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THE CARES ACT

NEW GUIDANCE FOR BIOSCIENCE STARTUPS

The CARES Act was signed March 27th with the goal to inject liquidity into an American economy profoundly affected by COVID-19. Even as we are writing this, the language of the law is being updated and clarification of certain critical details requested.

Earlier today, April 2, House Minority Leader Kevin McCarthy (R-Calif) said that the affiliation rule that excluded most of the VC- and PE-backed startups in our ecosystem is “going to be solved in a day or two.” The Treasury will release additional guidance, and the remaining exclusion will be “small businesses controlled by a single outside shareholder.” ([More.](#))

Initial start date for the SBA-backed PPP applications is tomorrow, April 3. However, pushing this date back to Monday is under consideration to accommodate preparations, with more detail to come.

Much of the recent attention has been devoted to the two *SBA-backed* programs (labeled Medium-Term Relief). Below you will find their key points as well as the *tax incentive* programs (labeled Near-Term Relief) included in the bill. The tax relief programs can offer an alternative (not additional) smaller but meaningful source of cash for those in our startup community that will still be excluded from the SBA-backed loans under revised guidelines, or as the budgeted amount of SBA-backed funding is potentially depleted.

are highly experienced in venture capital, startup and tax law and IRS reporting.

Please note the list of [sources and links](#) at the end.

SBA-Backed Programs

Current draft: Most of the VC- and PE-backed clients *may not* qualify for either of these due to triggering the affiliation rules.

New rules: Should include VC- and PE-backed clients, except those controlled by a single outside shareholder; details are yet to be released.

SBA Paycheck Protection Program (PPP) Loan

- Apply via a **local bank** ([find one here](#)); Cleveland banks are actively preparing for the unprecedented volume and will field most questions now
- [Application form found here](#)
- No personal guarantees, no fees, no collateral required
- Requirement that the business is unable to obtain credit elsewhere doesn't apply (venture and/or traditional debt); should not affect existing credit covenants
- Rate fixed at 1% ([adjusted up from 0.5% today](#), but down from proposed 4% in initial draft)
- Amount of 2.5 times monthly payroll
- At least 6, up to 12 months of payment deferral
- 10-year term
- Forgivable if proceeds are spent on payroll, interest payments on other commercial debt, rent and/or utilities. No limit on amount forgiven if spent on qualified expenses. *Additional guidance on qualified payroll expenses is needed.*
- Uses of funds: payroll, rent, mortgage, utilities

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>

SBA Economic Injury Disaster (EIDL) Loan

- [Apply directly to SBA](#)
- Up to \$2 million with collateral or \$25,000 unsecured
- Interest rates up to 3.75% for companies and 2.75% for nonprofits

- Provides for an **emergency advance/grant** of \$10,000 within three days of applying that does not need to be repaid

<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

Tax Incentive Programs

Do not explicitly exclude venture- and private equity-backed companies from qualifying; frees cash by foregoing, deferring and/or refunding **Social Security payroll tax liability**.

Employee Retention Refundable Tax Credit

Potential for **revenue-generating** startups with Social Security payroll tax liability

- Key factor in eligibility is *loss of at least 50% of revenue in Q1 2020 vs. Q1 2019*
- Tax credit first offsets SS payroll tax liability, allowing the company to keep the cash; then, the balance over the liability is refunded back
- *Not eligible if awarded SBA PPP loan*
- Frees cash by offering refundable tax credit against 6.2% SS payroll tax in the amount of 50% of up to \$10,000 of wages paid to an employee (maximum credit of \$5,000 per employee) after March 12, 2020 and before January 1, 2021
- **[New IRS Form 7200 can be used to obtain an advance payment of these credits](#)**

Payroll Tax Deferral

Potential for startups with Social Security payroll tax liability

- *Do not* have to demonstrate revenue loss to be eligible for this benefit
- Not eligible if awarded an SBA PPP loan *and that loan is forgiven*
- Frees cash by allowing companies to defer deposit and payment of the 6.2% SS payroll tax for the remainder of 2020, beginning March 27, 2020
- 50% deferred until December 31, 2021, and the remaining 50% deferred until December 31, 2022
- **[New IRS Form 7200 can be used to obtain an advance payment of these credits](#)**

Sources (do not reflect expected NEW SBA loan guidance)

- PDF: [SBA Loans – What you Need to Know](#) (Cohen & Co. with Rep. Anthony Gonzalez)
- PDF: [Many Venture-backed Start-ups May Be Precluded From Small Business Relief Under the CARES Act](#) (Squire Patton Boggs)
- [The CARES Act: A Summary for Technology and Life Sciences Companies](#) (Wilson Sonsini)
- [IRS Guidance: Employee Retention Tax Credit](#)
- [The CARES Act Tax Relief, part 13 and 14](#)
- [IRS to Introduce Form 7200 to Advance Tax Incentive Relief](#)

Additional Resources for Biosciences Startup Ecosystem

Squire Patton Boggs - Venture Law Meetup: SBA Loans Under the America CARES Act

FRIDAY, APRIL 3, 9:00 a.m.

[REGISTER](#)

Kohrman, Jackson, Krantz - Free Hotline

FRIDAY, APRIL 3, 9:00 a.m. - 7:00 p.m.

Pro-bono, free hotline for small businesses with complimentary 20-minute consultations on the CARES Act and the SBA Loan programs. The hotline number is 1-888-4KJKLAW (455-5529), or visit coronavirus.kjk.com.

Gener8tor - Emergency One-Week Program for Ohio Startups

APRIL 6 - APRIL 10, 2020

Signup deadline is April 4 at 11:59 p.m. Visit [Gener8tor's website](#) to apply.

PLUS

- JumpStart's [COVID-19 Resource Guide](#)
- [G2G consulting](#) (Washington, D.C.)

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We partner with people who have a passion for improving health and wellbeing. They are scientists, entrepreneurs, innovators and company founders with creativity and drive woven into their very DNA.

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