

115TH CONGRESS
1ST SESSION

S. 1788

To encourage companies to expand employee ownership, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2017

Ms. BALDWIN (for herself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To encourage companies to expand employee ownership, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Worker Owned Wealth
5 Act”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “ESOP” means an employee
8 stock ownership plan, as defined in section 4975(e)(7) of
9 the Internal Revenue Code of 1986.

1 **SEC. 3. EMPLOYEE OWNERSHIP REVOLVING LOAN FUNDS.**

2 (a) IN GENERAL.—The Secretary of the Treasury
3 shall establish in each field office in the Department of
4 the Treasury an Employee Ownership Revolving Loan
5 Fund that makes—

6 (1) low-interest loans to business owners seek-
7 ing to establish employee ownership in the business;
8 and

9 (2) loan guarantees to private lenders who
10 make loans to ESOPs.

11 (b) STAFF.—

12 (1) IN GENERAL.—The Secretary of the Treas-
13 ury may, without regard to the civil service laws (in-
14 cluding regulations), appoint and terminate such
15 personnel as may be necessary to enable the Sec-
16 retary to carry out this section.

17 (2) COMPENSATION.—The Secretary of the
18 Treasury may fix the compensation of personnel
19 without regard to chapter 51 and subchapter III of
20 chapter 53 of title 5, United States Code, relating
21 to classification of positions and General Schedule
22 pay rates, except that the rate of pay for personnel
23 may not exceed the rate payable for level V of the
24 Executive Schedule under section 5316 of that title.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
 2 authorized to be appropriated \$1,000,000,000 to carry out
 3 this section.

4 **SEC. 4. EXCLUSION OF INTEREST ON LOANS USED TO AC-**
 5 **QUIRE EMPLOYER SECURITIES FOR EM-**
 6 **PLOYEE STOCK OWNERSHIP PLANS.**

7 (a) IN GENERAL.—Part III of subchapter B of chap-
 8 ter 1 of the Internal Revenue Code of 1986 is amended
 9 by inserting after section 132 the following new section:
 10 **“SEC. 133. INTEREST ON CERTAIN LOANS USED TO AC-**
 11 **QUIRE EMPLOYER SECURITIES.**

12 “(a) ALLOWANCE OF EXCLUSION.—

13 “(1) IN GENERAL.—Except as provided in para-
 14 graph (2), gross income does not include the applica-
 15 ble percentage of the interest received by—

16 “(A) a bank (within the meaning of section
 17 581),

18 “(B) an insurance company to which sub-
 19 chapter L applies,

20 “(C) a corporation actively engaged in the
 21 business of lending money, or

22 “(D) a regulated investment company (as
 23 defined in section 851),

24 with respect to a securities acquisition loan.

1 “(2) ANNUAL LIMITATION.—The aggregate
2 amount of interest which may be excluded by a tax-
3 payer under paragraph (1) for any taxable year shall
4 not exceed \$20,000,000.

5 “(3) APPLICABLE PERCENTAGE.—For purposes
6 of this section—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the applicable percentage of
9 a taxpayer with respect to any securities acqui-
10 sition loan is 50 percent.

11 “(B) LOWER PERCENTAGES FOR LARGER
12 FINANCIAL INSTITUTIONS.—If, for any taxable
13 year in which a taxpayer enters into a securities
14 acquisition loan—

15 “(i) the average adjusted bases of all
16 assets of the taxpayer are equal to or
17 greater than \$2,000,000,000 but less than
18 or equal to \$10,000,000,000, the tax-
19 payer’s applicable percentage with respect
20 to interest received by the taxpayer on
21 such loan (including any refinancing of
22 such loan treated as a securities acqui-
23 sition loan) for such taxable year and any
24 succeeding taxable year shall be 25 per-
25 cent, and

1 “(ii) the average adjusted bases of all
2 assets of the taxpayer are greater than
3 \$10,000,000,000, the taxpayer’s applicable
4 percentage with respect to interest received
5 by the taxpayer on such loan (including
6 any refinancing of such loan treated as a
7 securities acquisition loan) for such taxable
8 year and any succeeding taxable year shall
9 be 10 percent.

