https://www.esopassociation.org/articles/ebsa-ends-esop-national-enforcement-project-signaling-brighter-path-forward-employee.

[229] See DOL, EBSA, *Field Assistance Bulletin No. 2026-01*, April 14, 2026, at https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2026-01.

[230] ERISA Section 404(a)(1)(A)-404(a)(1)(D).

[231] ERISA Section 3(21)(A).

[232] Individuals who provide recommendations that do not meet the definition of investment advice might be subject to other regulatory standards, such as the Securities and Exchange Commission's (SEC's) Regulation Best Interest.

Since the enactment of ERISA, DOL has considered whether the valuation of employer securities that are sold to or from an ESOP is considered investment advice.[233] In Advisory Opinion 76–65A, DOL concluded that valuation of closely held employer securities for the purpose of an ESOP purchasing such securities *would not* constitute investment advice under the 1975 regulation.[234]

In 2010, DOL issued a proposed rule to classify ESOP stock valuations as investment advice, which would have been subject to ERISA's fiduciary standards of conduct.[235] The 2010 proposed rule generated significant controversy, and DOL announced that it would re-propose the rule with the intent of reissuing it in early 2012.[236] On April 20, 2015, EBSA published a proposed rule in the *Federal Register* that withdrew the 2010 proposed rule.[237]

The 2015 proposed rule did not include the valuation of employer securities for the purposes of ESOP purchases as constituting investment advice, noting that, "although, the Department remains concerned about valuation advice concerning an ESOP's purchase of employer stock and about a plan fiduciary's reliance on that advice, the Department has concluded that the concerns regarding valuations of closely held employer stock in ESOP transactions raise unique issues that are more appropriately addressed in a separate regulatory initiative."[238] DOL issued the 2016 final rule on April 8, 2016, with an effective date of June 7, 2016.[239] The 2016 final rule was vacated by the U.S. Court of Appeals in March 2018, with the Court finding that DOL "lacked statutory authority to promulgate the Rule with its overreaching definition of 'investment advice fiduciary.'"[240] The vacatur had the effect of reinstating the five-part test. In July 2020, DOL implemented the vacatur of the 2016 rule.[241]

---

[233] A trustee's act of choosing a valuation firm to perform a valuation would be subject to ERISA's fiduciary standard.

[234] See DOL, EBSA, *Advisory Opinion 1976-65*, June 7, 1976, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/1976-65.

[235] DOL, EBSA, "Definition of the Term 'Fiduciary,'" 75 *Federal Register* 65263, October 22, 2010. Written testimony from the Employee-owned S Corporation of America (ESCA) organization provided during a public hearing highlighted the organization's concerns with the proposed change regarding ESOP valuation as investment advice: "ESCA is concerned that such established and well-respected appraisal firms will choose to discontinue their ESOP appraisal business rather than face the additional legal exposure and insurance costs that would result from the Proposed Regulation. Removing the most experienced and competent ESOP appraisers from the ESOP appraisal marketplace will force many ESOPs to use smaller and less-experienced appraisers, who may not be able to provide superior service and necessary ESOP expertise to ESOPs." See Prepared Statement of Linda E. Carlisle, General Counsel for ESCA, before the Department of Labor Public Hearing on 'Definition of Fiduciary – Investment Advice,'" March 2011, https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32/writtentestimony11.pdf.

[236] DOL, EBSA, "US Labor Department's EBSA to Re-propose Rule on Definition of a Fiduciary," press release, September 19, 2011, https://www.dol.gov/newsroom/releases/ebsa/ebsa20110919.

[237] See DOL, EBSA, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice; Proposed Rule," 80 *Federal Register* 21928-21960, April 20, 2015.

[238] See DOL, EBSA, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice; Proposed Rule," 80 *Federal Register* 21928-21960, April 20, 2015.

[239] See DOL, EBSA, "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption; rule," 81 *Federal Register* 20945, April 8, 2016. To allow retirement plans and financial services providers time to adjust to the new rule, the 2016 final rule had an applicability date of April 10, 2017. In March 2017, DOL issued a Temporary Enforcement Policy that indicated it would not initiate enforcement actions against financial advisers or financial institutions that failed to satisfy the conditions of the 2016 regulation or PTE (see Field Assistance Bulletin 2017-01, at https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-01.pdf.). In March 2018, a U.S. District Court ruled that the 2016 rule was improperly promulgated, and in March 2018, a U.S. court of appeals vacated the 2016 rule.

[240] See Chamber of Commerce v. United State Department of Labor, 885 F.3d.360 (5th Cir. 2018).

[241] See 85 *Federal Register* 40589, July 7, 2020.

Facilitating ESOP Sponsorship

Congress has expressed bipartisan interest in facilitating employee ownership of firms, particularly through the promotion and expansion of ESOPs. In the 117th Congress, the SECURE 2.0 Act of 2022 (P.L. 117-328) included multiple provisions related to ESOPs, such as expanding a tax deferral benefit to shareholders selling S corporation stock to ESOPs and directing the DOL to create an Employee Ownership Initiative. In July 2025, the Senate Committee on HELP held a hearing entitled "Empowering Workers by Expanding Employee Ownership," and in January 2024, the Senate Committee on Small Business and Entrepreneurship held a hearing entitled "Succession Planning: Opportunities to Build Wealth and Keep Jobs in Local Communities."

In the 119th Congress, bills have been introduced that aim to facilitate ESOP formation by, for example, creating loan programs to increase the level of employee ownership of firms, increasing tax advantages for shareholders selling S corporation stock to ESOPs, or establishing a position within the Small Business Administration (SBA) that would provide assistance to small businesses establishing ESOPs. For more details, see "Proposed Legislation in the 119th Congress."

Stakeholder groups have a variety of viewpoints regarding (1) the barriers preventing companies from adopting ESOPs and (2) how Congress should promote ESOP formation. For example, The ESOP Association identified a lack of access to capital as a factor limiting ESOP growth and advocates for legislation such as The American Ownership and Resilience Act, introduced as H.R. 3248 and as S. 1645, which would direct the Department of Commerce to create an investment facility to facilitate the conversion of private businesses into employee-owned businesses.[242]

Expanding ESOPs, a coalition of more than 100 organizations, advocates for partial ESOP formation, particularly by corporations that do not intend to become 100% employee-owned.[243] Expanding ESOPs identified multiple barriers to partial ESOP formation, including statutory and regulatory complexity, high expenses (due to limited corporate tax incentives), lack of tax benefits for shareholders selling non-closely held C corporation stock to an ESOP, long transaction timelines, and limited liquidity for sellers.[244]

Contribution Limits

Some stakeholders contend that ESOP participants are limited in their ability to accumulate sufficient retirement savings due to existing contribution limits that apply across all DC plans sponsored by an employer.[245] Employers may not deduct contributions in an amount that exceeds 25% of participants' compensation in a year, which applies to all plans sponsored by an employer (though there are some special rules for C corporations sponsoring leveraged ESOPs). In

[242] See The ESOP Association, "Cosponsor the bipartisan American Ownership and Resilience Act (AORA) to help provide access to private capital to promote employee ownership," June 5, 2026, https://www.esopassociation.org/articles/cosponsor-bipartisan-american-ownership-and-resilience-act-aora-help-provide-access; and "Access to Capital A Barrier to ESOP Creation," May 24, 2023, https://www.esopassociation.org/articles/access-capital-barrier-esop-creation.

[243] See Expanding ESOPs, The Path Forward, https://expandingesops.com/the-path-forward/.

[244] See Expanding ESOPs, Barriers, https://expandingesops.com/why-arent-there-more/.

