# How Perpetual Purpose Trusts Can Further Business and Sustainability Goals

© Hispanolistic / iStock

## Foreword

While specific agricultural practices, innovations, or industry collaborations have tremendous potential to address challenges related to sustainability within the food and agriculture sectors, business structure also holds promise to be transformational. Business structure can further play an important role for worker equity, which may continue to rise in prominence due to greater attention on diversity, equity, and inclusion as issues for businesses to address both in their workforce and operations.

This issue is especially challenging when it comes to the food and agriculture industry – although employees in corporate settings may enjoy rich benefits, much of the workforce that harvests crops and butchers animals is driven by illegal labor. While it is out of scope for this paper to address illegal labor, it is vital to consider the linkages between greater worker equity and sustainability within food and agriculture. With the average age of farmers in the US surpassing 57, many farmers will be looking to sell or pass on their businesses. How they are structured for transition can make a significant impact on decisions of what is grown in the coming years, and how, as well as the future of farming.

Beyond the farms themselves, employees within the food industry have a bird's eye view into how our food is produced, and often wasted, making them key stakeholders in the transformation to a more sustainable food system. By linking the motivation of increased worker equity with the potential for more sustainable production through business structures, companies can leverage both short and long-term sustainability efforts.

***Disclaimer:*** *The analysis presented in this paper is designed to foster dialogue and consider business structure as a means to embed sustainability within a company. It is not intended, nor can it be relied upon, as a legal opinion.*

What if you could leverage the structure of a business to embed sustainability and worker equity into a company's DNA? One way some companies have sought to improve worker equity is through different forms of employee ownership, such as employee stock ownership plans (ESOPs), worker cooperatives, or Perpetual Purpose Trusts (PPTs). These structures allow workers to benefit financially from the success of their companies. While ESOPs have been around a long time, counting such companies as Publix Super Markets and WinCo Foods among them, there are some drawbacks to the structure in terms of long-term sustainability goals. PPTs, on the other hand, have the potential to support more environmentally sustainable practices while also generating benefits for workers. While each model has advantages and disadvantages, the potential for adoption of employee ownership trusts in the United States represents an opportunity to restructure companies in favor of employees and the environment, while also continuing to emphasize business results.

## Employee Stock Ownership Plans (ESOPs)

In the U.S., employee stock ownership plans, or ESOPs, are the most common form of employee ownership, largely due to tax advantages.[1] As a qualified retirement program under the Employee Retirement Income Security Act (ERISA), ESOP benefits include capital gains deferrals for shareholders who sell to an ESOP and tax exemptions for the portion of the trust that is employee owned. That means that if a company is 100% owned by an ESOP trust, it pays no income tax on its profits. ESOPs encompass nearly 14 million employees across almost 6,500 companies nationally (NCEO, 2023). ESOPs also enjoy tax exemptions in the majority of states.

Despite these attractive tax advantages, ESOPS come with their share of challenges. They can be expensive for small to mid-sized companies to establish and maintain. According to the National Center for Employee Ownership, for most companies with a few hundred employees, ESOPs will cost between $150,000 to $400,000 to set up the first year, and between $20,000 to $30,000 annually to maintain after that (nceo.org, 2022). Additionally, under current ESOP trust law, trustees are prohibited from prioritizing nonfinancial benefits, such as working conditions, job security, or employee ownership as "a goal in and of itself." The trustees are legally obligated to act only for the exclusive financial benefit of the trust's beneficiaries (Michael, 2017). That does not have to be in discordance with prioritizing equity and sustainability goals, but the short-term versus long-term tradeoffs can make this difficult depending on how issues are prioritized. This may be particularly challenging depending on whether the ESOP is 100% employee-owned or if a smaller portion of the organization is under employee ownership.

Further, a concern with ESOPS for purpose or mission-oriented companies relates to whether they exist in perpetuity. A provision instructing an ESOP trustee to permanently hold shares, and establish a lasting program of employee ownership, would conflict with the trustees' duties under the ERISA. This means ESOP trustees must allow the sale of an ESOP's stock upon receiving a profitable offer even if it does not align with the mission. While this may benefit one generation of retiring employees, it could eliminate ownership for future employees and diminish the founders' legacy (Micheal, 2017). This is a critical consideration, because some sustainability goals require a longer time horizon to demonstrate financial results.

