

**Written House Testimony for Mr. Gary Shorman**  
**Committee on Small Business, U.S. House of Representatives**  
**September 30, 2021**

Thank you, Chairwoman Velazquez, Ranking Member Luetkemeyer, and members of the committee.

I'm Gary Shorman, Chairman of Eagle Communications, a 100% employee-owned company doing business in Kansas, Nebraska and Missouri where we own and operate 31 radio stations that focus on local news, sports, and weather. In addition, Eagle has Creative, Digital, and online learning divisions where we assist our customers in their creative production and online learning initiatives and needs. Eagle employs more than 170 employees who share in the ownership of the company through their Employee Stock Ownership plan, or ESOP.

I am also here representing The ESOP Association where I serve on the Board of Directors, and served as Board Chairman from 2019 until this past spring. The ESOP Association is a nationwide non-profit representing over 3,000 companies and professionals throughout the nation and whose purpose is to protect and grow employee stock ownership plans.

I would like to state something clearly right up front: ESOPs and employee ownership are NOT an experiment. They are proven. They are successful. And they are here to stay. It is time for the various agencies of the U.S. government, including the Small Business Administration, to recognize this and to treat ESOPs and employee owned businesses as the successful, mature businesses that they are.

According to the most recent figures submitted to the U.S. Department of Labor, approximately 8.6 percent of the entire U.S. workforce has some ownership in an ESOP—*more than 14 million American households.*

ESOPs were first codified by the U.S. Congress as part of the Employee Retirement Income Security Act of 1974. Since that time, their value to the retirement security of American workers, their contributions to our economy, and their resiliency in difficult times have been proven over and over.

In just a ten year period of time, from 2008 to 2018, the Department of Labor reports that more than one trillion dollars in retirement benefits have been paid to ESOP beneficiaries. *Let me say that again – more than a trillion dollars in the last ten years.*

To put an even finer point on it, Social Security in 2018 paid a total of \$894 billion in benefits nationwide to America's retirees. In that same year, ESOPs paid \$126 billion to their retirees.

Research conducted by Rutgers University in 2009 following the great recession and again in 2020 during the COVID pandemic clearly demonstrated the resiliency and the benefit of ESOPs to local economies and job security. During the pandemic, the Rutgers research showed that ESOPs were 3.2 times more likely to retain staff, were significantly less likely to cut employee hours and pay, and were more likely to provide personal protective equipment or allow work-from-home arrangements for safety. Coming out of the Pandemic, ESOPs are once again proving what was learned following the 2008 recession: ESOPs maintained employment, they helped anchor local economies, and they are rebounding much faster following an economic downturn.

Despite all of these strengths, and their deep roots within our local economies and business communities, there remain far too many unnecessary obstacles to new ESOP formation or expansion of existing ESOPs.

To begin addressing those obstacles, Congress passed the Main Street Employee Ownership Act in 2017. I would like to speak to two main goals of that legislation – access to capital through the Small Business Administration’s 7(a) lending program and a desperate need for public and stakeholder awareness initiatives.

During the pandemic more than 70% of all ESOPs were successfully awarded Paycheck Protection Program, or PPP loans through the SBA. As you are all aware, the PPP program was administered through the SBA’s 7(a) loan program and utilized the delegated lending authority program such that local SBA lenders could approve these time sensitive loans. However, in the first few days of the program, there was some initial confusion at many of these local lending facilities because, despite the clear intent of Congress in the Main Street Act, the SBA does not allow loans to ESOP companies to be approved through delegated lending authority, instead requiring ESOP loans to be approved by staff in Washington.

Fortunately, clarification was quickly given and ESOP PPP loans were allowed to be evaluated and granted by local lenders just like every other PPP loan as Congress intended. Our company was one of those PPP beneficiaries and it was the local familiarity that our lender had with our business that made it a streamlined and efficient process. Yet, even though our local lender clearly knows and understands our business, has evaluated and given us a PPP loan, if we were to apply for an SBA loan today, they could not approve it and would be required to forward our application to Washington, where it might languish for weeks or months.

To start addressing lending shortages, the SBA must streamline lending for ESOPs, as intended by the Main Street Employee Ownership Act. The Delegated Lending Program decentralizes loan decision making and results in faster loans, and it clearly was Congress' intent to make loans for ESOPs easier and faster by using it.

We ask that the SBA be unambiguously directed to include ESOP loans in the Preferred Lending Program. The experience of the PPP program clearly and unequivocally demonstrates that lending to ESOPs does not require special treatment and local, SBA approved lenders are fully capable of evaluating and responsibly lending to our companies.