[245] See The ESOP Association, "Limits on ESOP Contributions IRS Section 404 and 415," May 26, 2023, at https://www.esopassociation.org/articles/limits-esop-contributions-irs-section-404-and-415.

addition, total contributions made to an employee's DC accounts cannot exceed a dollar limit, which is $72,000 in 2026.[246]

Companies that sponsor ESOPs and other retirement plans might find it difficult to contribute to both of an employee's accounts, particularly if the value of employer stock is high enough that additions to a participant's ESOP account cause it to approach or exceed the total contribution limit. As shown in **Table 6**, 66.9% of ESOPs in 2023 were (1) stand-alone ESOPs in which the sponsoring company sponsored an additional retirement plan or (2) KSOPs in which the sponsoring company sponsored an additional retirement plan.

Legislation has been introduced that would exclude certain types of contributions from counting toward the deductibility limit and the total contribution limit. The Employee Ownership Fairness Act of 2025, introduced as S. 1727 by Senator Cassidy, would provide for special ESOP provisions:

- contributions of employer stock and contributions made to repay loans used to acquire employer stock would not count for the purposes of (1) the limits on deductible contributions and (2) the overall contribution limit for DC plans,
- reallocated forfeitures would not count toward the overall contribution limit,[247] and
- the deductibility limitation would apply separately to an employer's ESOP and separate DC plan.

The "Findings" section of S. 1727 states that "ESOP employees who run successful, profitable companies are often unable to make full use of their defined contribution plans as a result of their company's success accruing to their ESOP balance, thereby causing their other plan contributions to exceed the annual cap."

Senator Sanders requested a revenue estimate for S. 1727 from the Joint Committee on Taxation (JCT) in July 2025. In a response letter, JCT estimated that the bill would cost $155 billion from FY2026 through FY2035.[248] In the letter, JCT noted that

> carving employer stock out of the deduction limitations creates an avenue of compensation that may be deducted without any limitation…. We assume some employers will take advantage of this and either increase compensation in the form of employer stock or substitute employer stock for other forms of compensation."

[246] The limit in IRC §404 is generally 25% of participants' compensation in a year. The limit in IRC §415 is the maximum that may be contributed to all of a participant's defined contribution (DC) accounts in a year. In 2026, this limit is $72,000 (or 100% of the employee's compensation, whichever is less). The maximum amount of compensation paid to a single participant for the purpose of the limit is set in statute (IRC 404(l)) and indexed for inflation. In 2026, the compensation limit is $360,000. This means that in determining the total compensation paid by an employer to participants in a plan, compensation in excess of $360,000 paid to any participant is not included in calculating the aggregate compensation. See IRS, *2026 Amounts Relating to Retirement Plans and IRAs, as Adjusted for Changes in Cost-of-Living*.

[247] Reallocated forfeitures are shares that are reallocated to remaining plan participants when an employee separates from employment before becoming fully vested in the plan. Reallocated forfeitures of C corporation stock that was acquired with a loan does not count toward the total contribution limit, provided that no more than one-third of the contributions made to the ESOP to repay the loan are allocated to highly compensated employees.

[248] See *letter from the Joint Committee on Taxation to Senator Sanders*, July 24, 2025, at https://www.politico.com/f/?id=00000198-4d64-d39b-a7dc-ef66cdcb0000.

Legislative History of the ESOP

Louis Kelso, a political economist and lawyer, created the first ESOP in 1956 to enable the employees of a privately held newspaper business to purchase the business from its retiring owners.[249] After exploring different ways for the employees to buy the business, Kelso noted that the company's retirement plan held funds sufficient to make a 30% down payment on the company. Additionally, if the retirement plan were permitted to borrow, it could take out a loan and pay the loan back through employer contributions. However, because tax-qualified plans are not permitted to borrow from related parties under prohibited transaction rules, Kelso obtained IRS approval for an exemption to the prohibited transaction.[250]

The first mention of ESOPs in federal law occurred in 1973, when the Regional Rail Reorganization Act of 1973 (P.L. 93-236) created the Consolidated Rail Corporation (Conrail).[251] As part of the legislation, Conrail's system plan was required to consider how an ESOP could be used to meet certain capitalization and other goals. During a 1973 hearing about the Northeastern Railroad Transportation Crisis, Kelso, speaking as a witness, argued in favor of employee ownership of the rail corporation.[252] As part of a subsequent law, the United States Railway Association Amendments Act of 1978 (P.L. 95-565), Conrail was required to set up an ESOP that owned 15% of Conrail stock; the federal government owned the remaining 85% of Conrail stock. Conrail later went public in 1987 when the federal government sold its 85% ownership stake, representing the largest initial public offering (IPO) in the history of the U.S. at the time.[253]

Reportedly, during a meeting between Louis Kelso and Senator Russell Long, then-Chairman of the Senate Finance Committee, Kelso convinced Senator Long to authorize ESOPs as a type of DC retirement plan in ERISA (P.L. 93-406).[254] The NCEO noted that "Long, inspired by this idea, began a crusade to provide ESOPs with tax incentives and shepherded 17 pieces of legislation through Congress in 12 years."[255]

[249] See The Kelso Institute, Rutgers-New Brunswick School of Management and Labor Relations, https://cleo.rutgers.edu/articles/the-kelso-institute/.

[250] See John Menke, "The Origin and History of the ESOP and Its Future Role as a Business Succession Tool," May 12, 2011, https://www.menke.com/esop-archives/the-origin-and-history-of-the-esop-and-its-future-role-as-a-business-succession-tool/.

[251] See U.S. GAO, *Employee Stock Ownership Plans: Benefits and Costs of ESOP Tax Incentives for Broadening Stock Ownership*," GAO/PEMD-87-8, December 1986, https://www.gao.gov/assets/pemd-87-8.pdf.

[252] U.S. Congress, Senate Commerce, Science, and Transportation Committee, Surface Transportation and Merchant Marine Infrastructure, Safety and Security Subcommittee, *Northeastern Railroad Transportation Crisis*, hearing on S. 1031, 93rd Cong., 1st sess., February 28, 1973, S.Hrg. 93-8 (Washington: GPO, 1973), pp. 89-96.

[253] See U.S. Department of Transportation, *Privatization of Conrail: The Public Offering*, https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/17622/conrail.pdf. See Goldman Sachs, "Goldman Sachs Leads Historic Conrail IPO, the Largest Public Offering to Date," https://www.goldmansachs.com/our-firm/history/moments/1987-conrail-ipo. The Northeast Rail Service Act of 1981, enacted as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), authorized the sale of Conrail to the private sector but directed the U.S. Department of Transportation to give priority to an employee purchase should no other bidder make an acceptable offer for the railroad as a unit.

[254] See Thomas Edsall, "Whatever Happened to 'Every Man a King'?," *New York Times*, February 11, 2014, at https://www.nytimes.com/2014/02/12/opinion/edsall-whatever-happened-to-every-man-a-king.html.

[255] See NCEO, "The History of ESOPs," https://www.esop.org/articles/history-of-esops.php.

Legislation in the 1970s Following ERISA

Following the enactment of ERISA, subsequent legislation in the 1970s aimed to encourage the formation of ESOPs by providing tax benefits or preferential treatment to corporations with ESOPs and clarifying ESOP requirements.

The following sections describe legislation specifically affecting ESOPS, rather than those affecting DC plans generally (e.g., those modifying DC plan contribution limits). Not every provision in each law that modified requirements for ESOPs is discussed. For example, laws that included provisions that solely clarified requirements for ESOPs are not included in the discussion below.