Finally, an ESOP may not be an optimal structure for delivering financial benefits to short-term migrant farmworkers, such as those in seasonal farms and agricultural operations like equipment operators and field pickers, as employees cannot receive the equity earned until retirement. This is a major consideration in the U.S. as these seasonal migrant workers comprise approximately 73% of the national agricultural workforce (fwd.us, 2022) and often do not have legal work status. While ESOPs remain popular due to tax advantages and the equity afforded to employees, their structure does not ensure that long-term sustainability and equity goals are prioritized. This raises questions as to whether ESOPs could be adapted or supplemented with other structures to more effectively meet the needs of these evolving employment patterns.

## Cooperatives

The second most common form of employee ownership used in the U.S. are worker cooperatives, covering approximately 612 businesses and 6,000 workers. In many cooperatives (typically excepting rural farm-based cooperatives addressed later), workers jointly own and manage the business and have more control over their working conditions and governance (Democracy at Work Institute, 2023). This can also allow for strong mission orientation to further sustainability goals if the members are well aligned on priorities and the appropriate leadership and structures for decision-making are in place. However, if these are at odds, this form of ownership could become quite tedious if not outright cumbersome.

While a small portion of the U.S. economy, worker cooperatives are the most prevalent form of employee ownership globally, representing nearly 10% of the world's employed population, or roughly 279 million people. Cooperatives mainly consist of self-employed producer-members, the majority in agriculture (International Cooperative Alliance, 2017), where coop structures are common to aggregate product in commodities such as coffee. Like ESOPs, worker cooperatives have been shown to be an effective tool for businesses to boost employee motivation and retention and deliver financial benefits to employee owners. Since the majority of cooperative employment, particularly in the agricultural sector, consists of self-employed producer-members, distinguishing between these producer-members and employees (such as on-farm labor) is important, as it implies that while small farmers may be considered cooperative owners and members, their employed workers often do not share in this ownership.

Financially, worker cooperatives generally offer more equitable pay structures than traditional companies. A 2021 report by Democracy at Work Institute (DAWI) indicated that worker cooperatives in the U.S. pay an average wage of $19.67 per hour, significantly above the minimum wage in states with a high concentration of cooperatives, and that worker-owners earn an average of $8,241 in surplus profits beyond their wages. However, disparities exist within cooperatives, too. For instance, the DAWI report found that men and white worker-owners earned higher average wages compared to women and people of color. Such disparities suggest that while worker cooperatives can provide financial benefits, they are not immune to issues of occupational segregation and wage inequality.

While there are many advantages to co-op worker owners, certain barriers to adoption exist. In a co-op, workers must assume the risk of high costs should the enterprise fail. Because in most cases they must make an initial contribution to the business, they stand to lose both their jobs and their investment. Another challenge for establishing cooperatives relates to the ability to secure funding. The equal equity stakes present in a co-op can make them less attractive for larger investments. Since co-ops do not typically offer control to outside investors, they must rely mainly on business loans or employee-owned investment. One exception, of course, is if they are exporting products, have longer-term contracts, and/or are paid in dollars. In such a scenario they can often not only get access to more loans but also pay lower interest on them.

## Perpetual Purpose Trusts (PPTs) or Employee Ownership Trusts (EOTs)

One structure of employee ownership gaining popularity is a perpetual purpose trust (PPT), also referred to as an employee ownership trust (EOT) in other parts of the world. Like an ESOP, a PPT is a legal structure that allows employees to become owners and earn equity in their company. Both models establish a trust that will be used to purchase the company. In an ESOP, stock accounts are established for each individual participant, who is then paid the value of their earned equity upon retirement. In a PPT, however, the trust will hold these shares on behalf of all employees until the trust has paid back the selling shareholders in full. Only then will employees take the place of the previous owners and start receiving the economic benefit that is normally entitled to the shareholders of a private company.

### Employee Ownership Trusts Around the World

While this paper focuses on the US, EOTs exist elsewhere, ranging from nascent to established. In Australia, the concept of EOTs is in its initial stages, primarily driven by advocacy groups like Employee Ownership Australia. The focus is currently on building awareness and understanding the need for legal and fiscal frameworks to facilitate EOT adoption.

