
*Editors’ Note: This bibliography is by nature selective. We have tried to include publications that are either classic (and therefore timeless) or that are the most current on the subject.*

### B.1 General Employee Ownership Topics


This book expounds the idea that companies flourish when they become “communities of enterprise.” When employees share in the rewards as well as the responsibility for the decisions they make, better decisions result. The author explores both employee stock ownership plans and worker-owned cooperatives.


This article discusses the growing trend in various forms of employee ownership, including co-ops, ESOPs, land trusts, and municipal enterprises. It primarily discusses various types of employee-owned businesses in Ohio, which have been influenced in part by the efforts of the Ohio Employee Ownership Center. The article explores the effect of these businesses on the employees and on the local economy.


This article compares the development of employee ownership in the United States, Germany, and Sweden to examine the existing bodies of corporate and labor law and their effect on the course of employee ownership development.

Beamer, Glenn. “Sustaining the Rust Belt: A Retrospective Analysis of the Employee Purchase of Weirton Steel.” *Labor History* 48, no. 3 (August 2007).

This article provides a retrospective analysis of the employee purchase of Weirton Steel by 11,000 union workers and discusses the critical role collective bargaining agreements had in motivating the original parent company to seek an alternative to closing the plant. This decision enabled employees to balance their desires for secure incomes and pensions with the company’s financial obligations.
This article looks at the possible effects of creating an employee stock ownership plan, reasons to consider taking that path, and guidelines on how an ESOP could be structured.

Founded in 1969 with one government contract, SAIC built a culture firmly rooted in the simple idea that those who contribute to the company should own it, and ownership should be commensurate with a person’s contribution and performance as much as feasible. The company has grown since then into an $8 billion technology business. Over the years the company’s evolving ownership system incorporated nearly every means of providing stock incentives and ownership to employees. Dr. Beyster shares his vision and wisdom on his journey to founding and then sustaining one of the most successful corporations in America.

This book provides a comprehensive survey of laws on employee financial participation in businesses in 34 nations, including the United States, Canada, Japan, South Korea, the People’s Republic of China, and 14 European Union members. The author particularly focuses on ESOPs and stock option programs.

The book and chapter are based on the sixth annual Financial Markets and Development conference held April 26-27, 2004, in Washington, D.C. The conference was jointly sponsored by The World Bank Group, the International Monetary Fund, and the Brookings Institution. The chapter discusses the use of broadened employee ownership to facilitate the privatization of state-owned financial institutions. The principles are applicable in any industry.

This article reviews case studies produced by U.S. professors and researchers on shared capitalism, including employee ownership, stock options, and profit sharing, from 1975 to the present. The authors review the number of cases that can be identified, their topic areas, main themes, and chronological development and conclude that there has been a lack of attention to developing educational materials for business schools.

———. “Policy Note: Are Diversification and Employee Ownership Incompatible?” *The Journal of Employee Ownership Law and Finance* 18, no. 4 (Fall 2006).
This is the second article in a series that discusses both empirical and policy questions related to employee ownership. This article explores one of the principal objections to employee ownership by academic economists and investment experts—that it involves too much undiversified risk for workers who have both their job and their retirement assets tied up substantially in the company where they work. The authors propose a simple solution to that problem.

This is the third article in a series that discusses both empirical and policy questions related to employee ownership. This article explores the connection between different philosophical approaches
defining the role of employee ownership in modern capitalism and barriers to its wider institutionalization.


This is the first article in a series that discusses both empirical and policy questions related to employee ownership. According to the 2002 General Social Survey, 21 percent of the working population has direct employee ownership of company stock in the company where they work. This article discusses capital assets of employee owners, ownership population, and national evidence on some workplace performance outcomes from a national random sample of all U.S. workers.

———. “Shared Capitalism at Work: Employee Ownership, Profit and Gain Sharing, and Broad-Based Stock Options.” The Journal of Employee Ownership Law and Finance 22, no. 3 (Summer 2010).

This article summarizes the research results of the National Bureau for Economic Research’s Shared Capitalism Project. That study examined 14 companies and hundreds of work sites of companies with broad-based employee stock ownership, profit sharing, gain sharing, and stock options. The study found many benefits of shared capitalism including: improved company performance, greater employee loyalty and willingness to work hard, and lower turnover.


This issue brief discusses the importance of succession planning at many levels of an organization. It examines best practices in developing new leaders. Examples are provided from successful ESOP companies.


This article explores the reasons that companies with ESOPs outperform other companies. It highlights several examples of companies who have seen great success since implementing an ESOP.


This article summarizes numerous planning opportunities related to ESOP corporation stock purchase, financing, and ownership transactions. These corporate planning techniques, which can help maximize ESOP economic benefits, are becoming more vogue as practitioners become more familiar with them.


This article explains how companies have used ESOPs and MSOPS to provide vital liquidity during critical times when the cost of capital is prohibitive or liquidity from banks, private equity groups, or other outside sources is not available.


This book examines how ESOPs work and explores the effect of leverage. Topics include financing, accounting, regulations, valuation, and the tax-deferred ESOP rollover.

Many observers believe that the employee ownership movement is the wave of the future of American businesses. The author interviewed Steven Voigt, CEO of The King Arthur Flour Company, Inc., and chairman of The ESOP Association Board of Directors, about the future of ESOPs and challenges facing ESOP sponsor companies.


This issue brief explores an important aspect of maintaining an ownership culture—hiring practices. It is important for employee-owned companies to understand how to recruit and retain employees who have not only the skills required for the job but also the core values needed to become valuable members of an employee-owned organization. Several case studies are presented to illustrate these principles.