The Trade Act of 1974 (P.L. 93-618), which was a wide-ranging legislative package addressing international trade authority, included a provision authorizing the Secretary of Commerce to make loans to trade-impacted applicants that acquired, constructed, or modernized plant facilities or engaged in other purposes that would create new, long-term employment opportunities. Corporations that applied for such loans received preferential treatment if they established an ESOP, provided that the value of the stock purchased for the ESOP was equal to at least 25% of the loan principal.[256]

As part of **the Tax Reduction Act of 1975** (P.L. 94-12), which included tax cuts for individuals and businesses that were intended to boost growth, Congress authorized Tax Reduction Act Stock Ownership Plans (TRASOPs). TRASOPs were a type of ESOP in which the employer received a 1% tax credit for capital investments provided that the company contributed an equivalent amount of stock to the ESOP.[257]

The Tax Reform Act of 1976 (P.L. 94-455) was a legislative package that the JCT described as serving six major purposes: improving the equity of the tax system, simplifying the tax system, extending the fiscal stimulus provided by the Tax Reduction Act of 1975 (P.L. 94-12), encouraging capital formation, improving tax law administration, and revising estate and gift taxes.[258] Provisions affecting ESOPs were included in the section of the bill aimed at encouraging capital formation. For example, P.L. 94-455 extended and expanded the 1% tax credit for TRASOPs. The law includes a statement addressing congressional intent regarding ESOPs:

> The Congress, in a series of laws … 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 systems 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 JCT noted that the provision was "considered desirable in order to broaden employee ownership in business and thereby increase their interest in improving productivity."[259]

The Revenue Act of 1978 (P.L. 95-600), a legislative package focused on tax cuts, added tax qualification requirements for ESOPs.[260] Requirements included that company shares sold to and

[256] U.S. Congress, Senate Finance Committee, *Trade Act of 1974: Summary of the Provisions of H.R. 10710*, committee print, prepared by the staffs of the Senate Finance Committee and the House Ways and Means Committee, 93rd Cong., 2nd sess., December 30, 1974 (Washington: GPO, 1974).

[257] TRASOPs no longer exist under current law.

[258] U.S. Congress, JCT, *General Explanation of the Tax Reform Act of 1976*, committee print, prepared by the Joint Committee on Taxation, 94th Cong., 2nd sess., December 29, 1976, JCS-33-76 (Washington: GPO, 1976).

[259] U.S. Congress, JCT, *General Explanation of the Tax Reform Act of 1976*.

[260] IRC §409A. The Tax Reform Act of 1984 (enacted as Division A of P.L. 98-369, the Deficit Reduction Act of (continued...)

held by ESOPs be valued fairly. They also described distribution rules for ESOP participants, including the right to demand that benefits be distributed in the form of employer stock (or repurchased for fair market value if not readily tradable on an established market). The act required that closely held firms provide put options to employees to prevent retired employees from being required to hold employer stock that could not be sold. In addition, it required that ESOPs in publicly traded companies pass through voting rights to participants and required that privately held companies do so for major corporate issues.

The Technical Corrections Act of 1979 (P.L. 96-222) clarified that leveraged ESOPs were subject to the new requirements added by the Revenue Act of 1978 (P.L. 95-600).

P.L. 95-611, which amended the Regional Rail Reorganization Act of 1973 (P.L. 93-236) to authorize appropriations for the United States Railway Association for FY1979, authorized additional loans to certain railroads provided they adopted ESOPs.

The Chrysler Corporation Loan Guarantee Act of 1979 (P.L. 96-185) required Chrysler to establish an ESOP as a condition of receiving a federal loan guarantee of up to $1.5 billion. Chrysler was required to contribute $162.5 million over four years to purchase company stock for the ESOP. In 1984, Chrysler made its last contribution to the ESOP.[261] Subsequently, as part of union negotiations, Chrysler workers sold back most of their shares accumulated through the ESOP to the company.[262]

Legislation in the 1980s

Legislation in the 1980s expanded tax benefits of ESOPs. During this decade, several large corporations incorporated ESOPs into their plans to take advantage of new tax laws. Driven by the uptick in leveraged buyouts (LBOs), companies used ESOPs as tax-advantaged tools to fund such buyouts, block companies from takeover attempts, or refinance corporate debt. Later in the decade, several of these tax benefits were reduced or eliminated, likely for revenue purposes.

The Milwaukee Railroad Restructuring Act of 1980 (P.L. 96-101) amended the Regional Rail Reorganization Act of 1973 (P.L. 93-236) to permit additional loans to railroads, provided they made a written commitment to adopt an ESOP that would acquire $250,000 worth of employer stock. In addition, in the case of a Milwaukee Railroad system partial failure occurring under certain circumstances, federal relief for the surviving portion of the system would be conditioned upon the establishment of an ESOP. (Milwaukee Railroad never established an ESOP; the railroad was subsequently bought by the Soo Line Railroad Company.)[263]

The Small Business Employee Stock Ownership Act of 1980 (enacted as Title V of P.L. 96-302) provided that ESOP trusts were eligible for loan guarantees under Section 7(a) of the Small Business Act, regardless of the percentage of small business stock shares held by the ESOP.

1984) redesignated Section 409A of the IRC to Section 409 of the IRC. Under current law, Section 409A refers to the treatment of income under nonqualified deferred compensation plans (as added by P.L. 108-357).

[261] See "Chrysler's Employe [sic] Stock Plan Expires," July 10, 198, *The Washington Post*, https://www.washingtonpost.com/archive/business/1984/07/10/chryslers-employe-stock-plan-expires/34f52e8d-fe2d-47b6-a2a3-a94c8eb16c67/.

[262] See "Chrysler Buyback," December 17, 1985, *New York Times*, https://www.nytimes.com/1985/12/17/business/chrysler-buyback.html; and Peter Perl, "UAW Strikes Chrysler Corp.," October 15, 1985, *The Washington Post*, https://www.washingtonpost.com/archive/politics/1985/10/16/uaw-strikes-chrysler-corp/a8bc51ba-d880-4ad0-b112-436fda0d5155/.

[263] See "Soo Line Wins Bid for Milwaukee," February 9, 1985, *New York Times*, https://www.nytimes.com/1985/02/09/business/soo-line-wins-bid-for-milwaukee.html.

The Miscellaneous Revenue Act of 1980 (P.L. 96-605) amended the IRC to revise tax treatment of ESOPs, such as allowing stock bonus plans to provide cash distribution options to participants.

The Economic Recovery Tax Act of 1981 (P.L. 97-34) increased the deduction limits applicable to employer contributions used for payments toward an ESOP loan principal from 15% to 25% of employees' compensation. Prior to 1981, some corporations were combining ESOPs with money purchase pension plans to raise the deductible limits on employer contributions from 15% to 25%.[264] Enactment of P.L. 97-34 eliminated the need for this strategy.

It also phased out the TRASOP and replaced it with the PAYSOP, in which employers received a payroll-based tax credit equal to 0.5% of payroll for contributions to a PAYSOP of at least that amount.[265]

The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) created tax-qualification requirements for top-heavy plans, in which key employees have aggregate account balances that exceed 60% of all employees' balances. The requirements were intended to ensure that benefits also went to non-key employees. For example, these top-heavy plans had to incorporate accelerated vesting schedules. ESOPs sponsored by privately held or closely held companies with small numbers of employees might have become top-heavy when the value of company stock shares increased and thus would have been subject to these new requirements.

P.L. 98-120 amended a provision in the Trade Act of 1974 (P.L. 93-618) that gave preference to trade-impacted corporations with ESOPs when considering whether to grant federal loans or loan guarantees. P.L. 98-120 added and clarified conditions for the ESOP to qualify for the loan or loan guarantee preference. For example, it required that the agreement between the corporation receiving the loan, the lender, and the ESOP trust was unconditionally enforceable by any party against the others, jointly and severally.

The Tax Reform Act of 1984 (enacted as Division A of P.L. 98-369, the Deficit Reduction Act of 1984) added multiple tax incentives for ESOPs. For example, it permitted

- individuals selling closely held C corporation stock to an ESOP or worker cooperative to defer taxation of capital gains on this sale under certain conditions (e.g., the individual reinvests the sales proceeds into qualified replacement property, and the ESOP or worker cooperative owns at least 30% of the company stock after the sale), and
- employers to deduct dividends paid in cash to ESOP participants.