10 “(4) CONTROLLED GROUP OF CORPORA-
11 TIONS.—All members of a controlled group of cor-
12 porations (as defined in section 409(l)(4)) shall be
13 treated as 1 taxpayer for purposes of applying para-
14 graphs (2) and (3).

15 “(b) SECURITIES ACQUISITION LOAN.—

16 “(1) IN GENERAL.—For purposes of this sec-
17 tion, the term ‘securities acquisition loan’ means—

18 “(A) any loan to a corporation or to an
19 employee stock ownership plan to the extent
20 that the proceeds are used to acquire employer
21 securities for the plan, or

22 “(B) any loan to a corporation to the ex-
23 tent that, within 30 days, employer securities
24 are transferred to the plan in an amount equal
25 to the proceeds of such loan and such securities

1 are allocable to accounts of plan participants
2 within 1 year of the date of such loan.

3 For purposes of this paragraph, the term ‘employer
4 securities’ has the meaning given such term by sec-
5 tion 409(1). The term ‘securities acquisition loan’
6 shall not include a loan with a term greater than 15
7 years, except that in the case of a securities acquisi-
8 tion loan which is a refinancing loan described in
9 paragraph (5), such term may not extend beyond the
10 last day of the original securities acquisition loan
11 which such loan is refinancing.

12 “(2) LOANS BETWEEN RELATED PERSONS.—
13 The term ‘securities acquisition loan’ shall not in-
14 clude—

15 “(A) any loan made between corporations
16 which are members of the same controlled
17 group of corporations, or

18 “(B) any loan made between an employee
19 stock ownership plan and any person that is—

20 “(i) the employer of any employees
21 who are covered by the plan, or

22 “(ii) a member of a controlled group
23 of corporations which includes such em-
24 ployer.

1 For purposes of this paragraph, subparagraphs
2 (A) and (B) shall not apply to any loan which,
3 but for such subparagraphs, would be a securi-
4 ties acquisition loan if such loan was not origi-
5 nated by the employer of any employees who
6 are covered by the plan or by any member of
7 the controlled group of corporations which in-
8 cludes such employer, except that this section
9 shall not apply to any interest received on such
10 loan during such time as such loan is held by
11 such employer (or any member of such con-
12 trolled group).

13 “(3) TERMS APPLICABLE TO CERTAIN SECURI-
14 TIES ACQUISITION LOANS.—A loan to a corporation
15 shall not fail to be treated as a securities acquisition
16 loan merely because the proceeds of such loan are
17 lent to an employee stock ownership plan sponsored
18 by such corporation (or by any member of the con-
19 trolled group of corporations which includes such
20 corporation) if such loan includes—

21 “(A) repayment terms which are substan-
22 tially similar to the terms of the loan of such
23 corporation from a lender described in sub-
24 section (a), or

1 “(B) repayment terms providing for more
2 rapid repayment of principal or interest on such
3 loan, but only if allocations under the plan at-
4 tributable to such repayment do not discrimi-
5 nate in favor of highly compensated employees
6 (within the meaning of section 414(q)).

7 “(4) CONTROLLED GROUP OF CORPORA-
8 TIONS.—For purposes of this subsection, the term
9 ‘controlled group of corporations’ has the meaning
10 given such term by section 409(l)(4).

11 “(5) TREATMENT OF REFINANCINGS.—The
12 term ‘securities acquisition loan’ shall include any
13 loan which—

14 “(A) is (or is part of a series of loans)
15 used to refinance a loan described in subpara-
16 graph (A) or (B) of paragraph (1), and

17 “(B) meets the requirements of paragraphs
18 (2) and (3).

19 “(6) PLAN REQUIREMENTS.—

20 “(A) IN GENERAL.—A loan shall not be
21 treated as a securities acquisition loan for pur-
22 poses of this section unless, immediately after
23 the acquisition or transfer referred to in sub-
24 paragraph (A) or (B) of paragraph (1), respec-

1 tively, the employee stock ownership plan meets
2 the requirements of subparagraphs (B) and (C).

3 “(B) PLAN MUST HOLD MORE THAN 5
4 PERCENT OF STOCK AFTER ACQUISITION OR
5 TRANSFER.—An employee stock ownership plan
6 meets the requirements of this subparagraph if
7 the plan owns more than 5 percent of—

8 “(i) each class of outstanding stock of
9 the corporation issuing the employer secu-
10 rities, or

11 “(ii) the total value of all outstanding
12 stock of the corporation.