This article examines whether ESOPs increase the productivity of employees. The authors find that productivity improves the most in smaller companies. One reason seems to be that in many larger companies, ESOPs are created for various nonincentive purposes.


This book emphasizes the need for ESOP-owned companies to develop a long-range strategic financial plan and provides a step-by-step approach to developing such a plan. It also includes a modeling methodology that ties together the company’s repurchase obligation and its financial projections. The author discusses a wide range of best practices for ESOP-owned companies.


This book focuses on four main topics: the firms that participate in shared capitalism programs (such as ESOPs) in the United States and abroad, the factors that enable these firms to overcome classic free rider and risk problems, the effect of shared capitalism on firm performance, and the impact of shared capitalism on worker well-being.


This article explores several significant estate planning opportunities available to business owners who are willing to consider an ESOP. It gives a brief history of ESOPs and discusses the structuring and financing of ESOP transactions in some detail.


This article describes the origin and 50-year history of the ESOP and explains why ESOPs will increasingly become the business succession tool of choice for many owners of privately held businesses.

This article examines why ESOPs have become more appealing to both selling shareholders and ESOP participants in recent years. It defines issues that should be fully considered before installing an ESOP and highlights the common attributes of successful installations.


This article discusses the new Indiana ESOP Initiative program, which was implemented to encourage the formation of ESOPs in Indiana and to provide incentives and rewards for Indiana workers. The article also provides a case study of the first Indiana company to implement an ESOP under this plan.


This book answers questions related to regulations, laws, administration, valuation, and many other topics related to ESOPs in a straightforward question and answer format.


This is a booklet that summarizes how ESOPs work, what the rules for them are, and what considerations are involved in evaluating and implementing them. It provides an introduction to the subject of ESOPs and is suitable for laypeople.


This article discusses trends in the economy and the marketplace that offer indications of where ESOPs may be heading in the coming years.


The authors present convincing evidence that employee ownership can be much more than just a good employee benefit program. They show how ESOPs can provide the foundation for more effective models of business management. Studies of dozens of companies provide the evidence that ESOP companies are able to grow faster and be more profitable than their competitors.


In order to realize the maximum benefit of an ESOP, companies need to create a true culture of ownership. This book discusses practical ideas for creating such a culture. Examples are given from actual employee-owned companies.


Key lessons have emerged through the authors’ 26 years of research. This book tells the stories of employee ownership companies. Topics include entrepreneurship training, ownership education, creating a mission statement, getting employees involved, and practical techniques for starting an ownership culture.

This book is structured to help lay people understand what ESOPs are and how they work in both C and S corporations. Valuation and financing issues are included in the discussion.

Wirtz, Ronald A. “Employee Ownership: Economic Miracle or ESOPs Fable?” *The Region* (quarterly publication of the Federal Reserve Bank of Minneapolis) (June 2007).

This article briefly reviews the theory and history of employee ownership and discusses recent research into the effects of employee stock ownership plans. In particular, the author reviews and discusses research on the economic benefits of employee ownership conducted by The ESOP Association and by Blasi and Kruse of Rutgers University.

¶ B.2 Periodicals

*Benefits Magazine*, published monthly by the International Foundation of Employee Benefit Plans.

*Benefits Quarterly*, published quarterly by the International Foundation of Employee Benefit Plans.

*Compensation and Benefits Review*, published bimonthly by Sage Journals.


*Owners at Work*, published semiannually by the Ohio Employee Ownership Center.

¶ B.3 Administrative Issues


This book provides a detailed look at the kinds of fiduciary questions that arise in an ESOP context. Topics include determining fiduciary status, fiduciary duties, purchases and sales of employer securities, and personal liability issues.


This book explores the complexities of executive compensation in ESOP companies. Regulations such as Sarbanes-Oxley, Internal Revenue Code Section 409A, and the S corporation anti-abuse rules are discussed. The book also includes a report on the NCEO survey of executive compensation.


A guide to the issues that companies face in operating their plans. This book focuses on such issues as tracking ESOP shares, distribution rules, diversification requirements, dealing with audits, and terminating an ESOP.


This book provides details on corporate governance issues, such as board compensation, trustee selection and responsibilities, and employee roles on boards. It discusses the special legal
considerations for the governance of ESOP companies. And, it includes a survey on governance practices in ESOP companies.


Many class-action and other lawsuits have been brought against benefit plan fiduciaries. The cost to defend and resolve these suits can be substantial. This issue brief discusses the complex issues relating to insurance for ESOP and other benefit plan fiduciaries.


This article gives detailed descriptions of the nine steps in a repurchase liability forecast. It explains the role of each person involved in the study, from the board of directors to the ESOP legal counsel and financial adviser.


This article gives an overview of ERISA fiduciary standards, duties and responsibilities of the ERISA committee, scope of authority and responsibilities of the ESOP committee, and the differentiation between the fiduciary and the settlor functions.


Distribution policies are frequently afterthoughts that are drafted without considering the ESOP sponsor’s unique circumstances. The IRS may ask sponsors to provide their distribution policy as part of the determination letter process. Therefore, ESOP sponsors should carefully review their distribution policies to ensure they meet the company’s needs while balancing competing interests.


The timing of distributions, amount of distributions, and form of payment are all elements of the distribution policy that will affect the sponsor company cash flow and other corporate objectives. This article discusses the various elements that make up the ESOP distribution policy.


This issue brief explores KSOP plans, which include both an ESOP and a 401(k) plan. Legal and administrative issues of such plans are examined, and design options are discussed.


This book is a good resource for both internal and external ESOP fiduciaries. It explores such topics as fiduciary duties, prohibited transactions, ESOP company governance, and valuation of the employer securities. The book also comes with a CD.


