

May 21, 2010

Application Window is June 21, 2010–July 21, 2010
Treasury Department Notice

On May 21, 2010, the U.S. Department of the Treasury ("Treasury") released guidelines (the "Notice") for applying for certification ("§48D Certification") for a tax credit or cash grant in connection with a qualifying therapeutic discovery project. This Alert summarizes key information regarding funding availability and application deadlines and procedures. Please refer to the Notice and contact your Cooley attorney and your auditors for further information regarding detailed eligibility and application requirements.

\$1 billion in credits available; aggregate \$5 million limit per taxpayer

- The total amount of credits that may be allocated may not exceed \$1 billion for 2009 and 2010. Taxpayers may apply for a 50% credit or an elective 50% grant for qualified investment(s) made in 2009-2010. The IRS may certify all or a portion of an eligible taxpayer's qualified investment(s).
- A taxpayer must file a separate and complete application for each project for which the applicant is requesting a credit or a grant. The IRS will not certify more than \$10 million as qualified investment(s) for any single taxpayer, such that no taxpayer can be allocated more than \$5 million in credits or grants in the aggregate for 2009 and 2010.
- Applications for §48D certification must be made on Form 8942, which will be released no later than June 21, 2010. (A summary of information that will be required in Form 8942 can be found at Appendix A in the Notice linked to above.)
- Applications must include a Project Information Memorandum that is subject to strict word count and formatting limits and that will be the primary basis for project assessment by the Department of Health and Human Services (HHS).

Key deadlines

June 21 to July 21, 2010: Treasury has identified June 21, 2010 as the application period start date, and Form 8942 will be released no later than this date at www.irs.gov. Detailed submission instructions will be included on Form 8942. All originally signed applications must be postmarked no later than July 21, 2010. No additional unsolicited information may be submitted after the application deadline, except to notify Treasury of any significant change in the application information.

September 30, 2010: Preliminary review of timely-filed applications will end on September 30, 2010.

October 29, 2010: IRS will approve or deny applications for certification no later than October 29, 2010 and will notify the taxpayer by letter of its decision.

Review procedure

- Each application will be subject to a preliminary review, which will enable the IRS to determine whether the applicant is an "eligible taxpayer" and whether the application is otherwise complete.
- The IRS will consult with the HHS in conducting the program.¹

Next steps

- Applicants should review the Notice with their auditors and advisors.
- Applicants should begin drafting the Project Information Memorandum described in the Notice.
- Applicants should begin compiling the Form 8942 information specified in the Notice now rather than waiting for the Form 8942 to be released.
- A grant applicant must have a DUNS number. If a grant applicant does not already have a DUNS number, it may request one at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711.
- Grant applicants must also register with the Central Contractor Registration (CCR). To register, go to

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Notes

1 HHS will make the determination whether the taxpayer's project (1) is a qualifying therapeutic discovery project; and (2) shows reasonable potential: (a) to result in new therapies (i) to treat areas of unmet medical need, or (ii) to prevent, detect, or treat chronic or acute diseases and conditions, (b) to reduce long-term health care costs in the United States, or (c) to significantly advance the goal of curing cancer within the 30-year period beginning on May 21, 2010. The IRS will determine whether the taxpayer's project is among those projects that have the greatest potential (a) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and (b) to advance United States competitiveness in the fields of life, biological, and medical sciences.

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