H. R. 2096

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2015

Mr. Reichert (for himself, Mr. Kind, Mr. Tiberi, Mr. Neal, Mr. Paulsen, Mr. Blumenauer, Mr. Boustany, and Mr. Pascrell) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Promotion and Expansion of Private Employee Ownership Act of 2015”.

1

2

3

4

5
SEC. 2. FINDINGS.

Congress finds that—

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

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

(3) since that time, several thousand companies have become ESOP-owned S corporations, creating an ownership interest for several million Americans in companies in every State in the country, in industries ranging from heavy manufacturing to technology development to services;

(4) while estimates show that 40 percent of working Americans have no formal retirement account at all, every United States worker who is an employee-owner of an S corporation company through an ESOP has a valuable qualified retirement savings account;
(5) recent studies have shown that employees of ESOP-owned S corporations enjoy greater job sta-

bility than employees of comparable companies;

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

(7) under the Small Business Act (15 U.S.C. 631 et seq.) and the regulations promulgated by the Administrator of the Small Business Administration, a small business concern that was eligible under the Small Business Act for the numerous preferences of the Act is denied treatment as a small business con-
cern after an ESOP acquires more than 49 percent of the business, even if the number of employees, the revenue of the small business concern, and the ra-
cial, gender, or other criteria used under the Act to determine whether the small business concern is eli-
gible for benefits under the Act remain the same, solely because of the acquisition by the ESOP; and

(8) it is the goal of Congress to both preserve and foster employee ownership of S corporations through ESOPs.
SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EMPLOYER STOCK TO EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S CORPORATION.

(a) In General.—Section 1042(c)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “domestic C corporation” and inserting “domestic corporation”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to sales after the date of the enactment of this Act.

SEC. 4. DEDUCTION FOR INTEREST ON LOAN TO FINANCE PURCHASE OF EMPLOYER SECURITIES BY AN EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY AN S CORPORATION.

(a) In General.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 199 the following new section:

“SEC. 200. INTEREST ON CERTAIN LOANS FOR THE PURCHASE OF EMPLOYER SECURITIES BY AN EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY AN S CORPORATION.

“(a) In General.—There shall be allowed as a deduction an amount equal to 50 percent of the interest received during the taxable year by a bank (within the mean-
(b) Qualified Securities Acquisition Loan.—

(1) In general.—For purposes of this section, the term ‘qualified securities acquisition loan’ means—

“(A) any loan to an employee stock ownership plan sponsored by an S corporation to the extent that the proceeds are used to acquire employer securities for the plan, and

“(B) any loan to an S corporation that sponsors an employee stock ownership plan to the extent that the proceeds of such loan are loaned to the employee stock ownership plan to acquire employer securities for the plan.

For purposes of this paragraph, the term ‘employer securities’ has the meaning given such term by section 409(l).

(2) Terms Applicable to Certain Qualified Securities Acquisition Loans.—For purposes of paragraph (1)(B), the term ‘qualified securities acquisition loan’ shall not include any loan to the S corporation unless the loan to the employee stock ownership plan has repayment terms which are
substantially similar to the terms of the loan to the S corporation.

“(3) TREATMENT OF REFINANCINGS.—The term ‘qualified securities acquisition loan’ shall include any loan which is (or is part of a series of loans) used to refinance a loan described in paragraph (1) (after the application of paragraph (2)).

“(4) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER.—

“(A) IN GENERAL.—A loan shall not be treated as a qualified securities acquisition loan for purposes of this section unless, immediately after an acquisition of employer securities referred to in paragraph (1), the employee stock ownership plan owns more than 50 percent of the outstanding stock of the S corporation.

“(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST.—

“(i) IN GENERAL.—Subsection (a) shall not apply to any interest received with respect to a qualified securities acquisition loan which is allocable to any period during which the employee stock ownership
plan does not own stock meeting the re-
quirements of subparagraph (A).

“(ii) EXCEPTION.—To the extent pro-
vided by the Secretary, clause (i) shall not
apply to any period if, within 90 days of
the first date on which the failure occurred
(or such longer period not in excess of 180
days as the Secretary may prescribe), the
plan acquires stock which results in its
meeting the requirements of subparagraph
(A).

“(C) STOCK.—For purposes of subpara-
graph (A), the Secretary may provide that war-
rants, options, contracts to acquire stock, con-
vertible debt interests and other similar inter-
ests be treated as stock for 1 or more purposes
under subparagraph (A).

“(e) EMPLOYEE STOCK OWNERSHIP PLAN.—For
purposes of this section, the term ‘employee stock own-
ship plan’ has the meaning given to such term by section
4975(e)(7).”.

(b) CLERICAL AMENDMENT.—The table of sections
for part VI of subchapter B of chapter 1 of such Code
is amended by inserting after the item relating to section
199 the following new item:
“Sec. 200. Interest on certain loans for the purchase of employer securities by an employee stock ownership plan sponsored by an S corporation.”.

(c) **Effective Date.**—The amendments made by this section shall apply to interest accrued on loans made after the date of the enactment of this Act.

**SEC. 5. DEPARTMENT OF THE TREASURY TECHNICAL ASSISTANCE OFFICE.**

(a) **Establishment Required.**—Before the end of the 90-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall establish the S Corporation Employee Ownership Assistance Office to foster increased employee ownership of S corporations.

(b) **Duties of the Office.**—The S Corporation Employee Ownership Assistance Office shall provide—

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

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

**SEC. 6. SMALL BUSINESS AND EMPLOYEE STOCK OWNERSHIP.**

(a) **In General.**—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 47 as section 48;

and

(2) by inserting after section 46 the following:
SEC. 47. EMPLOYEE STOCK OWNERSHIP PLANS.

“(a) DEFINITIONS.—In this section—

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

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

“(b) CONTINUED ELIGIBILITY.—In determining whether an ESOP business concern qualifies as a small business concern for purposes of a loan, preference, or other program under this Act, each ESOP participant shall be treated as directly owning his or her proportionate share of the stock in the ESOP business concern owned by the ESOP.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1 of the first calendar year beginning after the date of the enactment of this Act.