In addition, P.L. 98-369 added two tax incentives that drove the growth of ESOPs, particularly the sponsorship by large corporations. First, it permitted qualified financial institutions (e.g., banks) to exclude 50% of the interest on loans made to ESOPs. This provision was limited in 1989 and repealed in 1996. A committee report explaining the reason for the repeal stated the following:

> The Committee believes that the 50-percent exclusion for interest with respect to ESOP loans provides an unnecessary tax benefit to financial institutions for loans they would make without regard to the interest exclusion. The Committee finds no evidence that

[264] For more information, see JCT, *General Explanation of the Economic Tax Recovery Act of 1981*, JCS-71-81, https://www.jct.gov/publications/1981/jcs-71-81/.

[265] The tax credit was 0.5% of payroll for 1983-1984 and 0.75% of payroll for 1985-1987. For more information about TRASOPs and PAYSOPs, see GAO, *Employee Stock Ownership Plans: Benefits and Costs of ESOP Tax Incentives for Broadening Stock Ownership*, GAO/PEMD-87-8, December 1986, https://www.gao.gov/assets/pemd-87-8.pdf; and U.S. Congress, Senate Finance Committee, *ESOPs and TRASOPs: An Explanation for Employees*, committee print, prepared by the Staff of the Committee on Finance of the United States Senate, 95th Cong., 2nd sess., November 1978 (Washington: GPO, 1978).

> employers that maintain ESOPs have less access to borrowing than other borrowers or that there is a need to provide an incentive to lenders to make money available to ESOPs.[266]

Second, it permitted employers to assume an estate's tax obligation in return for an equal amount of stock being transferred from the estate to an ESOP or worker cooperative. This resulted in an ESOP or worker cooperative assuming an estate's tax liability and relieving the estate's executor of obligations. This provision was repealed in 1989.

The Tax Reform Act of 1986 (P.L. 99-514) further expanded tax incentives for ESOPs, allowing companies to deduct dividends used to repay ESOP loans. It also permitted estates to deduct 50% of the proceeds from a sale of employer stock to an ESOP.[267] The ability to exclude 50% of the interest on loans made to ESOPs, added by P.L. 98-369, was extended to regulated investment companies (i.e., mutual funds).[268] It also phased out the tax credit associated with PAYSOPs, which had been in operation for about four years.

In addition, P.L. 99-514 imposed a 10% penalty on withdrawals from ESOPs taken before age 59½ and added ESOP-specific diversification requirements: For employer securities acquired after December 31, 1986, plans must permit individuals who reach age 55 with 10 years of participation in the plan to diversify a portion of their account.[269]

The Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) subsequently clarified some aspects of these diversification requirements, such as election rights.

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) revised rules for the estate tax deduction for proceeds received from a sale of employer securities to an ESOP.

The Omnibus Budget Reconciliation Act of 1989 (OBRA; P.L. 101-239) repealed or limited multiple ESOP tax incentives as part of the law's revenue raising measures. For example, it

- limited the ability of qualified financial institutions to exclude 50% of interest made on loans to ESOPs to those that resulted in ESOPs owning more than 50% of the company's stock;
- instituted a three-year holding period required before individuals selling C corporation stock to an ESOP could defer taxation of capital gains on the sale;
- repealed the provisions permitting (1) estates to deduct 50% of the proceeds from sale of employer stock to an ESOP and (2) ESOPs to assume an estate's liability;
- permitted C corporations that maintain leveraged ESOPs to exclude from the overall DC plan contribution limit (1) deductible employer contributions used to repay the interest on a loan and (2) forfeitures of employer stock that was acquired with a loan, if no more than one-third of the contributions made to the ESOP to repay the loan are allocated to highly compensated employees;[270] and
- limited deductions for dividends paid on employer stock.

[266] S.Rept. 104-281.

[267] This provision was subsequently repealed in 1989.

[268] This tax advantage was repealed as part of P.L. 104-188 in 1996.

[269] These rules apply to ESOPs sponsored by privately held companies. They also apply to ESOPs sponsored by publicly traded companies if the ESOP (1) is stand-alone, (2) does not permit employee contributions or provide matching contributions (based on the amount that an individual contributes to a separate plan sponsored by the employer), and (3) is a separate plan from any other DB plan or DC plan maintained by the same employer.

[270] IRC §415(c)-1(f)(3).

Legislation in the 1990s and Early 2000s

Legislation in the 1990s permitted S corporations to sponsor ESOPs, added diversification requirements for DC plans with publicly traded stock, and, in several cases, curbed perceived abuse or reduced or eliminated generous tax incentives.

The Small Business Job Protection Act of 1996 (P.L. 104-188) permitted S corporations to sponsor ESOPs beginning in 1998. Congressional motivation for this provision was to encourage employee ownership of closely held businesses.[271] It applied UBIT to an ESOP's share of S corporation earnings.[272]

P.L. 104-188 repealed the provision allowing qualified financial institutions to exclude 50% of the interest on loans to ESOPs (which had been previously limited by P.L. 101-239).

The Taxpayer Relief Act of 1997 (P.L. 105-34) repealed UBIT for ESOPs, which resulted in income attributable to S corporation stock being tax free while it is held in an ESOP. Congress was concerned about possible double taxation of S corporation ESOPs, since all S corporation income was subject to taxation at the shareholder level, in addition to the UBIT tax that was applied to an ESOP's share of S corporation earnings under P.L. 104-188.[273] It also permitted S corporation ESOPs make cash distributions to participants (rather than stock distributions).

The National Defense Authorization Act for Fiscal Year 1998 (P.L. 105-85) expressed the Sense of Congress that costs related to ESOPs should not be disallowed for Department of Defense (DOD) contracts.[274]

After permitting S corporations to sponsor ESOPs, Congress noticed an increase in abusive tax behavior that excluded rank-and-file employees from receiving a meaningful stake in the S corporation.

The Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA; P.L. 107-16) required that ESOPs holding S corporation stock comply with anti-abuse rules in 26 U.S.C. §409(p) and associated regulations.[275] These rules prevent S corporation ESOPs from being used as tax shelters and ensure that a broad range of rank-and-file employees benefit from the plan.[276]

Per a provision in P.L. 98-369, ESOPs are able to deduct dividends that are (1) paid in cash to participants or their beneficiaries or (2) paid to the ESOP and distributed in cash to participants or their beneficiaries not later than 90 days after the end of the plan year in which the dividends

[271] S.Rept. 104-281, p.66.

[272] Explaining the reason for the repeal, the Senate Report noted that "the Committee believes that the 50-percent exclusion for interest with respect to ESOP loans provides an unnecessary tax benefit to financial institutions for loans they would make without regard to the interest exclusion. The Committee finds no evidence that employers that maintain ESOPs have less access to borrowing than other borrowers or that there is a need to provide an incentive to lenders to make money available to ESOPs." S.Rept. 104-281, p. 114.

[273] House Conf. Report 105-220.

[274] DOD is "using a secondary Department of War designation," under Executive Order 14347, dated September 5, 2025. See DOD, "Contract Policy – Doing Business with the Department of Defense," at https://www.acq.osd.mil/asda/dpc/cp/policy/doing-business-with-dod.html. For Executive Order 14347, see https://www.federalregister.gov/documents/2025/09/10/2025-17508/restoring-the-united-states-department-of-war.

[275] Section 656 of P.L. 107-16 added Section 409(p) to Title 26 of the *U.S. Code*.

[276] See IRS, *Issue Snapshot – Preventing the occurrence of a nonallocation year under Section 409(p)*, https://www.irs.gov/retirement-plans/issue-snapshot-preventing-the-occurrence-of-a-nonallocation-year-under-section-409p.

were paid by the corporation. EGTRRA expanded this dividend deduction: with the affirmative election of participants, ESOPs may also deduct dividends that are reinvested into the ESOP.[277]

The American Jobs Creation Act of 2004 (P.L. 108-357) permitted ESOPs maintained by S corporations to use distributions of S corporation stock to repay an acquisition loan without engaging in a prohibited transaction (aligning ESOPs sponsored by S corporations with ESOPs sponsored by C corporations, which are permitted to use dividends to repay an acquisition loan without engaging in a prohibited transaction).