13 “(C) PLAN MUST COVER AT LEAST 50 PER-
14 CENT OF NONHIGHLY COMPENSATED EMPLOY-
15 EES.—

16 “(i) IN GENERAL.—An employee stock
17 ownership plan meets the requirements of
18 this subparagraph if at least 50 percent of
19 the employees of each employer maintain-
20 ing the plan who are not highly com-
21 pensated employees (as defined in section
22 414(q)) are participants in the plan.

23 “(ii) CERTAIN EMPLOYEES MAY BE
24 EXCLUDED.—For purposes of clause (i),

1 an employer may elect to exclude under the
2 plan employees—

3 “(I) who have not attained the
4 age of 21 before the close of a plan
5 year,

6 “(II) who have less than 1 year
7 of service with the employer as of any
8 day during the plan year,

9 “(III) who are covered under an
10 agreement which the Secretary of
11 Labor finds to be a collective bar-
12 gaining agreement if there is evidence
13 that the benefits covered under the
14 employee stock ownership plan were
15 the subject of good faith bargaining
16 between employee representatives and
17 the employer, or

18 “(IV) who are described in sec-
19 tion 410(b)(3)(C) (relating to non-
20 resident aliens working outside the
21 United States).

22 “(D) FAILURE TO MEET REQUIRE-
23 MENTS.—

24 “(i) IN GENERAL.—Subsection (a)
25 shall not apply to any interest received

1 with respect to a securities acquisition loan
2 which is allocable to any period during
3 which the employee stock ownership plan
4 does not meet the requirements of sub-
5 paragraphs (B) and (C).

6 “(ii) EXCEPTION.—To the extent pro-
7 vided by the Secretary, clause (i) shall not
8 apply to any period if, within 90 days of
9 the first date on which the failure occurred
10 (or such longer period not in excess of 180
11 days as the Secretary may prescribe), the
12 plan takes such actions as are required to
13 meet the requirements of subparagraphs
14 (B) and (C).

15 “(E) STOCK.—For purposes of subpara-
16 graph (B)—

17 “(i) IN GENERAL.—The term ‘stock’
18 means stock other than stock described in
19 section 1504(a)(4).

20 “(ii) TREATMENT OF CERTAIN
21 RIGHTS.—The Secretary may provide that
22 warrants, options, contracts to acquire
23 stock, convertible debt interests and other
24 similar interests be treated as stock for 1
25 or more purposes under subparagraph (B).

1 “(F) AGGREGATION RULE.—For purposes
2 of determining whether the requirements of
3 subparagraph (B) are met, an employee stock
4 ownership plan shall be treated as owning stock
5 in the corporation issuing the employer securi-
6 ties which is held by any other employee stock
7 ownership plan which is maintained—

8 “(i) the employer maintaining the
9 plan, or

10 “(ii) any member of a controlled
11 group of corporations (within the meaning
12 of section 409(l)(4)) of which the employer
13 described in clause (i) is a member.

14 “(7) VOTING RIGHTS OF EMPLOYER SECURI-
15 TIES.—A loan shall not be treated as a securities ac-
16 quisition loan for purposes of this section unless—

17 “(A) the employee stock ownership plan
18 meets the requirements of section 409(e)(2)
19 with respect to all employer securities acquired
20 by, or transferred to, the plan in connection
21 with such loan (without regard to whether or
22 not the employer has a registration-type class of
23 securities), and

1 “(B) no stock described in section
2 409(l)(3) is acquired by, or transferred to, the
3 plan in connection with such loan unless—

4 “(i) such stock has voting rights
5 equivalent to the stock to which it may be
6 converted, and

7 “(ii) the requirements of subpara-
8 graph (A) are met with respect to such
9 voting rights.

10 “(c) EMPLOYEE STOCK OWNERSHIP PLAN.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, the term ‘employee stock ownership plan’ has
13 the meaning given to such term by section
14 4975(e)(7).

15 “(2) ELIGIBLE WORKER-OWNED COOPERATIVES
16 INCLUDED.—For purposes of this section and sec-
17 tions 4978B, 6042, and 7872, such term shall also
18 include an eligible worker-owned cooperative (as de-
19 fined in section 1042(c)).