Canada has also shown interest in EOTs, as evidenced by discussions in the 2021 and 2022 budget announcements. The 2022 proposal included creating a dedicated EOT structure under the Income Tax Act. However, these legislative initiatives are still in the planning phase. Advocacy groups highlight the potential of EOTs for business succession but note the absence of specific tax incentives as a key barrier to their adoption. The progress of EOTs in Canada is pending the realization of these legislative proposals.

While the UK demonstrates significant adoption of EOTs, Australia and Canada are at different stages of exploring their integration. The successful implementation of EOTs in these countries depends on the development of supportive legal frameworks and tax incentives. It was out of the scope of this paper to research available legal structures globally, but these serve as some examples of additional uptake of EOTs.

## Perpetual Purpose Trusts in the United States

Since PPTs are not regulated by the Department of Labor or ERISA, they are not subject to the same expenses as ESOPs and can therefore be simpler and far less costly to establish and maintain (esoppartners.com, 2023). Furthermore, a PPT's trustees are not held to the same fiduciary responsibilities as those in ESOPs, meaning they have the right to prioritize non-financial benefits such as sustainability, working conditions, job security, or employee ownership when considering the sale of the company. This makes PPTs a particularly attractive tool for a business that is looking to keep its mission and culture intact over a long-term period, and for small- to mid-sized companies that seek to establish strong leadership upon the exit of the company's founders (Gary, 2020). Because many family farms are small businesses, and the average age of farmers in the US is steadily increasing, transition to a PPT as part of a succession plan could prove an attractive option.

This model could even be used to sell use rights of farms for environmental services in perpetuity. This would allow older farmers to retire with income, and still pass the farm onto their children, albeit with a conservation easement but also a long-term contract and payment schedule for services. This could be financed through agricultural subsidies in any part of the world where the government wants to shift agricultural payments as an incentive to get the poorest performers out of food and into services. So, it could pay those that produce the least food with the greatest environmental impacts to reduce impacts.

Among companies in the United States, PPTs are a fairly new model of ownership that have yet to achieve mainstream adoption, although Patagonia's 2022 decision to shift to this model has increased visibility, in particular due to the Patagonia Purpose Trust's stated goal of addressing the climate crisis.[2] Before this change made a splash in the headlines, in 2018, the Organically Grown Company (the OGC) became the first US business of this type, after the establishment of a new type of trust known as a stewardship trust. Originally established in 1978 in Eugene, Oregon by a group of small-scale farmers, the OGC set out to inspire the growth and adoption of organic agriculture. Over the years, the company has changed its ownership structure many times in efforts to better support its employees and safeguard its mission. First established as a nonprofit to bring organic education to local farmers, the company soon transitioned to a worker cooperative to help farmers purchase supplies collectively, and coordinate production to ensure all crops met but did not surpass demand.

As the organization continued to grow to include distribution, it eventually altered its structure again to a C corporation with an ESOP that would allow all employees, not just farmers, to grow their equity. As the founders of OGC began to consider exiting their business, they realized that its ESOP structure would not protect their values on a long-term basis. If targeted for a corporate takeover, the duties of the directors might make it impossible to stop the sale. The founders knew that the success of the company made it attractive to outside buyers who might not preserve the company's mission. They needed a way to retire and get a share of the equity they had created, while leaving the company in a position to continually reinvest its profits in pursuit of its purpose. The stewardship trust became the solution.

The stewardship trust was created for a business without ascertainable beneficiary, established by a relatively new statute to the Oregon trust code (ORS 130.193, stewardship trusts, 2019). This statute allows for purpose trusts to be held in perpetuity. Prior to this, all non-charitable purpose trusts could not be enforced for more than 90 years. The statute also removed the court's ability to reduce the amount in the trust, solidifying a stewardships trust's ability to continually reinvest its profits. Since the establishment of this new trust code, there has been an increasing interest among U.S. business owners. There are now an estimated 32 U.S. companies currently using this structure (Hand, nceo.org, 2022).