The Pension Protection Act of 2006 (PPA; P.L. 109-280) added diversification requirements for DC plans with publicly traded employer stock following the collapse of Enron in 2001, in which employees' 401(k) accounts were invested heavily in employer stock that lost effectively all value.

Recent ESOP Legislation

In the past decade, legislation has sought to increase sponsorship of ESOPs, expanded tax incentives for sales of S corporation stock to ESOPs, added categories of investments deemed to be publicly traded for the purposes of ESOPs, and created a pilot program for certain ESOPs and follow-on contracts from the DOD.

The Small Business Administration (SBA) provides a variety of programs to assist entrepreneurs with starting, operating, and expanding small businesses. Several SBA programs support small business formation and expansion by helping businesses access capital. The agency's largest capital-access program is the 7(a) loan guarantee program.[278]

The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY2019 NDAA, P.L. 115-232) included provisions related to promoting ESOPs through the SBA programs. (These provisions are sometimes referred to as the Main Street Employee Ownership Act.[279]) Those provisions included allowing 7(a) loan proceeds to be used to finance the purchase of 51% or more of a business by an ESOP (the only allowable partial ownership transaction at that time)[280] and allowing a borrower to use loan proceeds to finance certain transaction costs.

The FY2019 NDAA also authorized the SBA Administrator to waive certain general requirements for ESOP loans. Those requirements included securing personal guarantees from borrowers and

[277] IRC §404(k)(7) and IRS Notice 2002-02, at https://www.irs.gov/pub/irs-irbs/irb02-02.pdf.

[278] The program derives its name from Section 7(a) of the Small Business Act (P.L. 85-536, as amended), which authorizes the Small Business Administration (SBA) to provide and guarantee business loans to American small businesses. The 7(a) program operates through loan guarantees. The SBA approves private lenders to participate in the program, and these lenders make loans to qualifying small businesses. If a lender and a loan meet SBA requirements, then the loan may qualify for an SBA loan guarantee, which ensures that the agency will purchase the unpaid guaranteed portion of the loan if the borrower defaults. This reduces the lender's risk, thereby potentially making lending to risky borrowers more appealing to private lenders.

[279] This section about the SBA's loan program was authored by Anthony Cilluffo, CRS Specialist in Public Finance. The provisions in P.L. 115-232 were similar to those in H.R. 5236 of the 115th Congress, the Main Street Employee Ownership Act of 2018, which passed the House but did not receive significant action in the Senate. The related provisions in P.L. 115-232 are sometimes referred to as the Main Street Employee Ownership Act.

[280] At that time, the other allowable change of ownership uses of a 7(a) loan were for one or more new owners to purchase 100% of the business, and for existing owners to purchase the entire stake of another owner. In the latter case, the selling owner could not remain with the business. The ESOP loans were unique in that an existing owner could sell part of their ownership stake to the ESOP and remain a part owner. For example, a 100% owner could sell 75% of the business to an ESOP and remain a 25% owner and involved in the management of the business. The April 2023 final rule mentioned in the text expanded the allowable uses for partial change of ownership transactions, but these changes generally did not affect ESOPs because they were already eligible.

requiring a 10% equity injection when an SBA loan was used to finance a change in ownership. SBA implemented those waivers in its revision to the business loan program's standard operating procedures issued in August 2023.[281]

On April 10, 2023, the SBA finalized a rule that made several changes to the affiliation and lending criteria it uses in its business loan programs.[282] The SBA explained the regulation change as an attempt to assist ESOPs and provide a path to ownership for employees. Describing the past several fiscal years, the SBA stated that

> [o]ver the past 4 completed fiscal years (FY2018 through FY2021), SBA approved 31,940 7(a) loans where loan proceeds were used to affect a change of ownership. ESOP loans (loans to assist an ESOP trust in acquiring 51 percent or more of the equity ownership in the small business concern) accounted for only 17 of the 31,940 loans used for a change of ownership in the four years between FY2018 and FY2021, or fewer than five loans per year. Therefore, ESOP loans have not made the anticipated impact in transitioning small businesses to employee ownership as originally intended by the Agency. For these reasons, SBA is moving forward with lifting the prohibition on partial changes of ownership.[283]

Section 874 of **the National Defense Authorization Act for FY2022** (P.L. 117-81) authorized a five-year pilot program for certain S corporation defense contractors that are 100% ESOP-owned. Beginning in 2022, DOD was permitted to award noncompetitive *follow-on contracts* to these contractors for the continued provision of services procured by DOD under a prior contract.

Section 872 of the **NDAA for FY2024** (P.L. 118-31) modified some aspects of the program, including extending it to December 2029.

GAO Evaluation of the DOD Pilot Program

GAO evaluated the DOD pilot program (as required by P.L. 117-81) and published its findings in March 2025.[284] As of the date of the GAO report, eight ESOPs had been awarded contracts with a collective value of more than $450 million through the program. GAO found that the program guidance for contracting officers did not provide key information about eligibility requirements and that the pilot program did not fully align with GAO's pilot program leading practices. Because the pilot program is expected to continue until 2029, GAO provided six recommendations to improve the program, including that the Under Secretary of Defense for Acquisition and Sustainment provide additional guidance to contractor officials on key program requirements to reduce the risk of awarding a contract to ineligible contractors; establish well-defined, appropriate, clear, and measurable objectives for the pilot; and develop a plan to evaluate the pilot program.

The SECURE 2.0 Act of 2022 ("SECURE 2.0," enacted as Division T of the Consolidated Appropriations Act, 2023 [P.L. 117-328]) contained three provisions related to ESOPs. First, it permitted shareholders selling S corporation stock to an ESOP to defer taxation on 10% of gains from the sale, effective for sales after 2027. Under current law, this gain deferral tax advantage is available only to shareholders selling closely held C corporation stock to an ESOP or worker

[281] SBA, "Lender and Development Company Loan Programs," SOP 50 10 7, August 1, 2023.

[282] SBA, "Affiliation and Lending Criteria for the SBA Business Loan Programs," 88 *Federal Register* 21074, April 10, 2023, https://www.federalregister.gov/documents/2023/04/10/2023-07173/affiliation-and-lending-criteria-for-the-sba-business-loan-programs.

[283] SBA, "Affiliation and Lending Criteria for the SBA Business Loan Programs," 88 *Federal Register* 21074, April 10, 2023.

[284] U.S. Government Accountability Office, *DOD Contracting: Opportunities Exist to Improve Pilot Program for Employee-Owned Businesses*, GAO-25-107531, March 2025, https://www.gao.gov/products/gao-25-107531.

cooperative.[285] To be eligible for this provision, the securities sold by the shareholder to the ESOP cannot have been publicly traded for at least one year prior to the sale.[286]

Second, it treated certain securities as publicly traded for the purposes of the DC plan diversification requirement. The definition of *employer securities* for ESOP purposes depends on whether the employer's stock is readily tradable on an established securities market.[287] A final regulation issued in 2010, which described diversification requirements for DC plans with publicly traded securities, defined *readily tradable on an established securities market* as traded on a national securities exchange or an officially recognized foreign national securities exchange.[288] A provision in SECURE 2.0 (P.L. 117-328) expanded the definition of *employer securities* for the purposes of the DC plan diversification requirement to include certain non-exchange traded securities that meet a number of requirements, such as (1) the security is the subject of priced quotations by at least four dealers, published and made continuously available on an interdealer quotation system that has requested to be treated as an alternative trading system, (2) the security is not a penny stock, and (3) the security is issued by a corporation that is not a shell company, a blank check company, or subject to bankruptcy proceedings.

