



# The Second Round of PPP

and other highlights from  
the Consolidated  
Appropriations Act

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# Consolidated Appropriations Act and Coronavirus Response and Relief Supplemental Appropriations Act of 2021

## WHAT IS IT?

A \$2.3 trillion spending bill that combines \$900 billion in stimulus relief for the COVID-19 Pandemic with \$1.4 trillion of spending for the 2021 fiscal year.

Passed by both the U.S. House of Representatives and the U.S. Senate on December 21, 2020 and signed into law by the President on December 27, 2020.



Fun Fact: this is the longest bill ever passed by Congress



## The \$900 billion Coronavirus Response and Relief Supplemental Appropriations Act, 2021

Division M (pg. 1815)  
The Legislation

Division N  
Additional Provisions

### BILL ALLOCATION

- ✓ \$325 billion for small businesses
- ✓ \$166 billion for \$600 stimulus checks for Americans with an adjusted gross income lower than \$75,000
- ✓ \$120 billion for an extension of increased federal unemployment benefits (\$300 per week until March 14, 2021)
- ✓ \$82 billion for schools and universities
- ✓ \$69 billion for vaccines, testing, and health providers
- ✓ \$25 billion for a federal aid to state and local governments for rental assistance programs
- ✓ \$13 billion to increase SNAP benefits
- ✓ \$13 billion round of direct payments to the farming and ranching industry
- ✓ \$10 billion for childcare
- ✓ \$10 billion for the US Postal Service
- ✓ \$20 million for the Economic Injury Disaster Loan Program
- ✓ What else? Extends eviction moratorium for tenants with annual incomes of less than \$99K



# PAYCHECK PROTECTION PROGRAM ROUND 2

## Details:

\$325 billion of new money for new loans or second draw loans – with some new set asides:

\$15 billion across First and Second Draw PPP loans for lending by community financial institutions;

\$15 billion across First and Second Draw PPP loans for lending by insured depository institutions, credit unions, and Farm Credit System institutions with consolidated assets of less than \$10 billion;

\$35 billion for new First Draw PPP borrowers; and

\$15 billion and \$25 billion for First and Second Draw PPP loans, respectively, for borrowers with a maximum of 10 employees or for loans of less than \$250,000 to borrowers in low- or moderate-income neighborhoods. The SBA has determined that at least 25% of each of those set-asides will go to each one of the groups: loans to borrowers with a maximum of 10 employees and loans of less than \$250,000 to borrowers in low- or moderate-income neighborhoods.





## PAYCHECK PROTECTION PROGRAM ROUND 2

### ELIGIBILITY FOR THE SECOND ROUND

#### Be a Small Business

This bill changes the definition of “small business” for second draw loans: No more than 300 employees (down from the 500 employees limit) but must have also been eligible in the first round of PPP loans.

#### Must have used up first PPP Loan

Used or will use the full amount of the first PPP loan on or before the second PPP loan is to be disbursed. The interim final rule makes it clear that the borrower must have spent their original loan on qualified expenses.

#### Show a Loss of 25% quarterly revenue

How? Revenues dropped by 25% during one of the quarters of 2020 as compared to 2019. Note: forgiven first round PPP loans are not considered in gross receipts but all other revenue considered.

#### Types of Organizations Now Added

Tax Exempt Organizations that have no more than 300 employees and for whom lobbying activities are not their primary engagement.

Destination marketing organizations that do not have more than 300 employees

Housing cooperatives that do not have more than 300 employees

Broadcast stations, newspapers, and public broadcasting



# Note

If your original PPP calculation has increased due to a change in the SBA's interim final rules or a calculation error in the original application then you can ask for an increase in your first loan, **if and only if you have not received forgiveness already.**

If you did not apply originally or are newly qualified to utilize the program (given the expansion of eligible entities) then you can get a first-round loan and under the right circumstances, a second one as well.

The portal opened **January 11, 2021** to first draw loans (those who have not received any PPP funds) and opened **January 13, 2021** to second draw loans.