This guide examines such issues as who should be the fiduciary, the role of boards of directors in ESOP companies, legal considerations, and best practices for boards. This new edition also contains a
new survey on governance practices in ESOP companies. The survey details board compensation and composition, trustee selection and responsibilities, and employee roles on boards.


Repurchase obligation studies help ESOP corporations better manage the repurchase liability. This article discusses the many issues involved in such a study.


This book discusses how to communicate employee ownership and financial issues to employees. Its accompanying CD-ROM has many ready-to-use resources, including templates of documents to be used as handouts, customizable PowerPoint presentations, and case studies, as well as sample posters, slide shows, agendas, and advertisements.


This issue brief explores the various types of incentive plans available, including both nonequity and equity plans. Issues such as taxation, accounting, and governance are discussed, and various forms of financing are examined.


This article discusses various motivations for recycling shares repurchased from former employees back into the ESOP, especially in mature ESOPs. The author presents several strategies for accomplishing this objective.


This issue brief discusses the two most recent NCEO compensation surveys. Data from these surveys may be used in several different ways. These data may be used to keep compensation in line with a company’s compensation policies and philosophy. They may be used to design an equity compensation plan. They may be used to inform officers and directors about compensation at similar companies. And these data may be used to establish or adjust a company’s administrative practices.


This article encourages ESOP sponsors to embrace diversification as more than just one more compliance event in the life cycle of an ESOP. The article reviews the rules that govern ESOP diversification, discusses several complex diversification situations, and provides an informal survey of several leading ESOP administration firms.

Long, Kevin G. “Designing and Drafting ESOPs.” The Journal of Employee Ownership Law and Finance 20, no. 3 (Summer 2008).

Plan and trust documents for ESOPs require special investment, transactional, fiduciary, and administrative provisions. This article discusses designing and drafting ESOP plan and trust documents to take into account these special provisions. The article focuses on ESOPs in closely held companies.

This article explores ways to enhance the governance of nonpublicly traded ESOP-owned companies through employee participation in the governance process. The author suggests a framework for boards to use to bring employees into the “circle of governance”.


This book helps ESOP company board members to understand how ESOP law and best practices interact with corporate law and best practices. It discusses issues such as valuation, the repurchase obligation, executive compensation, and monitoring fiduciaries.


This article discusses the practice of creating segregated accounts for terminated vested ESOP participants that have retirement funds directed to investments other than company stock. It explores all of the implications of this design decision as well as many of the practical issues ESOP sponsors face when they decide to follow this path.

McIntyre, Bill. “Achieving ESOP Sustainability: Managing Your ESOP Repurchase Obligation—Minimize Surprises!” *Owners at Work* 21, no. 1 (Summer 2009).

This article discusses three important aspects of the ESOP repurchase obligation: (1) the nature of an employee’s termination, (2) when ESOP benefit distributions begin, and (3) the form of the ESOP benefit distribution. It examines ESOP plan designs that minimize the surprises in these three areas. It briefly discusses software programs available to help manage the repurchase obligation.


This issue brief explores the ERISA regulatory and enforcement environment for fiduciaries. It goes on to examine various aspects of fiduciary liability insurance, including policy exclusions. The brief explores issues involved in purchasing such a liability policy. Such issues include policy limits, deductibles, and what to expect when filing a claim.


This article gives an overview of the documents that an ESOP third-party administrator should require, why they are required, and how they should be used. This article also describes the increased responsibilities that often fall upon the third-party administrator when dealing with an S corporation ESOP.


ESOP sponsor companies should help their employees keep track of important tax information they will need when they receive a stock distribution. This article summarizes some practical procedures to help track employee tax basis information.

This article discusses current practices in corporate governance at ESOP companies. It draws primarily on a detailed survey conducted by the NCEO in 2009, in which 190 companies participated. Topics include board composition, director compensation, the role of ESOP participants in governance, and characteristics of the ESOP trustee.


This article discusses key choices among competing equity compensation plans, including the pros and cons of each choice. The article suggests a more dynamic model for deciding how and when to share equity. The model is based on setting goals and rewarding people in ways that achieve attraction, retention, and motivation.


The sale of a company can be an opportunity for employees to realize a premium on their ESOP ownership. However, if a company is selling because it is in trouble, employee anxiety may be high. Communication with employees is key in making the transition a smooth and successful one. This article explores how this can be accomplished.


An essential guide for those serving as an inside fiduciary, this small book provides a basic overview of fiduciary issues including fiduciary duties, potential penalties, basic ESOP rules, and valuation issues.


This issue brief is written for ESOP participants. It outlines the basic requirements that an ESOP company needs to follow with respect to providing information to the participants. Topics from plan inception to plan termination are covered in nontechnical language suitable for a layperson.


This issue brief explores key elements of successful wellness programs and current legal issues such as the effect of the Affordable Care Act. Results of national research studies on this topic are included.


This article examines the benefits and importance of a feasibility study as a first step in the process of establishing an ESOP in a corporation. It discusses the valuation analysis, liquidity analysis, and plan design analysis involved in such a study.
This handbook provides an overview and checklist of the entire administration process. Topics include disclosure requirements, diversification, contributions and allocations, and participation rules. Includes a CD-ROM.

This article describes the need for the consideration of the sponsor company repurchase obligation and the impact on the employer corporation stock valuation of the alternative ways that the shares of the departing ESOP participants are handled.

B.2 Legal, Legislative and Regulatory Issues

The Pension Protection Act of 2006 brought about some important changes in the laws governing tax-qualified employee benefit plans. The authors describe these new rules and discuss their effects on ESOPs.