This provision is intended to allow certain companies with securities that are traded on non-exchange markets to treat their stock as "public" for ESOP purposes.[289] JCT noted that "although the provision only modifies the definition ... with respect to the special diversification rules for certain defined contribution plans, it is intended that, consistent with IRS guidance applicable to ESOP rules ... such definition applies with respect to other ESOP rules under the Code."[290]

Third, a provision in P.L. 117-328 called the "Worker Ownership, Readiness, and Knowledge (WORK) Act" required DOL to establish an Employee Ownership Initiative. The initiative's purpose is to promote employee ownership by supporting existing and facilitating new state programs designed to promote employee ownership by (1) making federal grants and (2) acting as a clearinghouse on techniques employed by new and existing programs and existing state-level programs, or funding projects for outside groups to gather information on these techniques.[291]

DOL's Employee Ownership Initiative

DOL's Employee Ownership Initiative was launched in 2023. As part of the initiative, DOL's EBSA established a Division of Employee Ownership within EBSA's Office of Outreach, Education, and Assistance.[292]

The WORK Act stated that the initiative's programs regarding employee ownership are to encourage new and existing programs with the states that focus on the following:

- **education and outreach** to inform employees and employers about the possibilities and benefits of employee ownership and business ownership succession planning, including providing information about

[285] IRC §1042.

[286] This means that, for example, a shareholder selling publicly traded stock would not be eligible for the tax advantage in Section 1042.

[287] IRC §409(l).

[288] Treas. Reg. §401(a)(35)-1, and Internal Revenue Service, "Diversification Requirements for Certain Defined Contribution Plans," 75 *Federal Register* 27927, May 19, 2010, https://www.federalregister.gov/documents/2010/05/19/2010-11924/diversification-requirements-for-certain-defined-contribution-plans.

[289] This could enable companies based outside of the United States to offer ESOPs to their U.S. employees.

[290] See JCT, *General Explanation of Tax Legislation Enacted in the 117th Congress*, December 2023, p. 368, https://www.jct.gov/publications/2023/jcs-1-23/.

[291] See DOL, EBSA, *Employee Ownership Initiative*, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/programs-and-initiatives/employee-ownership-initiative.

[292] See DOL, EBSA, *Employee Ownership Initiative*.

financial education, employee teams, open-book management, and other tools that enable employees to share ideas and information about how their businesses can succeed;[293]

- **technical assistance** to assist employee efforts to become business owners, to enable employers and employees to explore and assess the feasibility of transferring full or partial ownership to employees, and to encourage employees and employers to start new employee-owned businesses;[294]
- **training for employees and employers** with respect to methods of employee participation in open-book management, work teams, committees, and other approaches for seeking greater employee input;[295] and
- **training other entities** to apply for funding to establish new programs and carry out program activities.[296]

The Secretary of Labor may make grants to carry out such programs. Entities may apply for grants with DOL, and states may sponsor and submit grant applications on behalf of any local entity consisting of a state or local government unit, state-supported institution of higher education, or nonprofit organization. Recipients of grants may not receive more than $300,000 for a grant made during FY2025, $330,000 during FY2026, $363,000 during FY2027, $399,300 during FY2028, and $439,200 during FY2029. The Secretary of Labor is authorized to reserve no more than 10% of any appropriated funds for a fiscal year for evaluating the grant programs.

The WORK Act authorized $50 million for a five-year grant program specified in the bill. In February 2026, a committee report accompanying the Consolidated Appropriations Act of 2026 (P.L. 119-75) advised DOL to make available $2 million in Dislocated Worker National Reserve Funds to establish an initial offering of Employee Ownership Grants, as conceptualized in the WORK Act.[297] DOL's Employment and Training Administration (ETA) will administer the grant program, and EBSA's Division of Employee Ownership will provide subject matter expertise.

The WORK Act also required that DOL submit a report on (1) progress related to employee ownership within the United States and (2) an analysis of the costs and benefits of the activities carried out by DOL to promote employee ownership. DOL published its report in January 2026.[298]

The WORK Act also required DOL to issue formal guidance for

- grant recipients and one-stop partners affiliated with workforce development systems of states, proposing that programs and other activities funded through grants are proactive in encouraging actions and activities that promote employee ownership of businesses, and are comprehensive in emphasizing both employee ownership of business so as to increase productivity and broaden capital ownership, and
- in consultation with Treasury, acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an ESOP.

[293] As part of this, the Secretary of Labor is permitted to establish provisions that target key groups, such as retiring business owners; encourage cooperation in workshop and conference organization; and prepare and distribute materials concerning employee ownership and business ownership succession planning.

[294] As part of this, the Secretary of Labor is permitted to establish provisions that provide preliminary technical assistance to employee groups, managers, and retiring owners exploring the possibility of employee ownership; provide for the performance of preliminary feasibility assessments; assist in the funding of objective third-party feasibility studies and preliminary business valuations, and in selecting and monitoring professionals qualified to conduct such studies; and provide a data bank to help employees find legal, financial, and technical advice in connection with business ownership.

[295] As part of this, the Secretary of Labor is permitted to establish provisions that provide for courses on employee participation and the development and fostering of networks of employee-owned companies to spread the use of successful participation techniques.

[296] As part of this, the Secretary of Labor is permitted to establish provisions that provide for visits to existing programs by staff from new programs receiving funding and to provide materials used for such training.

[297] U.S. Congress, Senate Appropriations Committee, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2026*, report to accompany S. 2587, 119th Cong., 1st sess., July 31, 2025, S.Rept. 119-55 (Washington: GPO, 2025), p. 16.

[298] See DOL, *Report to Congress; Employee Ownership Initiative*, January 2026, https://beta.dol.gov/system/files/media/research-data/surveys-reports/employee-ownership-report-to-congress.pdf.

DOL transmitted proposed regulations to establish good faith fair market value for shares of a business to be acquired by an ESOP to the Office of the Federal Register with a date of January 16, 2025, but they were not published in the *Federal Register* before January 20, 2025, and were suspended as part of the incoming second Trump Administration's freeze of all pending regulations.[299] DOL has indicated that it intended to issue a notice of proposed rulemaking relating to the definition of *adequate consideration* in late 2026.[300]

Section 872 of **the NDAA for FY2024** (P.L. 118-31) modified some aspects of the DOD pilot program for certain S corporation defense contractors that are 100% ESOP-owned, including extending the pilot program to December 2029.

The Retire through Ownership Act (P.L. 119-124), enacted on October 15, 2026, amended ERISA to allow an ESOP fiduciary to make a good faith reliance on a valuation provided by an independent valuation or business appraiser who uses IRS Revenue Ruling 59-60 methodology to determine the fair market value of a plan's securities if the securities are not traded on a national securities exchange (i.e., not publicly traded). IRS Revenue Ruling 59-60 provides guidance for valuing closely held businesses for estate and gift tax purposes.[301]

Proposed Legislation in the 119th Congress

In the 119th Congress, Members of Congress have introduced bills that would modify rules for ESOPs, expand ESOP representation in federal agencies, create new loan programs to promote employee ownership, and modify existing federal programs to make more ESOPs eligible for such programs. These bills and amendments are described below.[302] Some of the bills described in this section include similar, or identical, provisions.

The Employee Ownership Representation Act of 2025, S. 1728, passed the Senate on October 9, 2025.[303] As introduced by Senator Cassidy, the bill would expand the membership of the ERISA Advisory Council to include two representatives of employee ownership organizations. The ERISA Advisory Council consists of 15 members appointed by the Secretary of Labor who advise the Secretary and submit recommendations regarding issues important to the administration of ERISA.[304]

---

[299] The proposed regulations were not published in the *Federal Register*. The document is available at https://www.mcdermottlaw.com/pdf/proposed-regulation-relating-to-application-of-the-definition-of-adequate-consideration/. See The White House, "Regulatory Freeze Pending Review," January 20, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/.

[300] See Office of Information and Regulatory Affairs, Office of Management and Budget, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=1210-AC20.

[301] See TaxNotes, IRS, *Rev. Rul. 59-60*, https://www.taxnotes.com/research/federal/irs-guidance/revenue-rulings/rev-rul-59-60/d30t. ESOPs have relied on Rev. Rul. 59-60 for valuation purposes in the absence of clear federal guidance specifically applicable to ESOPs.