20 “(d) APPLICATION WITH SECTION 483 AND ORIGI-
21 NAL ISSUE DISCOUNT RULES.—In applying section 483
22 and subpart A of part V of subchapter P to any obligation
23 to which this section applies, appropriate adjustments
24 shall be made to the applicable Federal rate to take into
25 account the exclusion under subsection (a).

1 “(e) PERIOD TO WHICH INTEREST EXCLUSION AP-
2 PLIES.—

3 “(1) IN GENERAL.—In the case of—

4 “(A) an original securities acquisition loan,
5 and

6 “(B) any securities acquisition loan (or se-
7 ries of such loans) used to refinance the origi-
8 nal securities acquisition loan,

9 subsection (a) shall apply only to interest accruing
10 during the excludable period with respect to the
11 original securities acquisition loan.

12 “(2) EXCLUDABLE PERIOD.—For purposes of
13 this subsection, the term ‘excludable period’ means,
14 with respect to any original securities acquisition
15 loan—

16 “(A) IN GENERAL.—The 7-year period be-
17 ginning on the date of such loan.

18 “(B) LOANS DESCRIBED IN SUBSECTION
19 (b)(1)(A).—If the term of an original securities
20 acquisition loan described in subsection
21 (b)(1)(A) is greater than 7 years, the term of
22 such loan. This subparagraph shall not apply to
23 a loan described in subsection (b)(3)(B).

24 “(3) ORIGINAL SECURITIES ACQUISITION
25 LOAN.—For the purposes of this subsection, the

1 term ‘original securities acquisition loan’ means a
 2 securities acquisition loan described in subparagraph
 3 (A) or (B) of subsection (b)(1).”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Subparagraph (B) of section 291(e)(1) of
 6 the Internal Revenue Code of 1986 is amended by
 7 redesignating clause (iv) as clause (v) and by insert-
 8 ing after clause (iii) the following new clause:

9 “(iv) SPECIAL RULES FOR OBLIGA-
 10 TIONS TO WHICH SECTION 133 APPLIES.—
 11 In the case of an obligation to which sec-
 12 tion 133 applies, interest on such obliga-
 13 tion shall not be treated as exempt from
 14 taxation for purposes of this subpara-
 15 graph.”.

16 (2) Section 812 of such Code is amended by
 17 adding at the end the following:

18 “(g) TREATMENT OF INTEREST PARTIALLY TAX-EX-
 19 EMPT UNDER SECTION 133.—For purposes of this section
 20 and subsections (a) and (b) of section 807, the terms
 21 ‘gross investment income’ and ‘tax-exempt interest’ shall
 22 not include any interest received with respect to a securi-
 23 ties acquisition loan (as defined in section 133(b)). Such
 24 interest shall not be included in life insurance gross in-
 25 come for purposes of subsection (b)(3).”.

1 (3) Paragraph (5) of section 852(b) of such
2 Code is amended by adding at the end the following:

3 “(C) INTEREST ON CERTAIN LOANS USED
4 TO ACQUIRE EMPLOYER SECURITIES.—For pur-
5 poses of this section—

6 “(i) the applicable percentage (as de-
7 fined in section 133(a)(3)) of the amount
8 of any loan held by a regulated investment
9 company which qualifies as a securities ac-
10 quisition loan (as defined in section 133)
11 shall be treated as an obligation described
12 in section 103(a), and

13 “(ii) such applicable percentage of the
14 interest received on such loan shall be
15 treated as interest excludable from gross
16 income under section 103.”.

17 (4) Paragraph (2) of section 4978(b) of such
18 Code is amended by striking subparagraphs (A) and
19 (B) and all that follows and inserting:

20 “(A) first, from section 133 securities (as
21 defined in section 4978B(e)(2)) acquired during
22 the 3-year period ending on the date of such
23 disposition, beginning with the securities first
24 so acquired,

1 “(B) second, from section 133 securities
 2 (as so defined) acquired before such 3-year pe-
 3 riod unless such securities (or proceeds from
 4 the disposition) have been allocated to accounts
 5 of participants or beneficiaries,

6 “(C) third, from qualified securities to
 7 which section 1042 applied acquired during the
 8 3-year period ending on the date of the dispo-
 9 sition, beginning with the securities first so ac-
 10 quired, and

11 “(D) then from any other employer securi-
 12 ties.