This article provides an overview of ESOPs and the federal tax rules that apply to them. It addresses the deductibility of dividends under Code Section 404(k) and their limitations under Code Sections 162(k) and 404(k)(5). It provides a discussion of the issues regarding this deductibility and reviews the split among the Circuit Courts of Appeal and the Treasury Department’s administrative rulings on this issue. The author provides his recommendations for future handling of this issue.

Courts are increasingly concerned with the process followed by ESOP fiduciaries. This article outlines several judicial decisions that provide an overview of what the courts consider to be a prudent process.

This paper discusses the uses of ESOPs, issues related to S corporation ESOPs, ESOP loan requirements, limits on ESOP contributions, taxation issues, and other specialized ESOP issues.

When attorneys provide services for an employee benefit plan (such as an ESOP), the plan participants and beneficiaries are the actual clients, but the attorney works directly with fiduciaries. This situation can bring about confusion regarding attorney-client privilege. This article explores the application of attorney-client privilege in employee benefits litigation and examines recent court cases that address this issue.

B-11 Update 7-18-14

An annual update of case law, regulatory issues, and legislative developments that affect employee stock ownership plans and other related plans.


The IRS and Department of Labor have established voluntary correction programs that allow sponsors of tax-qualified employee benefit plans, such as ESOPs, to remedy errors in plan documents as well as errors that occur in the operation of the plans. This article discusses these various correction programs.


Lawsuits by employees against employers and other alleged fiduciaries for breach of their fiduciary duties under ERISA have multiplied in recent years. As a result, it is essential for ESOP fiduciaries to understand the full scope of their fiduciary duties as plans are drafted, implemented and administered. This article discusses the risks and the considerations for ESOP fiduciaries in both publicly traded and privately held companies.


This article explores the effect of legislative, regulatory, and judicial decisions on the effectiveness of ESOPs as an employee benefits and corporate finance vehicle. The article also discusses qualifications for ESOPs and rules for leveraged ESOPs.


This booklet contains an analysis of litigation in ESOP and 401(k) company stock cases over the last 20+ years. Case decisions are categorized by the kind of decision reached. There are over 300 decisions included.


This booklet provides a summary of rulings and regulations related to ESOPs and other employee benefit plans. Guidance from the Internal Revenue Service and the Department of Labor is included.


This paper goes into considerable detail on the topics of tax advantages of leveraged ESOPs, tax requirements for ESOPs, fiduciary duties under ERISA, and structuring a sale to an ESOP.

¶ B.4 Finance and Accounting Issues


This book provides an overview of how ESOPs are financed. Legal and structuring requirements are discussed. The book is designed to help both the experienced practitioner and the beginner. Information is included for company executives as well as lenders.

Audits of ESOPs by the Employee Benefit Security Administration U.S. Office of Chief Accountant have increased in recent years. This article explores ways to create a strategic framework for the ESOP audit, so that it may take place in an efficient manner. The article also discusses common audit deficiencies and the necessary corrections.


This issue brief explores common challenges in complying with diversification requirements in private companies. It provides information, interpretations, and procedures commonly used by ESOP sponsor companies.


This book (available in both print and digital editions) explores the ways that a company can plan for and manage the repurchase obligation. It also discusses the impact of this obligation on share value. In 2010, the NCEO conducted a survey of how companies deal with their repurchase obligations. The results of this study are presented in this book.


This article discusses the historical perspective of the current credit crisis, summarizes current market conditions, and outlines implications for ESOP companies and fiduciaries.


This article discusses the duties and potential liabilities of directors and officers in ESOP companies. It explores how insurance companies can provide protection and provides an in-depth review of their exclusions.

Steiker, James, Elisabeth Schutz, and Bill Vogelgesang. “ESOP Lending in the Current Environment.” The Journal of Employee Ownership Law and Finance 20, no. 4 (Fall 2008).

This article provides advice for ESOP companies in navigating the difficult challenges present in the current credit environment. Practical suggestions for preparing for a meeting with the bank or with another provider of financing are offered.

¶ B.5 ESOP Transaction Issues


This issue brief describes a variety of innovative transaction structures for ESOPs. These structures range from using profit sharing funds to having the ESOP co-invest with a private equity company.

This book is designed to educate owners, managers, and advisers of closely held businesses on selling to an ESOP. It describes the basic rules of ESOPs and how they work, financing and feasibility, and the tax-deferred Section 1042 rollover. It also describes alternative sale strategies and how they compare to an ESOP sale.


This article explores situations where an ESOP company CEO must inform the ESOP trustee and/or the board of directors of offers to purchase the company. It also explores the ESOP trustee’s role in the process of selling the sponsor company.


Existing ESOP companies considering a second-stage transaction have advantages and disadvantages compared to companies involved in an initial ESOP purchase transaction. One challenge faced by these companies is the ESOP repurchase obligation. Consideration must be given to the effect on the stock price from releveraging the company. A common way to address this issue is to provide floor price protection. This issue brief discusses techniques for providing such floor price protection. This topic is presented from a valuation perspective and from a fiduciary perspective.


This article outlines the reasons an ESOP-owned company might want to implement a stock-for-stock acquisition as a growth strategy. It discusses the underlying securities law issues involved in such acquisitions.


This issue brief provides a framework for evaluating acquisitions and discusses alternative transaction structures appropriate for ESOP companies. Due diligence and risk management strategies are included.


This article presents a procedure checklist that may be considered by the financial adviser in conducting the employer corporation stock valuation for transaction purposes or in performing any ESOP-related financial advisory due diligence analysis—such as the fairness opinion.

Secured lenders often require that a solvency opinion be issued at the time of a leveraged ESOP purchase of employer corporation stock. These solvency opinions are typically prepared by an independent financial adviser. This article presents a checklist of due diligence procedures that a financial adviser will typically consider in a transactional solvency analysis.


