



About the Firm

Shapiro Sher was founded in 1972 by Ronald M. Shapiro with the mission of providing outstanding legal counsel for businesses of all sizes. Based in Baltimore, the firm is nationally recognized for its practices in business law, litigation, bankruptcy, and creditors' rights. For over four decades, the firm has provided invaluable representation to large corporations, emerging growth businesses, governments, non-profits, and individuals.

At Shapiro Sher, our success is driven by a fundamental belief: the companies and individuals who place their trust in us deserve the close attention of deeply experienced attorneys. That's why we bring senior talent to bear on every matter. In all areas of bankruptcy, business law, and litigation, the strategies we provide are planned and executed by attorneys practicing at the top of their profession.

When you hire Shapiro Sher, you get an efficient team gifted with the ingenuity and foresight that only come with years of hard-fought accomplishment. The firm's attorneys have earned reputations that reach well beyond the Mid-Atlantic region. Our business lawyers are at the heart of major transactions in all industry sectors across the country and abroad. Our litigators serve as counsel in cases of national consequence, and our bankruptcy practice is international in scope.

For more information about the firm and its practices, please visit ShapiroSher.com.

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“CARES”) ACT

On March 27, 2020, President Donald J. Trump signed into law a \$2.2 trillion stimulus package intended to mitigate the economic impact of the Coronavirus (COVID-19) pandemic. The Coronavirus Aid, Relief, and Economic Security Act (the Act) stands as the largest emergency stimulus package in United States history. The Act provides certain economic assistance to businesses and individuals, and appropriates stimulus funds including, among other things:

\$349 BILLION FOR SMALL BUSINESS LOANS UNDER TITLE I-KEEPING AMERICAN WORKERS EMPLOYED AND PAID ACT

- The Act commits \$349 billion for 100% federally-backed SBA loans (of up to \$10 million) to eligible entities. An eligible entity is generally a “small business concern” as defined by the SBA, and any business concern, nonprofit organization, veterans’ organization, or Tribal business if it employs fewer than 500 employees.
- The Act includes a special eligibility rule for businesses in the hospitality and dining industries assigned to the “accommodation and food services” sector (Sector 72 under the North American Industry Classification System (NAICS)) with more than one physical location, if the business employs 500 or fewer employees per location. Under this special eligibility rule hotels, restaurants, and bars would be eligible to participate.
- The maximum loan amount is the lesser of:
 - (A) • 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019);
 - PLUS the outstanding amount of a loan made under the SBA’s Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;
- OR (B) Upon request, for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019:
 - 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020;

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- PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR (C)

\$10 million.

- Interest on loans is capped at 4%.
- Loan Deferral Relief
 - The Act provides that businesses that were operating as of February 15, 2020 and that have a pending or approved loan application under this program are presumed to qualify for payment deferment relief (for principal, interest, and fees) for 6 months to 1 year.
 - Lenders are required to provide deferral relief during the covered period (if secondary market investors decline to approve a lender's deferral request, the Administration must purchase the loan).
 - The SBA has 30 days from enactment of the Act to provide guidance to lenders on this process.
- Loan Forgiveness Relief
 - The Act includes a loan forgiveness provision which provides that indebtedness can be forgiven for an 8 week period after the loan origination date in an amount equal to costs incurred and payments made during the covered period for the following business expenditures: 1) payroll costs (compensation above \$100,000 is excluded); 2) mortgage interest payments; 3) rent payments; and 4) utilities payments. Borrowers with tipped workers may receive loan forgiveness for the additional wages paid to those employees. The loan forgiveness amount cannot exceed the principal amount of the loan. The amount forgiven is also reduced for any employee cuts or reductions in wages subject to a specific formula set forth in the Act.
 - The amount forgiven is excluded from gross income for tax purposes.
 - The Act requires borrowers seeking forgiveness of amounts to provide their lender with: 1) documentation verifying full-time equivalent employees (FTEEs) on their payroll and their pay rates; 2) documentation on covered costs/ payments (e.g., documents verifying mortgage, rent, and utility payments); 3) a certification that the documentation is true and correct and that forgiveness amounts requested were used to retain

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employees and make other forgiveness-eligible payments; and 4) any other documentation the SBA may require.

- The SBA must remit payment of forgiven amount, plus any accrued interest, to the lender within 90 days of the date the forgiveness amount is determined.
- Lenders and secondary market participants (at the discretion of the SBA) may seek advance purchase of a covered loan by reporting expected forgiveness amounts, up to 100% of principal, on program loans or on pools of such loans. The SBA must purchase the expected forgiveness amounts in such reports within 15 days.
- The Act provides that lenders who rely on documentation and accompanying certifications are held harmless from SBA enforcement actions and penalties relating to the loan forgiveness.
- The Act requires the SBA to issue regulations on these forgiveness provisions within 30 days.