The U.S. Small Business Administration, in consultation with the U.S. Treasury Department, will re-open the Paycheck Protection Program (PPP) loan portal to PPP-eligible lenders with *\$1 billion or less in assets* for First and Second Draw applications on **Friday, January 15, 2021** at 9 am ET. The portal will fully open on **Tuesday, January 19, 2021** to all participating PPP lenders to submit First and Second Draw loan applications to SBA.

**The deadline for all new loans is March 31, 2021.**



# Not Eligible

**Publicly traded** businesses.

Entities primarily engaged in **political lobbying**.

Entities created or organized under the laws of the **People's Republic of China** or the **Special Administrative Region of Hong Kong** that hold directly or indirectly 20% of the interest in a business or that retain as a member of the entity's board of directors a Chinese Resident.

Persons required to submit a registration statement under the **Foreign Agents Registration Act**.

Entities that were **not in operation** on February 15, 2020.

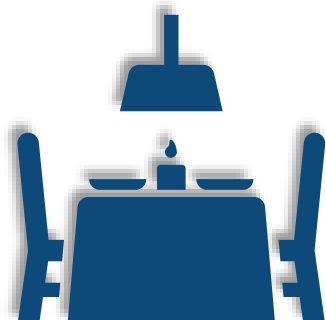
Businesses that received a grant under the **Economic Aid to Hard Hit Small Businesses, Nonprofits and Venues Act**.

Those **businesses defined in 120.110 of title 13 CFR** such as cannabis companies, lenders, illegal gambling, live performances of a prurient sexual nature.

# Loan Amount Calculation

Qualified businesses may receive up to 2.5 times the average monthly payroll costs in 2019 or the 12 months before the loan application, capped at \$2 million (as opposed to the 10 million in PPP round one). Seasonal Businesses may use any 12-week period from February 15, 2019 to February 15, 2020.

**Note:** the \$2 million cap does not apply to first-time borrowers, that cap remains at \$10 million



**Maximum Loan Amounts for the Hospitality Industry:** Borrowers of a second-draw PPP loan that have NAICS Code 72 (typically restaurants, hotels and campgrounds) are permitted to use a 3.5x multiplier of their average monthly payroll costs to calculate their maximum loan amount, subject to the \$2 million cap.





## Covered Period

Borrowers are now able to choose the length of their covered period so long as it is at least eight weeks and is not longer than 24 weeks. This subtle change will allow borrowers more control over how to handle potential reductions in workforce once the PPP funds are exhausted. Either period begins on the date funds are received.

## Increase in Loan Amount

The SBA Interim Final Rule 2021-0001, contains provisions that allow a recipient to request an increased amount on their first PPP loan if they have not already applied for forgiveness.



# Use of Proceeds

*Must use at least 60% of the funds for payroll-related expenses in the relevant cover period*

## Payroll Expenses to Include:

Existing Payroll Cost definition plus the following additions:

- Group Life Insurance
- Disability Insurance
- Dental and Vision benefits

Will not cover payroll expenses for wages used to obtain the Employee Retention Credit

Can a sole proprietor, partnerships, or S Corps write checks to owners during the Covered Period?

- Yes, form 3508 indicates that amounts may be “paid” to the owner



# Use of Proceeds

## The CCA now adds four types of non-payroll expenses that can be paid from the loan and submitted for forgiveness:

**Covered operational expenditures**, i.e., payments for software or cloud computing services that facilitate business operations, product or service delivery, the processing, payment or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

**Covered property damage**, i.e., costs related to property damage and vandalism or looting due to public disturbances that took place in 2020, which were not covered by insurance or other compensation.