EMPLOYEE OWNED

### Riverford Organic

Riverford Organic began to transition to employee ownership in 2018 and achieved 100% employee ownership in 2023. This has helped the company not only bring benefits to workers, but also allows the business to further invest towards meeting its sustainability goals. For Example, in 2022 the company launched its Planet Fund that has invested £1.8 million from its 2020/21 profits, and committed to allocating more in future profits to support the company's sustainability goals, including projects related to agroforestry, agricultural emissions monitoring, soil carbon monitoring, and biodiversity studies.

While still a fairly new structure in the U.S., PPTs have a rich history in the United Kingdom. The John Lewis partnership became the first company to transfer ownership to an EOT in 1929, and it has grown to employ 74,300 workers (statista.com, 2023). Today, EOTs represent the most common employee ownership structure in the UK, spanning 1,418 organizations (eoa.uk, 2023). This growth can be attributed to the government implementing legislation in 2014 favorable to EOTs. Designed to catalyze the EOT movement, the new legal framework extended a series of tax benefits. Sellers transitioning to an EOT could bypass capital gains tax; inheritance tax liabilities on share transfers were nullified, and employee bonuses were allowed, capped at £3,600 annually for each eligible member. According to the Employee Ownership Association, *"90% of businesses that are currently employee owned (in the UK) became employee-owned businesses in the years following the EOT being enshrined in legislation in 2014"* (EOA, 2023).

While the U.S. federal government hasn't launched an analogous nationwide initiative, states like Oregon and Delaware are pioneering their own PPT-friendly policies. This grassroots momentum at the state level could serve as a precursor to federal action. For businesses keen on promoting this structure, advocacy at both state and national levels, combined with collaboration with like-minded organizations and awareness campaigns, could be key drivers.

With less short-term pressure put on them by financial markets and investors, companies owned by PPTs can focus on progressing their mission and supporting employees, while exploring ways to create strong business results within that context. This approach encourages more innovation, as evidenced by the propensity of such companies to reinvest a larger share of their earnings into research and development. However, it's worth considering whether PPTs inherently foster innovation or if innovative companies are more inclined to adopt PPT structures.

PPTs have also demonstrated high employee retention rates — up to 40% more than their non-PPT counterparts — and foster improved resilience during economic downturns. Remarkably, PPT companies boast a 6x better survival rate in challenging economic climates compared to non-employee-owned firms (Børsting, C., Kuhn, J., Poulsen T., und Thomsen, S., 2017). A study on food-related ESOPs during COVID found that ESOPs had greater employee retention as well as company performance compared to non-employee-owned competitors.[3] Though the study focused on ESOPs rather than PPTs, it seems likely some of the results would also apply to PPTs.

Recent trends in the U.S. economic structure show a growing wealth disparity, with the wealthy accumulating more while the average worker's income stagnates. Small businesses, including those in the agricultural sector, are crucial, contributing about 44% of the nation's GDP (SBA.gov, 2019). Notably, a considerable number of small farm owners are approaching retirement, with about 60% planning to transfer ownership of their enterprises. This transition presents an opportunity to reshape agricultural ownership, potentially influencing food production and soft commodity markets. Exploring models like cooperatives or employee-owned structures could ensure the continuity of these small farms, vital for sustainable food systems.

PPTs, with their ability to plan for long-term goals, could be pioneering forces in green initiatives with the potential to leverage business structure to drive environmental and business results. Such companies might be more likely to adopt sustainable practices, invest in eco-friendly innovations, and prioritize long-term environmental health over short-term profits.

However, making the leap to PPTs is no small feat. While certain policies, akin to those in the UK, have been instrumental in enabling the transition abroad, the U.S. landscape is more fragmented. Some states, like Delaware and Oregon, have crafted more amenable trust laws, whereas others retain the status quo. Proposals to simplify and incentivize PPT transitions are in their early stages. Barriers aren't just legislative; there are cultural hurdles, financing challenges, and a general lack of awareness.

PPTs face other challenges as well. Securing financing might be more onerous due to perceived risks by lenders. The participative decision-making structure might mean longer deliberation times, and there are concerns that growth could be stifled without the impetus from traditional financial stakeholders. Long-term contracts could be a tool to mitigate these challenges, or sustainable development bonds supported by the government.

