

Cooley

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The recently enacted healthcare reform law created a new program that will provide cash grants and tax credits for certain emerging life sciences companies. The program applies to companies with no more than 250 employees performing qualified research and development during 2009 and 2010.

Only \$1 billion of combined cash grants and tax credits are allocated for the 2-year program, so companies will compete for these benefits by submitting applications to the Treasury Department. Application procedures have not been published as yet, but are expected by the end of May. Cooley will issue additional *Alerts* with details about the application and grant program as they become available. To receive future *Cooley Alerts* on the program, [please register](#).

Highlights of the program

- Eligible projects (referred to as "qualifying therapeutic discovery projects") include:
 - clinical trials, pre-clinical activities, clinical studies and research protocols undertaken to secure FDA product approval; or
 - projects designed to diagnose diseases or determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions; or
 - development of a product, process, or technology to further the delivery or administration of therapeutics.
- The new law provides for a 50% tax credit, or an elective 50% cash grant, for qualifying expenditures on eligible projects certified for acceptance by the Treasury Department in consultation with the Department of Health and Human Services.
- Certain expenditures do not qualify, including interest expense, facility rent and maintenance, and compensation for certain key executives.
- Applications must be submitted and accepted to qualify for either the credit or the cash grant.
- The application for a project will be evaluated based on both medical and economic criteria—particularly the project's potential to:
 - Create new treatments for unmet medical needs,
 - Prevent, detect or treat chronic or acute conditions,
 - Reduce long-term U.S. health care costs, or
 - