

## > Covid-19 Client Alert

### ESOP Sponsors and Paycheck Protection Program Loans

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#### Authors and Key Contacts

If you have any questions about this alert, please contact us. If you wish, you may directly contact our Executive Compensation & Employee Benefits attorneys who are carefully monitoring these changes:

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Many businesses are preparing to apply for loans under the Paycheck Protection Program of the [Coronavirus Aid, Relief and Economic Security Act](#) (the “Act”). On March 31, 2020, the U.S. Department of Treasury (the “Treasury Department”) provided a sample [loan application](#), which contains instructions for completing the application form. The instructions indicate that each applicant who is an individual, as well as each 20% or greater owner of an applicant business, must sign and certify the application. The following parties are the designated “owners” of the applicant business:

#### Certifying the Application

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- ***Any Trustor (if the applicant is owned by a trust).***

Companies that sponsor employee stock ownership plans (“ESOPs”) are at least partially owned by employee stock ownership trusts (“ESOTs”) established pursuant to the company’s ESOP. Pursuant to the instructions to the loan application (*which are subject to being modified before being finalized*), the Paycheck Protection Program loan application should be signed and certified on behalf of the ESOT by an authorized signatory of the employer corporation, which is the “Trustor” or “grantor” of the ESOT.

#### Including ESOP Contributions in Calculating the Loan Amount

In calculating the ceiling on loan amounts (i.e. 2.5 x annualized monthly payroll costs) companies that have paid cash contributions to their ESOPs during the measuring period (calendar 2019 for most employers) should remember **to include that ESOP contribution in the calculation of “payroll costs”** in their loan applications. This should increase their permitted loan amount by 20.83% [2 ½ times 1/12th] of the ESOP contribution (subject, of course, to the \$10 million loan cap).

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Morrison Cohen LLP has created the [COVID-19 Resource Taskforce](#), a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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