In addition to the lending programs, the Main Street Act also sought to significantly increase awareness within the privately held business community about ESOPs. Within the Act, the SBA was tasked with promoting awareness of ESOPs and employee ownership. The ESOP Association knows that some on the front lines of the agency already take this task seriously, but they are too few and lack adequate support, structure, and resourcing from senior management within the agency. We have been recently encouraged by public statements and support for employee ownership articulated by SBA Administrator Guzman. However, much more can and should be done to rapidly increase awareness.

Business owners must know the ESOP option exists, and must be able to obtain useful, unbiased information. To that end, we ask that the SBA be directed to resource a specific, centralized office —such as the Office of Small Business Development Centers— with active public education and information efforts about ESOPs. Further, we ask that the SBA undertake specific ESOP related educational training for regional SBA staff.

As you know, one of the biggest economic challenges ahead is the looming retirement in the next 10 years of baby boomers who own nearly 2.5 million small businesses. Known as the “Silver Tsunami,” this will be the largest transfer of business ownership over the shortest period of time in our nation’s history. Even more concerning, is that the Wilmington Trust has estimated that nearly 60% of these businesses currently have no succession plan.<sup>1</sup> These businesses, and their nearly 25 million employees, face difficult futures if plans and supportive policies are not adopted. Time is of the essence to raise awareness of ESOPs as an option for business owners seeking to exit.

Finally, while I recognize this is a matter outside of the jurisdiction of this Committee, I would be remiss if I did not speak about what many of us in the ESOP community view as the biggest obstacle to the formation and expansion of ESOPs: the chilling effect of the U.S. Department of Labor.

DOL has perpetuated an absence of formal regulatory guidance, while simultaneously pursuing a litigious approach to oversight. The effect has been a deep chill on the formation of new ESOPs.

Every year, hundreds of business owners who want to learn about ESOPs attend educational events hosted by The ESOP Association. Yet once exposed to the lack of clear regulatory guidance from the Department of Labor, many turn away out of fear that some unknowable misstep will invite never-ending DOL scrutiny.

Those fears are not unfounded.

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<sup>1</sup> <https://www.cnbc.com/2019/12/10/as-baby-boomers-retire-main-street-could-face-a-tsunami-of-change.html>

Today, more than 47 years after ESOPs were established with the passage of ERISA, the Department of Labor has *yet* to finish its rulemaking process. They started. They nearly finished in 1988. But they never issued final regulations.

Instead of issuing clear regulation, the Labor Department has practiced regulation by litigation, pursuing ESOP companies in a series of one-off cases that sometimes drag on for years, and often do not ever reach a formal end or resolution. The result: ESOP companies have been left to interpret a patchwork of settlement agreements or decisions that sometimes were predicated on such unique circumstances they provided little or no generally applicable guidance at all.

Operating without clear guidance is a risk ESOP companies should not be forced to bear; it is a risk that adversely affects the entire industry offering legal, accounting, and other professional services and that are instrumental in helping companies form new ESOPs; it is a risk that negatively affects the wealth and security of the 14 million employee owners DOL has been tasked with protecting.

It is a risk our nation cannot afford if we hope to survive the gathering wave of the Silver Tsunami.

The direct cost to the ESOP community of the DOL's regulatory inaction has been enormous: Companies embroiled in Labor Department actions have been forced to scale back investments, acquisitions, and other wealth building efforts to pay for the legal and administrative costs of fighting these claims. Those who lost most were the employee owners who failed to realize the greatest gains possible from their shares of company stock.

Further, the Labor Department's success rate in these cases has been extremely low, leading one to question this investment of time and energy.

The indirect cost of the Labor Department's actions is even higher: By adding undue risk to the process of forming and running an ESOP, the agency is discouraging companies from becoming employee owned. This does not benefit employees, and it denies our economy of potential buyers of businesses at a time when we will need them most.

The Labor Department must stop its policy of regulation by litigation and instead provide the clear guidance necessary so that ESOP companies, Boards, and trustees may operate their ESOP trusts in the manner consistent with clearly defined rules.

But here is the travesty: It is impossible to prove how many American workers have lost the opportunity to become employee owners as a result of this chilling effect. And due to the rapidly escalating retirements of baby boomer business owners, there is urgency to reduce the chilling effect this lack of regulatory clarity is causing.

A solution can start very simply: Congress should require DOL to define one thing: what constitutes "adequate consideration" when an ESOP trustee values the price to be paid for shares of company stock.

Ambiguity over what is adequate consideration has been at the heart of many DOL actions, and it is our belief this ambiguity has depressed the legitimate efforts of businesses to launch ESOPs while complying with the law.

Congress has made clear, through legislation such as the Main Street Employee Ownership Act, that it wishes to encourage the formation of ESOPs. For that to happen, the

Labor Department must fulfill its mission and provide clear regulations that good corporate citizens can follow when selling their companies to their employees.

This one simple piece of guidance could be a game changer for new employee ownership.

Thank you for the privilege of sharing my testimony today. I look forward to answering any questions you have.