This article reviews the historical roots of a board of director’s duty of care and duty of loyalty, the business judgment rule, and the basic legal framework underlying corporations in general. The authors examine the current application of these rules for ESOP sponsor company boards of directors.


This issue brief explores three real-world examples of companies transitioning to ESOP ownership. Various ways of ensuring a smooth transition are discussed.


The existence of an ESOP adds a measure of complexity to the sale of the sponsor company. This article presents an overview of the process, issues, considerations, roles and responsibilities of each party, and distribution rollover options in selling an ESOP-owned employer corporation.


The impact of mergers, acquisitions, asset sales, stock sales, and spin-offs on employee benefit plans depends on the structure of the transaction and the facts and circumstances of the transaction. It also depends on compliance with applicable regulatory requirements. This article discusses the factors affecting the impact of such transactions on ESOPs and other employee benefit plans.


This article discusses the processes by which ESOP companies manage a possible sale to a third party. The roles of the president and the board of directors are examined. In addition, the article explores the documents that may be involved in such a sale, including the fairness opinion.


Warrants may be used in ESOP transactions to provide an enhanced return to investors and/or debt holders. This article describes how warrants are used as part of the financing structure of leveraged ESOP transactions. The author discusses key corporate finance and federal tax considerations in structuring ESOP financing arrangements involving warrants.

This article summarizes the ERISA and IRS requirements for transactions between an ESOP and the selling owner. It examines possible valuation “pitfalls” that may be encountered and illustrates these pitfalls with litigation examples.

### B.6 Valuation Issues

Abrams, Jay B. “ESOPs: Measuring and Apportioning Dilution.” *Journal of Pension Planning & Compliance* 37, no. 3 (Fall 2011).

Both the ESOP and the owner of the sponsor companies can experience dilution in stock values in ESOP transactions. In addition, each party can experience two types of dilution: absolute dilution and relative dilution. This article focuses on absolute dilution only. It presents mathematical formulas for calculating post-transaction values of the sponsor company, and the ESOP, as well as the related dilution.


This article explains the common procedures for determining whether any financial statement adjustments are necessary for ESOP contribution expense. A practitioner may develop a basis for including ESOP contribution expense adjustments that best correspond with a particular set of facts and circumstances.


This issue brief covers valuation topics such as valuing stock appreciation rights, analyzing the repurchase obligation, adjusting financial statements for the ESOP contribution expense, and considerations for financial institution ESOPs.


ESOPs may terminate for a variety of reasons, including sale of company stock or assets, high plan costs, or other factors. The consequences of such a termination are explored in this issue brief. Also, alternative ways of terminating an ESOP are discussed.


This issue brief was prepared by the Control Premium Subcommittee of The ESOP Association to review issues related to how the block of stock purchased or held by the ESOP should be valued when elements of control may be present.


Executive compensation programs are important for attracting and retaining top talent. These programs take many forms, such as phantom stock and stock appreciation rights. This article discusses the many ways that these compensation plans can affect the value of the ESOP stock.
A Framework for Understanding the Impact of Repurchase Obligation on Share Price (Issue Brief #27).

Written by the Valuation Advisory Committee of The ESOP Association, this issue brief continues where Issue Brief #25 left off. This issue brief introduces the concept of opportunity cost. It discusses the implications for share prices when private companies devote resources to fund their repurchase obligations.


The Department of Labor pays close attention to how the employer stock valuations change from year to year. This article discusses the need for the ESOP financial adviser to carefully document the yearly employer stock valuation changes. It also suggests procedures for such documentation.


This issue brief provides ESOP trustees and fiduciaries with a better understanding of the various aspects of a valuation report. It also provides valuation practitioners with a framework for helping fiduciaries understand the ESOP valuation report.


Written by the Valuation Advisory Committee of The ESOP Association, this issue brief discusses how an ESOP company’s repurchase obligation should be understood and managed, and how the repurchase obligation associated with the ESOP should be reflected in the valuation. It explores the process of assessing how an existing ESOP fits into a company’s cost structure, which is an important step in strategic management.


The Department of Labor has proposed changing the status of appraisers from advisers to fiduciaries to being fiduciaries themselves. This webinar explores the background of this proposed regulation, the effects of the proposed change, and alternative responses for appraisers, should the regulation become final.


This webinar examines the legal requirements related to the valuation of ESOP stock with reference to the repurchase obligation. It explores how the issues with regard to this obligation have changed over the years. Finally, it discusses what can be done when a company wants to change its repurchase obligation exposure.


This article is a follow-up to the authors’ 2006 article on the same topic. In this article, the authors present two case studies that highlight the importance of adequately addressing the repurchase obligation in annual valuation reports.

The authors studied 100 ESOP companies. In this article, they discuss the importance of the repurchase obligation and its effect on the appraisal of ESOP sponsor companies. They also discuss various methods for taking into account this important factor.

Miller, Scott D. “Impact of Recent Developments on Employee Stock Ownership Plans.” *Business Valuation Update* (February 2014).

Recent legislation has affected various aspects of ESOPs. Examples of such legislation include the American Taxpayer Relief Act of 2012 (ATRA) and the proposed DOL regulations that would designate business valuation professionals as fiduciaries.


This article provides an overview of factors that financial advisers typically consider in the determination of reasonable executive compensation for ESOP majority-owned corporations. It also reviews several ESOP-related court cases that focus on the determination of reasonable executive compensation.


The author focuses on the approaches, methods, and procedures performed by valuation analysts and the types of opinions that valuation analysts issue with regard to ESOP transactions. This article also describes how the valuation analyst handles the post-stock-purchase decrease in employer corporation equity value that often results from leveraged ESOP transactions. The issue of the repurchase liability is also discussed.