© Torsten Asmus / iStock


© dusanpetkovic / iStock


© Gabriel Trujillo / iStock


© vgajic / iStock


© EvgeniyShkolenko / iStock

# Conclusion

The evolving landscape of employee ownership models presents diverse opportunities. It also shows that there is a thirst for alternative business models. While 15 U.S. states now allow perpetuity in trusts, potentially encouraging growth in PPTs, the advantages of ESOPs and worker cooperatives remain significant. ESOPs, with their tax benefits and proven track record in enhancing employee engagement, could benefit from legislative adaptations, such as amendments to the “exclusive benefit” rule, to align more closely with long-term company sustainability and employee interests. Worker cooperatives also offer substantial benefits, fostering more equitable pay structures and employee empowerment than traditional companies.

With small businesses forming such a monumental part of the U.S. economy, the potential impact of a widespread PPT transition could be transformational. The idea for ESOPs arose after the Great Depression took a significant toll on workers. Given the immense challenges posed by climate change, many businesses might be similarly challenged if they don’t seek to address the long-term sustainability of their models. PPTs could be a way to ensure business longevity in the face of climate change while also addressing worker equity. With improved economic resilience, worker retention, and the ability to incorporate long-term mission alignment, PPTs hold potential for the retiring generation to ensure their legacy continues. In an era clamoring for both equity and environmental stewardship, pivoting towards employee ownership trusts may prove a strategic move for small- and medium-sized companies.

Katherine Devine
Director, Business Case Development
Markets Institute, World Wildlife Fund
*Katherine.Devine@wwfus.org*

Kameron Hanna, MBA

WWF
MARKETS INSTITUTE
*Change at the speed of life*

marketsinstitute@wwfus.org

# Appendix: Differences in Employee Ownership Structures

| Feature/Criteria | ESOP | PPT | Worker-Owned Cooperatives |
|---|---|---|---|
| Ownership Structure | Employees own shares indirectly through a trust and grow equity in a qualified retirement program. | A trust holds the company shares on behalf of all employees; employees don't own shares directly. | Employees directly own and control the business. |
| Main reason to use structure | Retirement benefit and ownership participation. | To perpetuate the business and provide benefit to employees. | Shared ownership and democratic management. |
| Voting Rights | The Board of Directors manages trustee votes shares. Low level of voting rights for members. | Low to moderate. Decisions usually made by trustees; however, trust could be established as a constitutional democracy to allow employees voting rights. | High. One member, one vote principle on major decisions. |
| Distribution of Profits | Through stock value appreciation normally paid upon retirement from the company. | Typically, through annual bonuses or increased salaries. | Distributed based on a formula, often related to hours worked or salary. |
| Tax Benefits (U.S.) | Offers the most significant tax advantages in the U.S. | No federal tax advantages however, currently, Maryland, New York and Wisconsin offer a state capital gains tax exemption if selling a majority portion of the business to a PPT. | Like ESOPs, sellers can defer capital gains taxes on a sale to a worker cooperative if the sale meets certain requirements. |
| Flexibility | Limited flexibility; regulated by Department of Labor and ERISA. | Somewhat flexible; depends on the trust and state jurisdiction. | Highly flexible; structure and rules set by members. |
| Setup Complexity | High (due to regulations, valuations, etc.). | Moderate; simpler than ESOP but still involves a valuation and setting up a trust. | Moderate; requires democratic consensus and governance structures. |
| Primary Region/Country of Usage | Predominantly U.S. | Most prominent in the U.K., growing in E.U., Canada, and U.S. | Globally the most used form of employee ownership. |
| Companies using these structures look like | Established companies with owners looking to do a partial or complete ownership transition. Companies must be taxed as either a C or S corporations. | Businesses that want legal protections for preserving legacy, community benefit, or social and environmental goals. Or companies that do not want to comply with the rules and costs of an ESOP and are willing to trade off the tax benefits of ESOPs to do so. | Typically, smaller companies with a philosophical commitment to democratic corporate governance. Attractive for companies looking for a lower cost way to set up an employee ownership plan and/or get up front employee investment. |

(Based on information from Nceo.org, 2022 & esoppartners.com, 2023)

# Footnotes

1 https://www.nceo.org/what-is-employee-ownership#_Toc529288093

2 https://www.forbes.com/sites/matthewerskine/2022/09/16/yvon-chouinard-and-the-patagonia-purpose-trust-what-is-it-and-will-it-work/?sh=571465f52deb

3 https://www.nceo.org/sites/default/files/2022-05/NCEO%20research%20report%20-%20Employee%20Ownership%20in%20the%20U.S.%20Food%20System%20During%20COVID-19.pdf

# Citations


**Børsting, et al.** "(PDF) Industrial Foundations as Long-Term Owners." *ResearchGate*, 2017, https://www.researchgate.net/publication/323967790_Industrial_Foundations_as_Long-Term_Owners. Accessed 20 August 2023.