**Covered supplier costs**, i.e., expenses incurred by a borrower under a contract or order in effect before the date the PPP loan proceeds were disbursed for the supply of goods that are essential to the borrower's business operations

**Covered worker protection equipment**, i.e., costs of personal protective equipment incurred by a borrower to comply with rules or guidance issued by the Department of Health & Human Services, the Occupational Safety and Health Administration or the Centers for Disease Control, or a state or local government. These expenses appear to include PPE, physical barriers that were put in place, expansion of indoor/outdoor space, ventilation or filtration systems and drive-through windows. **Starting on March 1, 2020 to end of national emergency declaration.**

*Previously Defined Non-Payroll Costs Still Available*

Mortgage interest payments for debt incurred before February 15, 2020; Rent for leases in effect prior to February 15, 2020 (lease renewals okay); Utility payments

# Expense Deductions

**NEW:** The bill confirms that business expenses (that normally would be deductible for federal income tax purposes) paid out of PPP loans **may** be deducted for federal income tax purposes and that the borrower's tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness.

**Importantly,** the effective date of this provision applies to taxable years ending after the date of the enactment of the CARES Act. Thus, taxpayers that filed tax returns without deducting PPP-eligible deductions should consider amending such returns to claim the expenses.



# Loan Forgiveness

**YOU HAVE 10 MONTHS FROM THE END OF THE COVERED PERIOD TO APPLY FOR FORGIVENESS**

**60% must be used on payroll costs to get full loan forgiveness:** Partial forgiveness still available where 60% is not met

PPP loan recipients apply for loan forgiveness on either SBA Form 3508, Form 3508 EZ or Form 3508S  
3508S Easiest; 3580EZ more work, 3508 the most complicated



The bill provides a new simplified forgiveness procedure for loans of \$150,000 or less. Instead of the documentation required by the forms above, these borrowers cannot be required to submit to the lender any documents other than a one-page signed certification that sets out the number of employees the borrower was able to retain because of the PPP loan, an estimate of the amounts spent on payroll-related costs, the total loan value and that the borrower has accurately provided all information required and retains all relevant documents.

The SBA will be required to develop the simplified loan forgiveness application form within 24 days of the enactment of the bill and generally may not require additional documentation. Lenders will need to modify their systems used for applications to make an electronic version of the new forgiveness application available to eligible borrowers.



# Loan Forgiveness


## All current forms ask for the same initial information:

- Business Legal Name
- Business Address
- DBA or trade name
- EIN
- Phone Number
- Contact
- Email Address
- SBA PPP Loan Number
- Lender PPP Loan Number
- PPP Loan Amount
- Disbursement date (when you received the money)
- Number of employees at the time of loan application
- Number of employees at time of forgiveness application
- If applicable, EIDL loan advance amount and EIDL application number
- Forgiveness Amount


# Which Form do I use?

 **3508S:** loan less than \$50,000; not required to show any calculations or amounts except for forgiveness amount; only two pages long.


**DOCUMENTATION REQUIRED:** Payroll: Bank account statements, tax forms, receipts cancelled checks; Nonpayroll: Existence of mortgage or Lease prior to February 15, 2020, Mortgage interest lender amortization schedule, current lease agreement, invoices for utility payments.

 **3508EZ:** Self-employed and no employees OR did not reduce number of employees or wage by 25% or if you did have a reduction it was because you could not operate as normal due to COVID-19 health guidance compliance; three pages long – shows calculations; eliminates the FTE and Wage Reduction Calculation, and Documentation.

**DOCUMENTATION REQUIRED:** same as above

 **3508:** Must use this form if you do not meet the qualifications for the other forms; five pages long including calculation form, certifications/authorizations/signature form, schedule A, worksheet and demographic sheet (optional); this form requires the Borrower to calculate their Payroll costs using the 60%/40% rule as well as showing the calculations for determining how much to reduce your forgiveness.

**DOCUMENTATION REQUIRED:** same as above AND documentation supporting the FTE calculations

 **Simplified Form:** new one page form for loans under \$150,000 (to be released by 1/24/2021); will include a description of the number of employees the borrower was able to retain, the estimated total amount of loan spent on Payroll costs, total amount of loan, attestation that they have accurately provided the required information, still required to retain relevant records, loan forgiveness may still be reduced if you reduced your number of FTE or wages (as with original PPP), loan may be audited if fraud is suspected \*\* Lender could still ask for documentation even if SBA does not require it.

