

## Legislation

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### RECENT DEVELOPMENTS IN US COOPERATIVE LAW

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#### Background

The federal system in the United States allocates government authority between the federal (national) government, the 50 states, the District of Columbia, and a handful of other colonial territories such as Puerto Rico and Guam. The legal enabling environment for cooperative enterprise is similarly divided. Federal government policy is largely exercised through tax law, with favorable and restrictive provisions that define cooperative models nationally. Business entity formation is a matter of state law, which is fragmented and greatly variable among the 52+ jurisdictions.

In the U.S. system, legislation is created by Congress and the 52-plus state-level legislatures; interpretation and implementation of law is largely delegated to administrative agencies. Enacted legislation is generally described as “law,” “statute,” or “code.” Internal cooperative governance documents are referred to as “bylaws” or “operating agreements.”

The Internal Revenue Code (IRC) – the national tax laws – offers the only uniform application of “cooperative” and provides favorable tax treatment to cooperative revenues from business with members. The IRC’s definition is vague, referring only to “any corporation operating on a cooperative basis.” 26 U.S.C. §§ 1381(a)(2). Federal courts have interpreted this more carefully. *Puget Sound Plywood, Inc. v. Commissioner*, 44 T.C. 305 (1965), acq. 1966-2 C.B.

#### Federal Law and Policy

Recent years have seen significant developments in national law and policy, particularly in the area of worker ownership. In the U.S., the field of worker ownership is growing as a means of offering employees an ownership stake and sometimes a voice in businesses. Worker cooperatives are growing in number, but the vast majority of employee stakeholders is through an Employee Stock Ownership Plan, or ESOP. An ESOP is a form of employee benefits that places shares of the employer corporation into a trust for the benefit of participating employees. ESOPs take many different forms, ranging from a modest performance incentive to 100% worker ownership and democratic worker governance – the latter category a small minority.

The *Worker Ownership and Readiness and Knowledge Act* (WORK Act) of 2023 is a significant advancement of federal policy in support of employee ownership, including worker cooperatives. The resulting *Employee Ownership Initiative* is the first federal worker ownership grant program in the US Department of Labor. The legislation authorizes \$50 million over five years to promote employee ownership, by supporting new and existing state employee ownership programs, including:

- Federal grants toward state employee ownership programs for education and outreach about the benefits of employee ownership and business succession planning.
- Gathering data and information about state employee ownership programs.
- Serving as a clearing house on best practices within employee ownership.
- Hilary Abell, a prominent and talented employee ownership advocate was appointed as its first Division Chief.

In contrast, progress has been disappointingly slow in implementation of the *Main Street Employee Ownership Act*, passed in 2018. This Act required the US Small Business Administration (SBA) to recognize cooperatives as enterprises eligible on parity with investor-driven businesses for its loan programs and other benefits. Full realization of the Act was hampered by intransigence on the part of a previous presidential administration and reluctance on the part of SBA leadership to acknowledge the cooperative business model. The agency has made more substantial progress in recent years.

Congress enacted the *Corporate Transparency Act* to combat money laundering and other financial crimes. The law universally requires reporting of “beneficial ownership” of any enterprise that is not already subject to federal financial reporting requirements - including cooperatives – to a new federal agency – the Financial Crimes Enforcement Network (FinCEN). “Beneficial Ownership” is defined as an ownership share of 20.0% or more, or otherwise significant control of a business. Few cooperatives fall under the 20.0% ownership requirement, but must still file a report to FinCEN and identify at least one controlling officer.

### **Interagency Working Group on Cooperative Development**

The most successful advance in federal policy is occurring at the administrative level. The 2014 Farm Bill created the Interagency Working Group on Cooperative Development (IAWG) “to foster cooperative development and ensure coordination with federal agencies and ... cooperative organizations” 7 U.S.C. section 1932(e)(12). Led by the US Department of Agriculture’s (USDA) Rural Development division, the Working Group has engaged formal participation from federal agencies as well as numerous State, Local, Tribal, and private sector actors. The effort has gained momentum and spread understanding of cooperatives well beyond its traditional home in USDA. To date, the IAWG has compiled century’s worth of cooperative economic statistics, established working groups and offered webinars to a national audience on: Food, Environment, Worker Cooperative Conversions, Housing, Child Care, Real Estate, Equitable Governance, Equitable Ecosystem Development, and Cooperatives in the Carceral System.

### **Change of Administration**

The recent election creates substantial uncertainty with respect to USDA Rural Development and programs related to cooperative development. Donald Trump’s attempt to eliminate Rural Development completely did not receive approval from Congress. Presidential appointees later instituted a gag order preventing the agency from publicizing its programs and successes. As

noted above, implementation of the Main Street Employee Ownership Act was also slow.

### **State Law and Policy**

As noted, any consistency in US cooperative law comes from the federal tax code. There is considerable variation in coverage and level of detail in laws among the various states.

Along with the federal WORK Act, a decade of advocacy by worker cooperative movement leaders is starting to bear fruit in some state legislatures and some large cities. Notable developments include:

- **Colorado**

Colorado Governor Jared Polis created the Colorado Employee Ownership Office by executive order in 2020. The legislator provided statutory authority for the Office in 2024. The law offers tax benefits for businesses converting to worker ownership – cooperatives and ESOPs – and creates a 12-member Employee Ownership Commission to support the work of the Office.

- **Washington State**

The governor of Washington State signed legislation in 2023 creating the Washington Employee Ownership Program within that state's Department of Commerce. The law offers tax benefits for employee ownership transactions, and establishes a revolving loan fund to finance such conversions. The new Employee Ownership Commission serves as an advisory board for the program.

- **New York City**

In 2015 one of the country's largest cities created the Worker Cooperative Business Development Initiative to create innovative ways for New Yorkers to overcome economic and social inequality. The program has found success and grown significantly, with a 2024 budget of \$9.8 million.

- **Chicago**

More recently, the City of Chicago created the Chicago Community Wealth Building Ecosystem (CCWBE) as a significant aspect of its recovery from the COVID pandemic. Initially hosted by the Center for Urban Economic Development (CUED) at the University of Illinois Chicago (UIC) and the Community Enterprise & Solidarity Economy Clinic of the UIC School of Law, the project supports worker-owned cooperatives, community land trusts, limited equity housing cooperatives, community investment vehicles, and other ecosystem partners.