13 If subsection (d) or section 4978B(d) applies to a
 14 disposition, the disposition shall be treated as made
 15 from employer securities in the opposite order of the
 16 preceding sentence.”.

17 (5)(A) Chapter 43 of such Code is amended by
 18 inserting before section 4979 the following new sec-
 19 tion:

20 **“SEC. 4978B. TAX ON DISPOSITION OF EMPLOYER SECURI-**
 21 **TIES TO WHICH SECTION 133 APPLIED.**

22 “(a) IMPOSITION OF TAX.—In the case of an em-
 23 ployee stock ownership plan which has acquired section
 24 133 securities, there is hereby imposed a tax on each tax-

1 able event in an amount equal to the amount determined
2 under subsection (b).

3 “(b) AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The amount of the tax im-
5 posed by subsection (a) shall be equal to 10 percent
6 of the amount realized on the disposition to the ex-
7 tent allocable to section 133 securities under section
8 4978(b)(2).

9 “(2) DISPOSITIONS OTHER THAN SALES OR EX-
10 CHANGES.—For purposes of paragraph (1), in the
11 case of a disposition of employer securities which is
12 not a sale or exchange, the amount realized on such
13 disposition shall be the fair market value of such se-
14 curities at the time of disposition.

15 “(c) TAXABLE EVENT.—For purposes of this section,
16 the term ‘taxable event’ means any of the following dis-
17 positions:

18 “(1) DISPOSITIONS WITHIN 3 YEARS.—Any dis-
19 position of any employer securities by an employee
20 stock ownership plan within 3 years after such plan
21 acquired section 133 securities if—

22 “(A) the total number of employer securi-
23 ties held by such plan after such disposition is
24 less than the total number of employer securi-
25 ties held after such acquisition, or

1 “(B) except to the extent provided in regu-
2 lations, the value of employer securities held by
3 such plan after the disposition is 50 percent or
4 less of the total value of all employer securities
5 as of the time of the disposition.

6 For purposes of subparagraph (B), the aggregation
7 rule of section 133(b)(6)(D) shall apply.

8 “(2) STOCK DISPOSED OF BEFORE ALLOCA-
9 TION.—Any disposition of section 133 securities to
10 which paragraph (1) does not apply if—

11 “(A) such disposition occurs before such
12 securities are allocated to accounts of partici-
13 pants or their beneficiaries, and

14 “(B) the proceeds from such disposition
15 are not so allocated.

16 “(d) SECTION NOT TO APPLY TO CERTAIN DISPOSI-
17 TIONS.—

18 “(1) IN GENERAL.—This section shall not apply
19 to any disposition described in paragraph (1), (3), or
20 (4) of section 4978(d).

21 “(2) CERTAIN REORGANIZATIONS.—For pur-
22 poses of this section, any exchange of section 133 se-
23 curities for employer securities of another corpora-
24 tion in any reorganization described in section
25 368(a)(1) shall not be treated as a disposition, but

1 the employer securities received shall be treated as
2 section 133 securities and as having been held by
3 the plan during the period the securities which were
4 exchanged were held.

5 “(3) FORCED DISPOSITION OCCURRING BY OP-
6 ERATION OF STATE LAW.—Any forced disposition of
7 section 133 securities by an employee stock owner-
8 ship plan occurring by operation of a State law shall
9 not be treated as a disposition. This paragraph shall
10 only apply to securities which, at the time the securi-
11 ties were acquired by the plan, were regularly traded
12 on an established securities market.

13 “(4) COORDINATION WITH OTHER TAXES.—
14 This section shall not apply to any disposition which
15 is subject to tax under section 4978 or section
16 4978A (as in effect on the day before its repeal).

17 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
18 poses of this section—

19 “(1) LIABILITY FOR PAYMENT OF TAXES.—The
20 tax imposed by this section shall be paid by the em-
21 ployer.

22 “(2) SECTION 133 SECURITIES.—The term ‘sec-
23 tion 133 securities’ means employer securities ac-
24 quired by an employee stock ownership plan in a
25 transaction to which section 133 applied.

1 “(3) DISPOSITION.—The term ‘disposition’ in-
2 cludes any distribution.