[302] Bills introduced as of October 15, 2026, that include the term "employee stock ownership plan" or "ESOP" with provisions that would specifically affect ESOP rules are included in the report. Some bills, such as S. 4212, mention ESOPs as a form of compensation but are not intended to change ESOP requirements directly and so are not included in this report.

[303] For a cost estimate for the version of the bill passed by the Senate, see Congressional Budget Office, *S. 1728, Employee Ownership Representation Act of 2025*, June 24, 2026, https://www.cbo.gov/publication/62541/

[304] See DOL, EBSA, *ERISA Advisory Council*, at https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council. ERISA requires that the ERISA Advisory Council meet four times per year. However, the council did not meet during 2025 and has not publicly announced any plans to meet in 2026. See PSCA, "The ERISA Advisory Council Has Quietly Disappeared," February 10, 2026, https://www.psca.org/news/psca-news/2026/2/the-erisa-advisory-council-has-quietly-disappeared.

Language from two other bills in the 119th Congress was attached to S. 1728 as amendments in the nature of a substitute. Provisions included from The Employee Ownership Financing Act, introduced as S. 2458 by Senator Sanders, would

- create the Office of Employee Ownership to implement the Employee Ownership Initiative, and
- create an Advisory Council on Employee Ownership to advise DOL on employee ownership.

In addition, language from The Advocate for Employee Ownership Act, introduced as S. 2474 by Senator Hassan, would create an Advocate for Employee Ownership position within the Employee Ownership Initiative at DOL. The Advocate's duties would include consulting with the Employee Ownership Initiative, acting as a liaison between DOL and employee ownership stakeholders, providing education and assistance related to the expansion of employee ownership, providing assistance for purposes of resolving disputes between DOL and ESOP sponsors, fiduciaries, and participants; identifying and recommending potential legislative changes to promote ESOPs; and coordinating with other federal agencies such as SBA, Treasury, and Commerce, and state and local governments on outreach and education regarding employee ownership. CBO estimated that S. 1728, as passed by the Senate, would cost $8 million from FY2026 through FY2031.[305]

In addition to the provisions creating the Office of Employee Ownership and creating an Advisory Council on Employee Ownership that were included as amendments to S. 1728, The Employee Ownership Representation Act of 2025, **The Employee Ownership Financing Act**, introduced as S. 2458 by Senator Sanders, would establish an Employee Ownership Loan Program to make loans or loan guarantees to eligible entities (ESOPs, eligible worker-owned cooperatives, qualified trusts under Section 401(a) of Title 26 of the *U.S. Code* on behalf of an ESOP) to do the following:

- enable the entity to purchase the equity of a company that is 51% or more employee-owned or to allow a company that is less than 51% employee-owned to become 51% or more employee-owned,
- allow a company that is less than 51% employee-owned to become 51% or more employee-owned,
- allow a company that is 51% or more employee-owned to increase the level of employee ownership, or
- allow a company that is 51% or more employee-owned to expand operations and increase or preserve employment.

The director of the Office of Employee Ownership would be responsible for carrying out the Employee Ownership Loan Program. Entities receiving loans under the program would have to comply with various requirements, such as providing a business plan to the Director. The principal amount of loans and loan guarantees made under the program shall not exceed $500 million at any time. S. 2458 would also amend the Worker Adjustment and Retraining Notification Act (WARN Act; P.L. 100-379) to require that an employer ordering a plant closing that permanently shuts down an entire facility to include in its WARN Act notice an offer for the

[305] see Congressional Budget Office, *S. 1728, Employee Ownership Representation Act of 2025*, June 24, 2026, https://www.cbo.gov/publication/62541/.

affected employees to purchase that plant or facility, or the company of the plant or facility, through an ESOP or eligible worker-owned cooperative.[306]

The Employee Ownership Fairness Act of 2025, introduced as S. 1727 by Senator Cassidy, would provide for special ESOP provisions: Contributions of employer stock and contributions made to repay loans used to acquire employer stock would not count for the purposes of (1) the limits on deductible contributions or (2) the overall contribution limit for DC plans. Reallocated forfeitures would not count toward the overall contribution limit.[307] In addition, the deductibility limitation would apply separately to an ESOP and another DC plan (for an employer that sponsors both).

The Promotion and Expansion of Private Employee Ownership Act of 2025, introduced as S. 2461 by Senator Daines and as H.R. 3105 by Representative Mike Kelly, would do the following:

- Remove the 10% limit on SECURE 2.0's (P.L. 117-328) provision permitting shareholders selling S corporation stock to an ESOP to defer taxation on 10% of gains from the sale, effective for sales after 2027. This would mean that individuals selling either closely held C corporation or S corporation stock to an ESOP would be permitted to defer capital gains taxation under certain conditions.
- Require Treasury to establish the S Corporation Employee Ownership Assistance Office to provide education and outreach to inform companies and individuals about the benefits of employee ownership of S corporations, and to provide technical assistance to S corporations in sponsoring ESOPs.
- Amend the Small Business Act to allow the SBA to "look through" an ESOP to use the characteristics of the underlying employee-owners when determining eligibility for group-based small business preferences (such as for women-owned or veteran-owned businesses). Under the Small Business Act, small businesses may qualify for preferences based on gender, veteran status, or other characteristics of the owners.[308] However, once an ESOP acquires more than 49% of a business, the business loses eligibility for group-based preferences even if the underlying qualifying criteria (e.g., more than 50% ownership by women) remains the same. This provision would allow the SBA to "look through" the ESOP and use employee characteristics toward determining whether the business is eligible for group-based preferences, provided that the business met the eligibility criteria prior to the ESOP ownership transition.
- Create an Advocate for Employee Ownership position within the Employee Ownership Initiative at DOL. The advocate's duties would include consulting with the Employee Ownership Initiative; acting as a liaison between DOL and employee ownership stakeholders; providing education and assistance related to the expansion of employee ownership; providing assistance in the resolution of disputes between DOL and ESOP sponsors, fiduciaries, and participants; consulting with Treasury's S Corporation Employee Ownership Assistance Office (which would be created under a separate provision in this bill) to identify and recommend potential legislative changes to promote ESOPs; and coordinating

[306] The WARN Act requires qualified employers that intend to carry out plant closings or mass layoffs to provide 60 days' advance notice to affected employees, states, and localities. For more information on the WARN Act, see CRS Report R42693, *Worker Adjustment and Retraining Notification (WARN) Act: A Primer*.

[307] Reallocated forfeitures are shares that are reallocated to remaining plan participants when an employee separates from employment before becoming fully vested in the plan.

[308] See CRS Video WVB00682, *The Small Business Administration: An Overview*.

with other federal agencies, such as SBA, Treasury, and Commerce, and state and local governments on outreach and education regarding employee ownership.

The American Ownership and Resilience Act, introduced as H.R. 3248 by Representative Blake Moore and as S. 1645 by Senator Van Hollen, would direct the Department of Commerce to create an investment facility to facilitate the conversion of private businesses into employee-owned businesses. Commerce would provide leverage to licensed ownership investment companies (OICs), which would

- manage capital for the purpose of financing the sale of a private business to an ESOP or eligible worker-owned cooperative,
- have the authority to borrow money and issue securities or other obligations to finance the sale, and
- have the full faith and credit of the United States to guarantee the payment of all such amounts.

When selling a business to an ESOP, an independent trustee must be appointed to obtain a fairness opinion on the investment from an independent financial advisory.

Sections 418 of **the Advancing Policy Priorities Act** and **the Advancing Commonsense Policies Act**, introduced as H.R. 7315 and H.R. 7314, respectively, by Representative Magaziner, and Section 418 of **the Responsible Legislating Act**, introduced as H.R. 185 by Representative McGovern, would treat certain securities held by ESOPs as publicly traded for the purposes of the diversification requirement applicable to DC plans with publicly traded employer securities.[309] In addition, all three bills would delay the applicability of the 10% gain deferral provision for sales of S corporation stock to ESOPs (as enacted in SECURE 2.0 [P.L. 117-328]) from 2028 to 2030.