# Information Provided by the SBA

## Interim Final Rule 1

### Defines who is eligible for a first Draw PPP Loan

**Affiliation Rules clarified:** SBA's affiliation regulations provide that to determine a concern's size, employees of the concern "and all of its domestic and foreign affiliates" are included.

### Self-employed individuals may apply for a loan

**Seasonal Businesses:** A seasonal business will be considered to have been in operation as of February 15, 2020, if the business was in operation for any 12-week period between February 15, 2019 and February 15, 2020.

**Legal gambling institutions allowed:** A business that is otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans.

**Ineligible for a loan:** You are engaged in any activity that is illegal under Federal, state, or local law; You are a household employer (individuals who employ household employees such as nannies or housekeepers); An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government; Your business or organization was not in operation on February 15, 2020; You or your business received or will receive a grant under the Shuttered Venue Operator Grant program under section 324 of the Economic Aid Act; Your business has permanently closed; business is in bankruptcy.





# Information Provided by the SBA

## Interim Final Rule 1

**Affiliation Rules Clarified:** Considered affiliates based on factors including but not limited to stock ownership, overlapping management, and identity of interest.

The affiliation rules apply to private equity-owned businesses in the same manner as any other business subject to outside ownership or control. However, in addition to applying any applicable affiliation rules, all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that, “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

## **Additional Information for First Draw Loans**

Under the PPP, the maximum loan amount for First Draw PPP Loans is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula authorized by the Act, as explained below.

*Provides Calculation examples for how to calculate loan amount for both business and self-employed*

**Can a single corporate group receive unlimited PPP loans?** No. To preserve the limited resources available to the PPP program, and considering the previous lapse of PPP appropriations and the high demand for PPP loans, businesses that are part of a single corporate group shall in no event receive more than \$20,000,000 in aggregate. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.



# Information Provided by the SBA

## Interim Final Rule 1

**Do Independent contractors count as employees?** No, independent contractors can apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan calculation, nor do they count in the forgiveness calculation or payroll costs or employee numbers.

**Do student workers count for employee count?** Yes. Student workers generally count as employees, unless (a) the applicant is an institution of higher education, as defined in the Department of Education's Federal Work-Study regulations.

Can I use e-signatures or e-consents if a borrower has multiple owners? Yes, e-signature or e-consents can be used regardless of the number of owners.

**Paying back the loan:** If you do not submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you must begin paying principal and interest after that period.

**What happens if proceeds misused?** If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

# Information Provided by the SBA

## Interim Final Rule 2

The same affiliation rules that apply to First Draw PPP Loans apply to Second Draw PPP Loans, except as provided in this IFR. Specifically, business concerns with a NAICS code beginning with 72 qualify for the affiliation waiver for Second Draw PPP Loans if they employ 300 or fewer employees. Eligible news organizations with a NAICS code beginning with 511110 or 5151 (or majority-owned or controlled by a business concern with those NAICS codes) may qualify for the affiliation waiver for Second Draw PPP Loans only if they employ 300 or fewer employees per physical location.

Businesses that are part of a single corporate group shall in no event receive more than \$4,000,000 of Second Draw PPP Loans in the aggregate.

**Documentation Required:** For loans with a principal amount greater than \$150,000, the applicant must also submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 relative to 2019.

**Loans to borrowers with unresolved first loans:** If a borrower's First Draw PPP loan is under review by SBA and/or information in SBA's possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received or for the loan amount it received, the lender will receive notification from SBA when the lender submits an application for a guaranty of a Second Draw PPP Loan and will not receive an SBA loan number until the issue related to the unresolved borrower's First Draw PPP Loan is resolved.

# Information Provided by the SBA

## Interim Final Rule 2

Gross receipts of a borrower with affiliates is calculated by adding the gross receipts of the business concern with the gross receipts of each affiliate. If a borrower has acquired an affiliate or been acquired as an affiliate during 2020, gross receipts includes the receipts of the acquired or acquiring concern. The gross receipts of a former affiliate are not included.

