FSI CARES Act Webinar FAQs

Contents

Part I: Recovery Rebate (Stimulus Check) under the CARES Act

Is the $1200 tax recovery rebate (i.e., stimulus check) taxable?
The rebate is not taxable at the federal level. The $1200 rebate is an advance on a new refundable tax credit for tax year 2020. The rebate is actually an advance on a tax credit that you may claim on your 2020 tax return, even though the IRS will use your 2019 or 2018 tax to calculate your advance. If your income is lower in 2020 than in 2019, any additional credit you are eligible for will be refunded or reduce your tax liability when you file your 2020 tax return next year. If the credit amount you qualify for based on 2020 income is less than what you qualify for based on your 2019 tax return, you will not be required to pay it back.

Part II: SBA Loan Programs under the CARES Act

Determining Eligibility and the Application Process

Where can I access the applications for the PPP and EIDL?
The application form for the PPP may be found here. The application form for the Economic Injury Disaster Loan (EIDL) program may be found on the SBA website.

Please note: On April 16, 2020, the SBA's website was updated with notices stating that the SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding, and stating that the SBA is unable to accept new applications at this time for the (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding. These programs may be able to re-open if the SBA receives additional appropriations funding.

When is the deadline for applying for the PPP? When is the deadline for applying for the EIDL advance?
The application deadline for the PPP is June 30, 2020. The application deadline for the EIDL advance is December 31, 2020.

The SBA is encouraging eligible businesses to apply as quickly as they can because there are funding caps and lenders need time to process loan applications.

What are the interest rates for PPP loans?
In implementing the CARES Act, the SBA set a maximum interest rate of 1 percent.

I am a financial advisor working for an independent broker-dealer, and I do not have any employees. What are the eligibility requirements for the PPP?
You may be eligible to apply for a PPP loan if you are a small business concern, as defined in the Small Business Act, or any other business concern that employs not more than the greater of:

- 500 employees[1] or
- if applicable, the size standard in number of employees established by the Small Business Administration for the industry in which your business operates.

Should I take a PPP loan if my cash flow is in good shape?
If your cash flow is in "good shape," you may want to consider whether you can certify in good faith, as the application requires, that the uncertainty of economic conditions at the time of application makes the loan request necessary.

I am a sole proprietor. I have experienced significant decline in net income. Is PPP or EIDL for me?
If you are seeking capital to cover the cost of retaining employees, then the PPP program may be right for you. If you are seeking a quick infusion of a smaller amount of cash to cover expenses, the EIDL Advance may be more of a fit.

Can I apply for both a PPP loan and an EIDL?
Businesses that are eligible for the PPP and EIDL may apply for both loans, as long as the loans are not duplicative and not used for the same purpose.

I applied for a PPP loan to cover my employee's payroll costs. However, I did not include my compensation. I am paid with a 1099-MISC. Can I now apply to the PPP for my compensation as an independent contractor?
The SBA has stated that a business cannot obtain more than one PPP loan. You may want to inquire about supplementing your loan application.

Where do I apply for the PPP and EIDL?
You may apply for the Paycheck Protection Program through an SBA-approved lender. The SBA is not administering the Paycheck Protection Program loan process.

You may apply directly through the SBA website for the Economic Injury Disaster Loan program.

Without an SBA relationship, how would an independent investment advisor apply for a PPP loan?
You may apply for the Paycheck Protection Program through an SBA-approved lender. The SBA is not administering the Paycheck Protection Program loan process.

What do I need to be prepared to provide to apply for the PPP?
You will need to provide your lender with payroll documentation. Specifically, the loan application notes that you will need to provide to the lender documentation verifying the number of full-time equivalent employees on the your payroll as well as the dollar amounts of payroll

[1] Companies with a common owner, including subsidiaries of larger firms, might not qualify due to their affiliates, even if they individually have 500 or fewer employees.

costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

Do I have to provide my 2019 tax return when applying for the PPP?
You do not need to provide your 2019 tax return to get a PPP loan. However, you may need information that will be filed with your 2019 tax return. For example, individuals with self-employment income who have filed or will file a Form 1040, Schedule C, will need to provide the 2019 Form 1040 Schedule C with their PPP application and a 2019 IRS Form 1099-MISC detailing nonemployee compensation received, invoice, bank statement, or book of record that establishes that they are self-employed.