3 “(4) ORDERING RULES.—For ordering rules for
4 dispositions of employer securities, see section
5 4978(b)(2).”.

6 (B) The table of sections for chapter 43 of such
7 Code is amended by inserting before the item relat-
8 ing to section 4979 the following new item:

 “Sec. 4978B. Tax on disposition of employer securities to which section 133
 applied.”.

9 (6) Subsection (e) of section 6047 of such Code
10 is amended by striking paragraphs (1) and (2) and
11 inserting the following new paragraphs:

12 “(1) any employer maintaining, or the plan ad-
13 ministrator (within the meaning of section 414(g))
14 of, an employee stock ownership plan—

15 “(A) which acquired stock in a transaction
16 to which section 133 applies, or

17 “(B) which holds stock with respect to
18 which section 404(k) applies to dividends paid
19 on such stock,

20 “(2) any person making or holding a loan to
21 which section 133 applies, or

22 “(3) both such employer or plan administrator
23 and such person.”.

1 (7) Subsection (f) of section 7872 of such Code
2 is amended by adding at the end the following new
3 paragraph:

4 “(12) SPECIAL RULE FOR CERTAIN EMPLOYER
5 SECURITY LOANS.—This section shall not apply to
6 any loan between a corporation (or any member of
7 the controlled group of corporations which includes
8 such corporation) and an employee stock ownership
9 plan described in section 4975(e)(7) to the extent
10 that the interest rate on such loan is equal to the
11 interest rate paid on a related securities acquisition
12 loan (as described in section 133(b)) to such cor-
13 poration.”.

14 (8) The table of sections for part III of sub-
15 chapter B of chapter 1 of such Code is amended by
16 inserting after the item relating to section 132 the
17 following new item:

 “Sec. 133. Interest on certain loans used to acquire employer securities.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to original securities acquisition
20 loans (as defined in section 133(e)(3) of the Internal Rev-
21 enue Code of 1986 (and loans refinancing such loans))
22 made after the date of the enactment of this Act.

1 **SEC. 5. EMPLOYEE STOCK OWNERSHIP REQUIREMENTS**
 2 **FOR USE OF PERFORMANCE EXCEPTION TO**
 3 **LIMITATION OF DEDUCTIBILITY OF EXECU-**
 4 **TIVE COMPENSATION; EXPANSION OF PUB-**
 5 **LICLY HELD CORPORATION DEFINITION.**

6 (a) LIMITATION ON USE OF PERFORMANCE EXCEP-
 7 TION.—

8 (1) IN GENERAL.—Section 162(m) of the Inter-
 9 nal Revenue Code of 1986 is amended by adding at
 10 the end the following new paragraph:

11 “(7) EMPLOYEE STOCK OWNERSHIP REQUIRE-
 12 MENTS FOR USE OF PERFORMANCE EXCEPTION.—

13 “(A) IN GENERAL.—The exception under
 14 paragraph (4)(C) shall not apply to any remu-
 15 neration payable by a publicly held corporation
 16 for any taxable year unless the corporation has
 17 in effect at all times during the year a qualified
 18 employee stock program.

19 “(B) QUALIFIED EMPLOYEE STOCK PRO-
 20 GRAM.—For purposes of this paragraph, the
 21 term ‘qualified employee stock program’ means,
 22 with respect to any corporation, a program of
 23 the corporation under which—

24 “(i) employees of the corporation
 25 other than highly compensated employees
 26 (within the meaning of section 414(q))

1 hold nonforfeitable rights to at least 5 per-
2 cent of—

3 “(I) either each class of out-
4 standing stock of the corporation
5 issuing the employer securities or the
6 total value of all outstanding stock of
7 the corporation, and

8 “(II) the voting rights of the
9 total outstanding voting shares of
10 stock of the corporation,

11 “(ii) any stock (or any right with re-
12 spect to such stock) taken into account
13 with respect to an employee under clause
14 (i) is provided to the employee as an em-
15 ployer contribution and at no cost to the
16 employee, and

17 “(iii) the providing of such stock or
18 right by the corporation is not in lieu of
19 any other remuneration payable to such
20 employee.

21 If a program includes the granting at no cost
22 to employees of stock options under which em-
23 ployees may purchase stock through the exer-
24 cise of the options, the cost to the employee of
25 such purchase shall not be taken into account

1 in determining whether the program meets the
2 requirements of clause (ii).