**How to submit application?** The applicant must submit to the lender SBA Form 2483-SD (Paycheck Protection Program Second Draw Borrower Application Form) or the lender's equivalent form

**Certifications:** The Applicant has realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period. For loans greater than \$150,000, Applicant has provided documentation to the lender substantiating the decline in gross receipts; he Applicant received a First Draw Paycheck Protection Program Loan and, before the Second Draw Paycheck Protection Program Loan is disbursed, will have used the full loan amount (including any increase) of the First Draw Paycheck Protection Program Loan only for eligible expenses; the Applicant is not a business concern or entity (a) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong



## FORGIVENESS IS FEDERALLY TAX FREE

- Expenses paid for with PPP funds are tax-deductible
- Tax-free forgiveness will not reduce the basis
  - According to some CPA's the tax-free income will increase your Capital in a Partnership, LLC or an S-Corp., which allows you to take out your Capital tax-free
- Some states (California and North Carolina) have already announced that they **will not** follow the Federal tax-free treatment. Other states may follow suit.

## EIDL Advances Do Not Reduce Forgiveness

Prior to the passage of the new Act, borrowers that received an EIDL Advance (advances between \$1,000 and \$10,000) had that amount subtracted from their total forgiveness, which, in effect, had the effect of repaying the EIDL Advance. The Act now provides that EIDL Advances will not reduce PPP loan forgiveness. The SBA has indicated that borrowers that already received forgiveness and had their EIDL Advance deducted from such forgiveness may be able to amend their forgiveness applications. Further guidance is expected to be issued.



U.S. Small Business  
Administration

**Economic Injury Disaster Loan**

## MORE ABOUT THE EIDL

An Additional \$20 Billion is allocated to the program

The \$1,000 grant is now a flat **\$10,000 grant**.

The SBA will issue retroactive grants up to \$10,000 for businesses that had previously applied.

The SBA has **21 days** to issue the difference in the grant.

The grant **does not** reduce the PPP loan forgiveness amount anymore.

Interest rates on the EIDL are still 3.75%.

The term of the loan is **30 years**.

Borrower must be located in a disaster declared county or contiguous county, they must have suffered at least a 30% economic loss during an **8 week** period between March 2, 2020 and December 17, 2021 they **cannot employ more than 300 people**, they must be a qualifying small business, private non-profit, sole proprietorship, or independent contractor.



# ERC

a refundable tax credit equal to 50% of up to \$10,000 in qualified wages (i.e., a total of \$5,000 per employee) paid by an eligible employer whose operations were suspended due to a COVID-19-related governmental order or whose gross receipts for any 2020 calendar quarter were less than 50% of its gross receipts for the same quarter in 2019.

## The bill makes the following changes to the ERC, which will apply from January 1 to June 30, 2021:

The **credit rate is increased** from 50% to 70% of qualified wages and the limit on per-employee wages is increased from \$10,000 for the year to \$10,000 per quarter.

The **gross receipts eligibility threshold for employers is reduced** from a 50% decline to a 20% decline in gross receipts for the same calendar quarter in 2019, a safe harbor is provided allowing employers to use prior quarter gross receipts to determine eligibility and the ERC is available to employers that were not in existence during any quarter in 2019. The 100-employee threshold for determining “qualified wages” based on all wages is increased to 500 or fewer employees.

The credit is available to **certain government instrumentalities**.

The bill clarifies the determination of gross receipts for certain tax-exempt organizations and that **group health plan expenses can be considered qualified wages** even when no wages are paid to the employee.

New, **expansive provisions** regarding advance payments of the ERC to small employers are included, such as special rules for seasonal employers and employers that were not in existence in 2019. The bill also provides reconciliation rules and provides that excess advance payments of the credit during a calendar quarter will be subject to tax that is the amount of the excess.

**Treasury and the SBA will issue guidance** providing that payroll costs paid during the PPP covered period can be treated as qualified wages to the extent that such wages were not paid from the proceeds of a forgiven PPP loan. Further, the bill strikes the limitation that qualified wages paid or incurred by an eligible employer with respect to an employee may not exceed the amount that employee would have been paid for working during the 30 days immediately preceding that period (which, for example, allows employers to take the ERC for bonuses paid to essential workers).