Payroll Costs

When calculating payroll costs for purposes of the PPP, I noticed that my 2019 payroll costs are not representative of current payroll costs. What other time periods can I use to calculate payroll costs?
The CARES Act provides an alternative way for calculating payroll costs for seasonal businesses and businesses that were not in operation from February 15, 2019 to June 30, 2019.

- For seasonal businesses, you may use your average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.
- For businesses that were not in operation from February 15, 2019 to June 30, 2019, you may use your average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

What is the 12-month period we must use to calculate payroll costs for purposes of the PPP?
Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount.

I am an independent financial advisor, and I employ and pay salaries to others. How do I calculate payroll costs for purposes of the PPP? What is the maximum loan amount I can receive?
If you have employees, the following methodology should be used to calculate your maximum loan amount:

Step 1: Compute 2019 payroll by adding the following:

- Your 2019 Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value), up to $100,000 annualized, if this amount is over $100,000, reduce it to $100,000, if this amount is less than zero, set this amount at zero;
- 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of $100,000 annualized and any amounts paid to any employee whose principal place of residence is outside the United States; and

- 2019 employer health insurance contributions (health insurance component of Form 1040 Schedule C line 14), retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly amount from Step 2 by 2.5.

Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

As an independent financial advisor with no employees, how do I calculate my payroll costs under the PPP? What is the maximum loan amount I can receive?
If you have no employees, the following methodology should be used to calculate your maximum loan amount:

Step 1: Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over $100,000, reduce it to $100,000. If this amount is zero or less, you are not eligible for a PPP loan.

Step 2: Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly net profit amount from Step 2 by 2.5.

Step 4: Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

I received a PPP loan. For what expenses may I use the loan proceeds? By what date am I required to use the loan proceeds?
During the eight-week period following the first disbursement of the loan, a business must use the proceeds of a PPP loan for: (1) payroll costs; (2) costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave and insurance premiums; (3) employee salaries, commissions or similar payments; (4) payments of interest on any mortgage obligation (which cannot include any prepayment of or payment of principal on a mortgage obligation); (5) rent (including rent under a lease agreement); (6) utilities; and (7) interest on any other debt obligations that were incurred before the covered period.

PPP Loan Forgiveness

How do I request loan forgiveness under the PPP? How can I document for purposes of loan forgiveness that 75 percent of loan proceeds were used for payroll costs?
Borrowers will need to submit a request to the lender that is servicing the loan for forgiveness. The request must include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. Borrowers must

certify that the documents are true and that they used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.

I'm a sole proprietor with one full-time employee. I understand how to prove that I paid my employee and rent, but how do I prove that I "paid" myself for purposes of the PPP loan forgiveness?
Sole proprietorships will need to submit a Schedule C from their 2019 tax return filed (or to be filed) showing income and expenses from the sole proprietorship. The 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the eight-week covered period. The SBA determined that for purposes of loan forgiveness it is appropriate to require self-employed individuals to rely on the 2019 Form 1040 Schedule C to determine the amount of net profit allocated to the owner during the covered period. The SBA has determined that it is appropriate to limit the forgiveness of owner compensation replacement for individuals with self-employment income who file a Schedule C to eight weeks' worth (8/52) of 2019 net profit.

I am a financial advisor who is a sole proprietor, and I have one employee. How do I evidence the amount I paid myself and my employee during the eight-week period for purposes of the PPP loan forgiveness?
In addition to the borrower certification required under the CARES Act, to substantiate your request for loan forgiveness, the 2019 Form 1040 Schedule C that was provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the eight-week covered period. The SBA determined that for purposes of loan forgiveness it is appropriate to require self-employed individuals to rely on the 2019 Form 1040 Schedule C to determine the amount of net profit allocated to the owner during the covered period.

For your employees, you should submit Form 941 and state quarterly wage unemployment insurance tax reporting forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions).

Whether or not you have employees, you must submit evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period if you used loan proceeds for those purposes.

Am I required to repay the $10,000 EIDL advance if I am not approved for, or do not take the loan?
The $10,000 loan advance will be treated like a grant and need not be repaid, regardless of the loan decision.

Does an investment adviser representative or investment adviser need to disclose in their Form ADV Part 2 that they received a PPP loan?
Investment advisers will want to consider whether disclosure regarding the receipt of the loan is called for in their Form ADV Part 2.