———. “Compensation and Valuation Considerations in Closely Held Company Stock Sales to an ESOP.” *Compensation and Benefits Review* 43, no. 5 (July 2011).

This article summarizes the generally accepted approaches to the valuation of closely held company stock. It also explains many of the reasons why the ESOP versus non-ESOP stock sale transactions may take place at different prices.


The author discusses analysts’ ethics considerations in performing ESOP employer stock valuation services, specifically what he calls the “Six Cs”: compliance (with professional standards), competency (to perform the analysis), completeness (of the analysis), correctness (of the analysis and the conclusion), confusion (actually, lack thereof, in the analysis), and consistency (with previous positions taken).


This article discusses the consideration and quantification of a company-specific risk premium in developing a discount rate for use in the income approach to valuing ESOP stock.
This article discusses the valuation aspects of the pricing and sale of a closely held company to its employees. The author introduces some valuation considerations related to deal structuring and taxation. The primary focus of the article, however, is the employee purchase of a closely held employer company as a long-term investment. Key topics include the level of value to apply in the valuation, contractual rights and privileges related to the stock, and the financing of the purchase.

This three-part article summarizes the generally accepted valuation approaches with regard to the employee purchase of the employer company. It then explores the effect of security-specific contractual rights and privileges on the employer stock valuation. Finally, it discusses the impact of the transaction structure on the employee purchase of the employer company.


The second edition of this book updates the consensus of professional practitioners with regard to ESOP stock valuation, transaction structuring, acquisition financing, taxation, and independent financial advisory issues. The book is not designed to be a “how to” textbook, but rather to explore the practical issues currently facing the ESOP financial advisory service practitioner.


This newly updated 28-page booklet explains why an ESOP valuation is needed, how to find and evaluate an appraiser, and how a valuation is performed. It briefly discusses special issues such as discounts and premiums, and the impact of leverage on the valuation.


This article provides an overview of ESOP regulations and requirements. It discusses recent court cases that illustrate some of the pitfalls that can be encountered during the valuation process. The author concludes that one of the most important things that a selling owner can do is to engage an independent valuation analyst to value the company stock being sold to the ESOP.


This issue brief explores the treatment of ESOP debt in an adequate consideration analysis. It also explores the treatment of such debt in the valuation of the ESOP company common stock. Different types of debt are examined, including bank debt, company-issued ESOP debt, and ESOP-issued ESOP debt.


This issue brief discusses issues that may arise when an ESOP sponsor company has synthetic equity (such as warrants). The paper is especially addressed to ESOP trustees and fiduciaries who review valuations of ESOP companies. Various models for valuing synthetic equity are explained.


The market approach is a generally accepted business valuation and security analysis approach. However, it is a challenge to perform a market approach valuation analysis during periods of severe
economic turmoil. This article identifies some of the factors to consider in the application of the market approach in an employer stock valuation during such periods.


ESOP trustees rely on financial advisers’ transaction opinions and valuation opinions as important inputs in a number of trustee decisions. The ESOP fiduciary should submit the financial adviser’s work to a rigorous due diligence process, rather than naively accepting the financial adviser’s opinion. This article summarizes some of the factors that should be considered when reviewing such opinions and includes a checklist.

¶ B.7   S Corporation ESOP Issues


This book covers all of the important topics related to ESOPs in S corporations, including tax issues, compliance, valuation, and administration. It includes a state-by-state analysis of S corporation tax treatment.


This paper draws on prior employee ownership literature to describe the benefits and costs to employees, to firms, and to society at large from the legislation that authorizes S ESOPs. Where possible, the paper quantifies the costs and benefits associated with ESOPs in S corporations.


This issue brief describes some of the potential pitfalls associated with an S corporation ESOP. Some of these traps include the tax consequences of converting to S corporation status and the effect on the ESOP’s operational rules, S corporation ESOP redemptions, deduction timing for accrued bonus payments, and S corporation distributions. An overview of solutions to these potential pitfalls is provided.


Latecomers to the ESOP legislative and regulatory scene, but probably the most onerous of all, are the requirements of Section 409(p). This article focuses on the final regulations, what they clarify and accomplish, where they go too far, and what they fail to address. It also discusses key definitions and penalties for failure to comply.


This article addresses the tax treatment of S corporations in each state. It gives a brief history of tax law developments and provides a handy table that gives state-by-state information on such issues as income tax treatment of S corporations and imposition of other state taxes on S corporations.

This article discusses numerous considerations that affect the decision to become an S corporation. These considerations relate to S corporation tax rules and corporate/structural issues.


This article explores Treasury Reg. 1.409(p)-1, which was issued in December 2006. The author contends that several of the provisions set forth in this regulation are superfluous and should be removed from the regulation.


IRC Secs. 409A and 409(p) have brought about issues that must be considered by S corporations owned in whole or in part by an ESOP when planning for nonqualified executive benefits. IRC Sec. 409(p) classifies most traditional nonqualified plans as “synthetic equity,” which can cause pre–IRC Sec. 409(p) plans to violate the provision. Therefore, ESOP-owned S corporations may consider discontinuing or avoiding deferred-compensation plans. The article discusses alternatives to such plans.

### Case Studies


This article explores one of the earliest attempts by a leading American corporation to share rewards with its workers, long before employee ownership was first implemented. In the late 19th century, Pillsbury started a program of profit sharing to a portion of its employees. The program later expanded to include more and more employees and was heralded as a great success.