\$454 BILLION UNDER TITLE IV - ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

- The Act, at Section 4003(b)(4), provides \$454 Billion to fund a Federal Reserve lending facility for eligible businesses, states and localities. At the Secretary of the Treasury's discretion, these may include direct loans, loan guarantees, and investments in Federal Reserve programs/facilities to provide liquidity to the financial system that supports lending to eligible borrowers.
- Title IV of the Act provides potential financial assistance for mid-sized businesses, specifically.
 - The Act, at Section 4003(c)(3)(D), directs the Secretary to work with the Federal Reserve to establish a federal reserve facility to provide financing to banks to make direct loans to mid-sized businesses.
 - A mid-sized business is an "eligible business" with between 500 and 10,000 employees.
 - These loans would have interest rates are capped at 2 percent, and no principal or interest payments are due for the first 6 months.
 - Borrowers under this program must certify in good faith that funds will be used to retain 90% of the pre-pandemic workforce, and that they intend to "restore" 90% of their workforce existing as of February 1, 2020 with full compensation and benefits within four months following termination of the COVID-19 emergency declaration. The use of the word "restore" leaves open the question of whether a restored employee is entitled

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to receive back pay. Such a reading seems inconsistent with other provisions of the Act that enhance unemployment benefits, and this drafting ambiguity will need to be resolved.

- Title IV also provides that the Federal Reserve System has the discretion to also establish a “Main Street Lending Program” or similar program that supports lending to small and mid-sized business.
- The terms and conditions for loans under Section 4003(b)(4) include compensation limits for employees of the borrower during the term of the loan and for 1 year thereafter. Employees whose “total compensation” exceeded \$425,000 in 2019 cannot receive greater compensation during any 12 month period during this term. The Act defines “total compensation” to include salary, bonuses, awards of stock, and other financial benefits. Those employees whose total compensation exceeded \$3.0 million in 2019 cannot receive more than the sum of \$3.0 million plus 50% of the amount of their 2019 total compensation that exceeded \$3.0 million. Exceptions to these limits apply for employees whose compensation is determined through a collective bargaining agreement entered prior to March 1, 2020. The Act also limits severance pay and other termination benefits to twice the “total compensation” the departing employee received in 2019.
- Title IV requires the Secretary of the Treasury to publish procedures for the application and minimum requirements for making loans and loan guarantees to passenger air carriers, cargo air carriers and companies deemed “critical to maintaining national security” within 10 days. A similar deadline has not been set for publishing procedures applicable to the \$454 Billion lending facility.

BUSINESS TAX RELIEF

- The Act allows employers to defer payment of their share of the 6.2% Social Security tax through December 31, 2020, and to make delayed payments on December 31, 2021 (50%) and December 31, 2022 (50%).
- The Act allows self-employed taxpayers to defer paying 50% of their self-employment tax through December 31, 2020, and to make delayed payments on December 31, 2021 (50%) and December 31, 2022 (50%).
- The Act suspends the Tax Cuts and Jobs Act's (TCJA) taxable income limit on net operating loss (NOL) carryovers for three years so that the limit does not apply to tax years beginning in 2018, 2019, and 2020, and allows businesses to carry NOLs arising in 2018, 2019, and 2020 back five years.
- The Act temporarily increases the limitation on interest deductions imposed by the TCJA to 50% of AGI for tax years beginning in

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2019 and 2020.

- The Act amended the Bankruptcy Code to increase the eligibility threshold for businesses to file what are referred to as Small Business bankruptcies, by raising the debt limit to \$7,500,000 from the current limit of \$2,725,625. The provision reverts to the original threshold after one year.

\$250 BILLION FOR ENHANCED UNEMPLOYMENT INSURANCE BENEFITS

- The Act eliminates the waiting period and provides for an additional \$600/week in benefits for up to four months, and an additional 13 weeks of benefits for participating states.
- The Act provides federal funding for unemployment compensation benefits to certain “gig-economy” workers adversely impacted by COVID-19.

\$250 BILLION IN DIRECT PAYMENTS TO INDIVIDUALS AND FAMILIES

- The Act provides direct payment of up to \$1,200 to individual taxpayers and \$2,400 to joint filers, plus \$500 per qualifying child. Payments phase out beginning at \$75,000 for individual taxpayers and \$150,000 for joint filers. The benefit is phased out entirely at \$99,000 for single taxpayers with no children and \$198,000 for joint taxpayers with no children.

RETIREMENT PLAN WITHDRAWS, LOANS AND DISTRIBUTIONS

- The Act permits Individuals experiencing the economic impact of the pandemic, to withdrawal of up to \$100,000 from their retirement accounts (401(k)s, IRAs, etc.) without paying an early-withdrawal penalty. Amounts withdrawn can be replaced within 3 years without being subject to annual contribution limits. Funds withdrawn and not recontributed within the 3 year window are taxed at ordinary income tax rates over a 3 year period.
- The Act waives the required minimum distribution from IRAs and other retirement accounts for the calendar year 2020.