Part III: Waiver of 10% Early Withdrawal Tax

Does the waiver of the early withdrawal tax apply to nonqualified deferred annuities?
The waiver of the 10% early withdrawal tax applies only to coronavirus-related distributions made from the following types of plans:

- IRAs
- qualified retirement plans
- section 403(a) annuity plans
- section 403(b) plans
- governmental section 457(b) plans

The waiver does not apply to distributions from other types of plans.

Coronavirus Distributions

Is a coronavirus distribution taxed as ordinary income?
Yes. All distributions from qualified retirement plans and IRAs are taxed as ordinary income to the extent that they are subject to income tax.

Can I repay a coronavirus-related distribution to a plan or IRA that is different from the plan or IRA that made the distribution?
Yes. As a practical matter, most plans probably will not accept the repayment of a distribution from another plan, but you can repay the distribution to an IRA if you cannot, or do not want to, repay the distribution to the plan that made the distribution.

If an individual takes a coronavirus-related distribution from a 401(k) plan and repays it to an IRA, is the repayment made on an after-tax basis?
We are still waiting for the IRS to issue guidance on the tax treatment of repayments of coronavirus-related distributions. However, in the case of other disaster-related distributions from retirement plans, the IRS has allowed taxpayers to take a deduction, or amend their prior-year tax returns, to reflect the repayment of a distribution.

If I take a coronavirus-related distribution from my 401(k) plan, can I repay it to my IRA in installments over the following three years?
Yes. If you take a coronavirus-related distribution, you can repay it, in whole or in part, and it can be repaid in one or more payments over the three-year period beginning on the day after the coronavirus-related distribution is made.

Is permissible to withdraw up to $100,000 from a qualified plan as a coronavirus-related distribution and roll it over into an IRA funded by a fixed or fixed indexed annuity?
A coronavirus-related distribution cannot be rolled over, but you can accomplish a similar result by taking a coronavirus-related distribution from a qualified plan and repaying the distribution to an IRA.

How do recordkeepers code the repayment of a coronavirus-related distribution?
We are waiting for the IRS to provide guidance on this issue.

Are plans required to provide coronavirus-related distributions?
No. However, if you take a distribution and it meets the requirements to be a coronavirus-related distribution, the 10% early withdrawal tax will not apply to the distribution, even if your plan does not provide for coronavirus-related distributions.

Retirement Plan Loans

If an employee takes a loan from a 401(k) plan and later terminates employment, is the loan in default, even with the changes to loan repayments made by the CARES Act?
Many plans require loans to be repaid in full upon termination of employment. If a plan accelerates loan repayments upon a termination of employment, and the participant fails to repay the loan in accordance with its terms, the loan will be in default. The provisions of the CARES Act do not change this.

Are plans required to increase the maximum amount that can be borrowed from the plan?
No. Plans are not required to increase the maximum amount that can be borrowed from the plan

Waiver of Required Minimum Distributions

Does RMD waiver apply to inherited IRAs?
Yes. The RMD waiver applies to inherited IRAs.

If an RMD was taken in 2020 and taxes withheld, how are the taxes dealt with if an individual rolls over the RMD?
To rollover the full amount of an RMD from which taxes were withheld, you must use your own funds to make up any tax withholding and contribute to the IRA an amount equal to the RMD. The amount withheld will be credited against your income tax lability for the year of distribution. If you do not make up for the withholding when you do the rollover, the amount withheld will be treated as a distribution and will be subject to tax.

Can an RMD from a 401(k) plan be rolled over into an IRA?
Yes. An RMD taken in 2020 from a 401(k) plan can be rolled over into an IRA if the applicable rollover rules are satisfied.

Has the IRS extended the 60-day period for making rollovers?
No. It is possible that the IRS may extend the 60-day rollover period, but it has not done so as of April 16, 2020.

Employee Retention Tax Credit

Can an employer receive an employee retention tax credit to cover the cost of premiums for dental, vision, life and disability insurance?
An employee retention tax credit is available for amounts paid or incurred by an eligible employer to provide and maintain a group health plan. Dental and vision plans are generally considered group health plans for this purpose. Disability and life insurance plans generally are not group health plans for this purpose.

Deferral of Employment Taxes

Can a sole proprietor with no employees defer social security taxes?
Yes. A sole proprietor can generally defer 50% of the social security taxes otherwise imposed on self-employment income for the period beginning on March 27, 2020 and ending on December 31, 2020. One half of the deferred amount is payable on or before December 31, 2021, and the other half is payable on or before December 31, 2022.