This is the first part of a two-stage research project, funded by the Employee Ownership Foundation, to explore the causes of ESOP termination. The study is based on 30 interviews conducted with ESOP-owned or formerly ESOP-owned companies. The study concluded that the two most common reasons for termination are (1) the company being acquired and (2) the inability to handle the repurchase obligation.


This study examined a cross-section of S corporations with ESOPs and compared them to S corporations without ESOPs. The study looked at job creation, revenue growth, and providing for employees’ retirement security. The S corporations with ESOPs paid their employees higher wages on average, contributed more to their employees’ retirement security, and hired workers when the overall U.S. economy was in a recession and most companies were cutting jobs.

This article summarizes the results of a recent survey conducted by the National Bureau for Economic Research (NBER) Shared Capitalism Project. The survey examined the impact of shared capitalism on expected turnover, absenteeism, loyalty, and willingness to work hard by questioning 42,000 workers in 14 corporations and at hundreds of work sites.


Past research has confirmed that employee-owners benefit from ESOPs. Employee ownership is associated with greater employment stability, job satisfaction, organizational commitment, and workplace participation. Moreover, ESOPs generally are on top of—not in place of—wages or other benefits. In contrast, very little research has been done on the effects of employee ownership on society or on specific management practices. This working paper, commissioned by the Employee Ownership Foundation, reviews and summarizes both lines of research. It then goes on to discuss gaps in the research and further research that should be performed. The paper ends with an excellent bibliography. Copies of this paper are available at http://repository.upenn.edu/od_working_papers/2/.


Using aggregate quarterly data, the authors find that large increases in stock prices result in improved operating performance for ESOP companies. This, of course, is not surprising. However, the authors also find that ESOP companies experiencing falling stock prices also show improvement in operating performance. This study provides new information for corporate planners and public policy makers in their understanding of ESOP firm performance.


This study examines whether ESOPs add to or destroy value from a company. It explores the relation of the adoption of an ESOP and the company cost of capital. The study finds that companies adopting leveraged and nonleveraged ESOPs experienced decreases in costs of equity and debt capital. ESOPs benefit from decreased cost of capital related to the ability to increase debt capacity for the company as well as the existing tax preferential treatment of ESOPs.


This study seeks to ascertain the impact of ESOPs on earnings management. The evidence from this study shows that companies with larger ESOP ownership exhibit a lower degree of earnings management. The author concludes that this is the case for two reasons: (1) employees in ESOP-owned companies have more incentive to scrutinize management more carefully, reducing managerial opportunism and (2) ESOPs can act as an anti-takeover defense, making managers’ jobs more secure, and thus allowing managers to concentrate more on the long-term welfare of the corporation rather than short-term “window dressing.”
Kramer, Brent. “Employee Ownership and Participation Effects on Outcomes in Firms Majority Employee-Owned through Employee Stock Ownership Plans in the US.” *Economic and Industrial Democracy* 31, no. 4 (November 2010).

This study examines sales per employee for a group of over 300 U.S. companies that are majority employee-owned through ESOPs with a group of closely matched, traditionally owned companies. The study finds that sales per employee were substantially higher for the employee-owned companies.


This paper examines how ownership structure and active participation by workers affect the productivity of cooperatives and employee-owned enterprises. The authors found that employee ownership by itself does not necessarily have a positive impact on productivity. A combination of employee ownership with real participation in decision-making at the enterprise level, however, does improve labor productivity and other aspects of business performance.


This study compares companies with ESOPs to companies without ESOPs to determine if ESOP-owned companies allow executives to exercise greater managerial control than non-ESOP-owned companies. The evidence from this study shows that executives of ESOP corporations do not appear to use ESOPs as entrenchment devices.


This study, funded by the Employee Ownership Foundation, examines data collected on DOL Form 5500 from defined contribution retirement plans. The study compares the assets of employees from ESOP companies with those from non-ESOP companies. The study concludes, among other things, that the average ESOP participant has 20 percent more defined contribution assets than the average non-ESOP participant.


This issue brief reviews recent data on the prevalence and impact of ESOPs and similar plans, employee stock purchase plans, and broad-based equity grants. It examines the growth of ESOPs and other plans, the effect of ESOPs on corporate performance, and the effect of ESOPs on employee financial well-being. It reviews several major studies performed by others in recent years, including the 2010 General Social Survey, the 2011 NASPP/Deloitte ESPP Survey, the 2009 BLS Study, the 2009 Charles Schwab Study, and others. It also includes data and analysis from recent NCEO surveys.


This study examines whether the effects of employee stock ownership on employee work effort, peer monitoring behaviors, and measures of employment durability depend on the presence of other employment practices and company characteristics. Employee stock ownership is directly associated with job security and employment stability. The study also finds that the effects of employee ownership depend on what other human resource practices are in place.

The authors of this study compare publicly traded ESOP companies to size- and industry-matched peer companies using a matched-pair methodology. They investigate whether the ESOP affects public company performance and in what way. They find, for example, that ESOP companies generally have lower risk and higher return on assets than their non-ESOP counterparts.

¶ B.10 Video Tapes, Audio Tapes, CDs, and Seminars


This 34-minute DVD features interviews with CEOs and employee owners who discuss why an ownership culture is important. They discuss success stories and tactics used to create a culture of ownership. This video also has a section on the Annual Awards for Communications Excellence.


This audio conference, available on CD, featured ESOP practitioners Robert Schweighs, Mike Hartman, Stephen Smith and Judith Kornfeld. Topics discussed include the historical perspective of the ESOP repurchase liability, various valuation methods, and remedies available to ESOP sponsor companies to amend their plans to better deal with the repurchase liability.


This video is a useful tool for companies considering ESOP implementation. It introduces the concept of ESOPs, reasons for establishing an ESOP, the role an ESOP plays in motivating employees, and the potential rewards of employee ownership. It also summarizes legal and regulatory issues affecting ESOPs.