The ESOP Act, introduced as H.R. 6492 by Representative Mills, would change eligibility requirements for the DOD ESOP-owned S corporation pilot program: S corporations that are 30% or greater ESOP-owned—rather than 100% ESOP-owned—could apply.

The ESOP Funding for SBA Position Act of 2025, introduced as H.R. 2993 by Representative Case, would establish a position within the SBA that would provide assistance to small businesses establishing ESOPs.

The Reduction of Excess Business Holding Accrual Act, introduced as S. 1416 by Senator Rick Scott and as H.R. 2014 by Representative Steube, would treat certain stock repurchased by a corporation from an ESOP as outstanding voting stock for purposes of the federal excise tax imposed on a private foundation's excess business holdings.

S.Amdt. 3743, submitted by Senator Van Hollen to S. 2296, **the National Defense Authorization Act for FY2026**, would require a study and recommend alternatives to unconditional ownership and control requirements for ESOP and eligible worker-owned cooperatives that would enable access to set-aside procurement programs.

[309] This diversification requirement is at IRC §401(a)(35).

Appendix. Largest Plans in DOL ESOP Data

Table A-1 shows the 20 largest plans in publicly available DOL Form 5500 data, based on number of total participants, that indicated having ESOP features in plan year 2023. The largest plan in this table was the Walmart 401(k) Plan, a KSOP with 1.9 million participants and $36.7 billion in assets, 9% of which was invested in employer securities.

The plans in **Table A-1** have a range of plan assets invested in employer securities. The plan sponsored by Publix Super Markets indicated that 95.8% of plan assets were invested in employer securities, while the IBM 401(k) Plus Plan indicated that 1.8% of plan assets were invested in employer securities.

Some plans indicated that they had zero investments in employer securities. This is because some employers—typically larger employers—commingle the assets of the multiple plans that they sponsor into a master trust for investment and administrative purposes. These master trusts are also required to submit annual Form 5500 filings and to indicate how much of the trust assets are invested in employer securities. It is not possible to determine the amount of employer securities held in the company's ESOP compared with employer securities held in other plans sponsored by the company because all of the company's plans' assets are held in a separate master trust.

Table A-1. Twenty Largest Plans Indicating Having ESOP Features in Plan Year 2023

in descending order based on number of total participants

Plan Name	Number of Participants (end of year)	KSOP or Stand-Alone ESOP	Total Assets (end of year, in millions of dollars)	Percentage of Total Plan Assets in Employer Securities
Walmart 401(k) Plan	1,879,281	KSOP	$36,748	9.0%
Target Corporation 401(k) Plan	466,755	KSOP	$13,008	See note.
The Home Depot Futurebuilder	444,408	KSOP	$12,586	See note.
CVS Health Future Fund 401(k) Plan	305,635	KSOP	$27,589	See note.
Lowes 401(k) Plan	302,381	KSOP	$8,109	43.0%
JPMorgan Chase 401(k) Savings Plan	297,494	KSOP	$44,552	14.5%
Wells Fargo & Company 401(k) Plan	284,932	KSOP	$51,831	18.0%
The Kroger Co. Savings Plan	261,807	KSOP	$2,300	See note.
The Bank of America 401(k) Plan	252,274	KSOP	$54,849	10.7%
Costco 401(k) Plan	244,643	KSOP	$33,385	47.9%
The Boeing Company 401(k) Plan	214,943	KSOP	$72,246	See note.

Plan Name	Number of Participants (end of year)	KSOP or Stand-Alone ESOP	Total Assets (end of year, in millions of dollars)	Percentage of Total Plan Assets in Employer Securities
RTX Savings Plan	211,465	KSOP	$52,760	See note.
Publix Super Markets, Inc. ESOP & Trust	205,090	Stand-alone ESOP	$11,810	95.8%
AT&T Retirement Savings Plan	202,163	KSOP	$40,012	See note.
Microsoft Corporation Savings Plus 401(k) Plan	177,306	KSOP	$53,226	9.1%
The PepsiCo Savings Plan	174,004	KSOP	$13,651	See note.
Macys Inc 401(k) Retirement Investment Plan	168,721	KSOP	$4,260	See note.
The Kroger Co. 401(k) Retirement Savings Account Plan	159,098	KSOP	$8,445	See note.
Northrop Grumman Savings Plan	156,940	KSOP	$36,173	See note.
IBM 401(k) Plus Plan	156,167	KSOP	$57,428	1.8%

Source: CRS analysis of DOL Form 5500 data, 2023 plan year.

Notes: Not all participants in these plans hold employer stock through the ESOP component, as some plans have a legacy ESOP component that is no longer offered to current participants. Plans with "See note" show zero percent of their assets invested in employer securities. This is because some employers—typically larger employers—commingle the assets of the multiple plans that they sponsor into a master trust for investment and administrative purposes. These master trusts are also required to submit annual Form 5500 filings and to indicate how much of the trust assets are invested in employer securities. Because of this, it is not possible to determine the amount of employer securities held in the company's ESOP compared with employer securities held in other plans sponsored by such companies when the assets are held in a separate master trust.

Table A-2 shows the 10 largest plans that indicated having ESOP features and indicated that 50% or more of plan assets were invested in employer securities. The largest such plan was the Publix Super Markets, Inc. ESOP and Trust, which covered 205,090 participants and held $11.8 billion in assets, 95.8% of such were invested in employer securities.

Most of the plans in **Table A-2** were stand-alone ESOPs, except for the plans sponsored by Sherwin Williams and Dillards. Among the eight stand-alone ESOPs in **Table A-2**, all but one sponsored a separate 401(k) plan. Presumably, many of the participants in the stand-alone ESOPs are eligible to participate in the companies' separate 401(k) plans.

Table A-2. Ten Largest ESOPs with 50% or More of Plan Assets Invested in Employer Securities in Plan Year 2023

in descending order, by number of total participants

Plan Name	Number of Participants (end of year)	KSOP or Stand-Alone ESOP	Offers a Separate 401(k) Plan	Total Assets (end of year, in millions of dollars)	Percentage of Total Plan Assets in Employer Securities
Publix Super Markets, Inc. ESOP & Trust	205,090	Stand-alone ESOP	Yes	$11,810	95.8%
Procter & Gamble Profit Sharing Trust & ESOP	66,165	Stand-alone ESOP	Yes	$21,972	89.3%
The Sherwin-Williams Company 401(k) Plan	63,164	KSOP	Yes	$10,129	57.5%
Dillard's Inc. Investment & ESOP	47,761	KSOP	No	$2,854	70.2%
Wawa, Inc. ESOP	43,015	Stand-alone ESOP	Yes	$5,338	96.4%
U-Haul Holding Company ESOP	30,175	Stand-alone ESOP	Yes	$618.5	95.9%
Winco ESOP	25,838	Stand-alone ESOP	Yes	$4,331	95.6%
Parsons ESOP	19,738	Stand-alone ESOP	Yes	$3,757	98.5%
Houchens Industries, Inc. ESOP	18,445	Stand-alone ESOP	No	$2,065	99.8%
Raymond James Financial, Inc. & Affiliates ESOP	16,801	Stand-alone ESOP	Yes	$662	99.9%

Source: CRS analysis of DOL Form 5500 data, 2023 plan year.

Notes: Some plans showed zero percent of their assets invested in employer securities and were not included in this analysis. This is because some employers—typically larger employers—commingle the assets of the multiple plans that they sponsor into a master trust for investment and administrative purposes. These master trusts are also required to submit annual Form 5500 filings and to indicate how much of the trust assets are invested in employer securities. Because of this, it is not possible to determine the amount of employer securities held in the company's ESOP compared with employer securities held in other plans sponsored by such companies when the assets are held in a separate master trust.

Author Information

Elizabeth A. Myers
Analyst in Income Security

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.