3 “(C) FAILURE TO RETAIN MINIMUM STOCK
4 INTEREST.—

5 “(i) IN GENERAL.—Notwithstanding
6 subparagraph (A), paragraph (4)(C) shall
7 not apply to any remuneration payable by
8 a corporation with a qualified employee
9 stock program during any period employ-
10 ees do not own stock meeting the require-
11 ments of subparagraph (B)(i).

12 “(ii) EXCEPTION.—To the extent pro-
13 vided by the Secretary, clause (i) shall not
14 apply to any period if, within 90 days of
15 the first date on which the failure occurred
16 (or such longer period not in excess of 180
17 days as the Secretary may prescribe), the
18 employees are given stock which results in
19 the program meeting the requirements of
20 subparagraph (B)(i).

21 “(D) STOCK.—For purposes of this para-
22 graph—

23 “(i) IN GENERAL.—The term ‘stock’
24 means stock other than stock described in
25 section 1504(a)(4).

1 “(ii) TREATMENT OF CERTAIN
2 RIGHTS.—The Secretary may provide that
3 warrants, options, contracts to acquire
4 stock, convertible debt interests and other
5 similar interests be treated as stock for 1
6 or more purposes under subparagraph (A).

7 “(E) AGGREGATION RULE.—For purposes
8 of determining whether the stock ownership re-
9 quirements of subparagraph (B)(i) are met, a
10 controlled group of corporations (within the
11 meaning of section 409(l)(4)) may elect to treat
12 all members of the group as 1 corporation.

13 “(F) EXCEPTION FOR EXISTING BINDING
14 CONTRACTS.—This paragraph shall not apply to
15 any remuneration payable under a written bind-
16 ing contract which was in effect on April 1,
17 2017, and which was not modified thereafter in
18 any material respect before such remuneration
19 is paid.”.

20 (2) CONFORMING AMENDMENT.—Subparagraph
21 (C) of section 162(m)(4) of such Code is amended
22 by striking “The term” and inserting “Subject to
23 paragraph (7), the term”.

1 (b) DEFINITION OF PUBLICLY HELD CORPORA-
 2 TION.—Paragraph (2) of section 162(m) is amended to
 3 read as follows:

4 “(2) PUBLICLY HELD CORPORATION.—For pur-
 5 poses of this subsection, the term ‘publicly held cor-
 6 poration’ means any corporation which—

7 “(A) qualifies as an issuer the securities of
 8 which are registered under section 12 of the Se-
 9 curities Exchange Act of 1934, or

10 “(B) is required to file reports under sec-
 11 tion 15(d) of such Act.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to taxable years beginning after
 14 the date of the enactment of this Act.

15 **SEC. 6. OFFICE OF EMPLOYEE OWNERSHIP AND WORKER**
 16 **EMPOWERMENT.**

17 (a) ESTABLISHMENT.—There is established within
 18 the National Economic Council the Office of Employee
 19 Ownership and Worker Empowerment.

20 (b) DUTIES.—The Office of Employee Ownership and
 21 Worker Empowerment established under subsection (a)
 22 shall—

23 (1) provide educational and technical assistance
 24 at no cost to small businesses, as defined by the Ad-

1 administrator of the Small Business Administration,
2 that are attempting to establish employee ownership;

3 (2) raise awareness of profit sharing to compa-
4 nies and employees, including ESOPs; and

5 (3) not later than 180 days after the date of
6 enactment of this Act, submit to Congress a report
7 on any barriers to employee ownership in companies.

8 (c) STAFF.—

9 (1) IN GENERAL.—The Director of the National
10 Economic Council may, without regard to the civil
11 service laws (including regulations), appoint and ter-
12 minate such personnel as may be necessary to enable
13 the Office of Employee Ownership and Worker Em-
14 powerment to carry out this section.

15 (2) COMPENSATION.—The Director of the Na-
16 tional Economic Council may fix the compensation
17 of personnel without regard to chapter 51 and sub-
18 chapter III of chapter 53 of title 5, United States
19 Code, relating to classification of positions and Gen-
20 eral Schedule pay rates, except that the rate of pay
21 for personnel may not exceed the rate payable for
22 level V of the Executive Schedule under section 5316
23 of that title.

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