¶ B.11 Useful Web Sites

Beyster Institute, http://rady.ucsd.edu/beyster

Part of the Rady School of Management at the University of California at San Diego, the Beyster Institute’s mission is to advance the use of entrepreneurship and employee ownership to build stronger, higher performing enterprises nationally and internationally. The institute provides training, education, and outreach to business leaders worldwide.

Capital Ownership Group, http://cog.kent.edu

The Capital Ownership Group’s mission is “to create, build and serve a coalition that promotes broad ownership of productive capital; reduces inequality of income and wealth; increases sustainable economic development; expands opportunities for people to realize their productive and creative potential; stabilizes local communities by improving living standards; and enhances the quality of life for all.” The organization is a nonprofit network of professionals, academics and activists on six continents. It operates an online virtual think tank (navigable in six languages), conference center, and library from Kent State University.

Center for Economic and Social Justice, www.cesj.org

The Center for Economic and Social Justice (CESJ), established in 1984, promotes a free enterprise approach to global economic justice through expanded capital ownership. CESJ is a nonprofit, nonpartisan, ecumenical, all-volunteer organization with an educational and research mission. CESJ’s macro- and micro-economic concepts and applications are derived from the economic theories and principles of economic justice developed by the late lawyer-economist Louis B. Kelso and the
Aristotelian philosopher Mortimer Adler. They also provide an extensive library on employee ownership, which can be found at www.cesj.org/library.html.

Curriculum Library on Employee Ownership (CLEO), Aspen Institute, Center for Business Education, www.caseplace.org

Historically, employee ownership has been explored most extensively in accounting and entrepreneurship courses. However, the positive outcomes generated by the creation of “ownership cultures” at many companies offer lessons for other disciplines as well. The Curriculum Library on Employee Ownership is an online repository of teaching and background materials on employee ownership.

Employee Owned S Corporations of America, www.esca.us

The Employee Owned S Corporations of America’s (ESCA) mandate is to represent the unique concerns of Subchapter S ESOP companies before Congress and the Administration. Their goal is to preserve and enhance the laws and policies that govern S corporation ESOP businesses and the employees who own them. To carry out its mission and to position the Association strongly with key decision-makers in Washington, ESCA maintains a team of seasoned political and legal experts in Washington, and enlists the support of the nation’s top technical advisers to ensure that they remain actively in touch with the issues and challenges confronting the Subchapter S ESOP community.

Employee Ownership Foundation, www.employeeownershipfoundation.org

The Employee Ownership Foundation's (EOF) primary purpose is to support programs that will increase the level of awareness and appreciation of the benefits of employee ownership and increase the number of employees who have access to this benefit. It awards grants, annual scholarships and fellowships for programs consistent with its mission. The EOF performs an annual economic performance survey of ESOP Association company members.

The ESOP Association, www.esopassociation.org

The ESOP Association’s mission is “to educate and advocate about employee ownership with emphasis on ESOPs. The association is a nonprofit membership organization serving approximately 2,400 employee stock ownership plan (ESOP) companies, professionals with a commitment to ESOPs, and companies considering the implementation of an ESOP. Promoting and enhancing laws before Congress and regulatory agencies that govern ESOPs and providing its members with expert educational ESOP programming and information are its main focuses.


As a private foundation, the Foundation for Enterprise Development (FED) seeks to foster the advancement of entrepreneurial scientific and technology enterprises. FED’s goals are to stimulate and accelerate (1) education and transferability of entrepreneurial practices to future generations of technical leaders and (2) research and thought leadership that advances an innovative and free enterprise system.

Global Equity Organization, www.globalequity.org

Global Equity Organization (GEO) is a nonprofit organization created in 1999 by share plan professionals from around the world with a common interest—providing a networking opportunity for everyone around the world who works with employee share plans. GEO is run by a full-time staff and countless volunteers.
International Foundation of Employee Benefit Plans, [www.ifebp.org](http://www.ifebp.org)

This nonprofit organization provides education, information, and research on employee benefits and compensation. Their members are compensation and benefits professionals. They publish several periodicals, including *Benefits Quarterly* and *Benefits Magazine*.

The Kelso Institute, [www.kelsoinstitute.org](http://www.kelsoinstitute.org)

Dedicated to the legacy of Louis O. Kelso, this institute provides lecture transcripts, books, and articles written by Louis Kelso. It also provides a basic discussion of binary economics. Mr. Kelso is credited with the original development of the ESOP as a technique of corporate finance.

The National Center for Employee Ownership, [www.nceo.org](http://www.nceo.org)

The NCEO’s mission is “to provide the most objective, reliable information possible about employee ownership at the lowest price possible.” The NCEO is a private, nonprofit membership and research organization that serves as a leading source of accurate, unbiased information on employee stock ownership plans (ESOPs), equity compensation plans such as stock option plans, and ownership culture.

Ohio Employee Ownership Center, [www.oeockent.org](http://www.oeockent.org)

The Ohio Employee Ownership Center (OEOC) is a nonprofit, university-based program established in 1987 to provide outreach, information, and preliminary technical assistance to Ohio employees and business owners interested in exploring employee ownership. The OEOC provides ownership training to existing employee-owned firms. The center has an active research and publication program on employee ownership.

Rutgers School of Management and Labor Relations, [www.smlr.rutgers.edu](http://www.smlr.rutgers.edu)

Rutgers School of Management and Labor Relations is a source of information on managing and representing workers, designing effective organizations, and building strong employment relationships. Professor Joseph Blasi, a leading expert on employee stock ownership, teaches at Rutgers.