**Bourguignon, Francois.** "Spreading Wealth". https://www.imf.org/en/Publications/fandd/issues/2018/03/bourguignon, March 2018. Accessed 20 August 2023.

**Roelants, B., Hyungsik, E., & Terrasi, E. (2014).** First Global Report on "Cooperatives and Employment". CICOPA. November 19, 2014.

**"Co-ops employ 10% of the global employed population | ICA."** *International Cooperative Alliance*, 25 September 2017, https://www.ica.coop/en/media/news/co-ops-employ-10-global-employed-population. Accessed 20 August 2023.

**"Employee-Owned Sector Growth | What the evidence tells us."** *Employee Ownership Association*, 2023, https://employeeownership.co.uk/resources/what-the-evidence-tells-us/. Accessed 20 August 2023.

**FWD.us.** (n.d.). *Immigrant Farmworkers and America's Food Production: 5 Things to Know*. Retrieved [the date you accessed the article], from https://www.fwd.us/news/immigrant-farmworkers-and-americas-food-production-5-things-to-know/

**Gary, Susan.** "The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business." *University of Cincinnati College of Law Scholarship and Publications*, March 2020, https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1352&context=uclr. Accessed 20 August 2023.

**Hand, Mark.** "Employee Ownership Trusts in the News." *NCEO*, 1 December 2022, https://www.nceo.org/employee-ownership-blog/employee-ownership-trusts-news. Accessed 20 August 2023.

**"An Introduction to Employee Ownership Trusts."** *NCEO*, March 2023, https://www.nceo.org/article/introduction-employee-ownership-trusts. Accessed 20 August 2023.

***Organically Grown Company***, https://www.organicgrown.com/. Accessed 20 August 2023.

**Juckett, Aaron.** "ESOP vs. Cooperative: Why Your Employee Ownership Choice Matters." *ESOP Partners*, 7 June 2022, https://www.esoppartners.com/blog/esop-vs-cooperative. Accessed 20 August 2023.

**Michael, Christopher.** "The Employee Ownership Trust: An ESOP Alternative." *EOT Advisors*, 2017, https://eotadvisors.com/the-employee-ownership-trust-eot-an-esop-alternative. Accessed 20 August 2023.

**"ORS 130.193 - Stewardship trust."** *OregonLaws*, 2019, https://oregon.public.law/statutes/ors_130.193. Accessed 20 August 2023.

**"The Rise of Employee Ownership Trusts."** *Longhurst*, 6 February 2022, https://longhurst.co.uk/2022/02/06/the-rise-of-employee-ownership-trusts/. Accessed 20 August 2023.

**Ryder, Andy.** "How Does an Employee Ownership Trust Work?" *Shorts Accountants*, 9 May 2023, https://blog.shorts.uk.com/how-does-an-employee-ownership-trust-work. Accessed 20 August 2023.

# Citations (continued)

**"Small business closure crisis."** *Project Equity*, 2021, https://project-equity.org/wp-content/uploads/2021/03/Silver-Tsunami-United-States-business-closure-crisis-Project-Equity1.pdf. Accessed 20 August 2023.

**"Small Businesses Generate 44 Percent of U.S. Economic Activity."** *SBA's Office of Advocacy*, 30 January 2019, https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/. Accessed 20 August 2023.

**Smith, P.** "John Lewis Partnership employee numbers 2023." *Statista*, 10 May 2023, https://www.statista.com/statistics/420213/john-lewis-partnership-employees-united-kingdom-uk/. Accessed 20 August 2023.

**Stephens, Sara.** "Worker Cooperatives Performance and Success Factors." *Co-opLaw.org*, 22 October 2014, https://www.co-oplaw.org/knowledge-base/worker-cooperatives-performance-and-success-factors/. Accessed 20 August 2023.