# Employment Retention Credit (ERC)



# ERC: Retroactive Changes

**Employers that received PPP loans may qualify for the ERC with respect to wages that are not paid for with proceeds from a forgiven PPP loan.**

**How tax-exempt organizations determine “gross receipts.”**

**Group health care expenses can be considered “qualified wages” even when no other wages are paid to the employee.**

## *Families First Coronavirus Response Act (FFCRA)*

The FFCRA paid emergency sick and child-care leave and related tax credits are extended through March 31, 2021 on a voluntary basis.

**FFCRA Leave is no longer MANDATORY.**

However, employers that provide FFCRA leave from January 1 to March 31, 2021 may take a federal tax credit for providing such leave.

Clarifications have been made for self-employed individuals as if they were included in the FFCRA.



# Tax Provisions

**Charitable donation deduction:** For taxable years beginning in 2021, taxpayers who do not itemize deductions may take a deduction for cash donations of up to **\$300** made to qualifying organizations.

**Business meal deduction:** Businesses may deduct 100% of business-related restaurant meals during 2021 and 2022

**Extenders:** The bill provides for a five-year extension of the following tax provisions that are scheduled to end on December 31, 2020:

- The look-through rule for certain payments from related controlled foreign corporations in IRC Section 954(c)(6), which was extended to apply to taxable years of foreign corporations beginning before January 1, 2026 and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations' end
- New Markets Tax Credit
- Work Opportunity Tax Credit
- Health Coverage Tax Credit
- Carbon Oxide Sequestration Credit
- Employer credit for paid family and medical leave
- Empowerment zone tax incentives
- Exclusion from gross income of discharge of qualified principal residence indebtedness
- Seven-year recovery period for motorsports entertainment complexes
- Expensing rules for certain productions
- Oil spill liability trust fund rate
- Incentive for certain employer payments of student loans (notably, the bill does not include other student loan relief so that borrowers will need to resume payments on such loans and interest will begin to accrue)



# Tax Provisions

## Additional Changes

makes several tax provisions permanent that were scheduled to expire in the future.

**Medical expense deduction:** The income threshold for unreimbursed medical expense deductions is permanently reduced from 10% to 7.5% so that more expenses may be deducted

Costs of **energy-efficient** commercial building property

A **gross income deduction** provided to volunteer firefighters and emergency medical responders for state and local tax benefits and certain qualified payments

A **transition** from a deduction for qualified tuition and related expenses to an increased income **limitation on the lifetime learning credit**

The **railroad track maintenance** credit

Certain provisions, refunds and **reduced rates** related to beer, wine and distilled spirits, as well as minimum processing requirements for certain craft beverages produced outside the U.S.

## Other Funding Options

- **\$15 Billion for Shuttered Venue Operator Program**
  - Certain Museums, Movie Theaters, and Live Venue Operators
  - Must have been in business on February 29, 2020
  - Must be open or intend to reopen
  - Must have a reduction of 25% or more in gross revenue relative to the same quarter in 2019
  - Maximum amount \$10 Million
  - Cannot ALSO receive a PPP loan
  - Awards to be made in tranches
    - First 14 days: entities that experienced a 90% or greater decline in Gross Revenue
    - Second 14 days: entities that experienced a 70% or greater decline in Gross Revenue
    - After 28 days, the grant awards open to all eligible participation





## *Other Provision Details*

- A temporary (through December 31, 2022) enhanced tax deduction for business meals purchase from a restaurant. The taxpayer can now deduct 100% of the cost of meals (versus 50% currently)
- Reduction of the Adjusted Gross Income floor for medical expense back to 7.5% (from 10%)
- Keep an eye out for: the Caring for Americans with Supplemental Help Act (CASH Act) which aims to increase \$600 stimulus checks to \$2000.



# QUESTIONS?



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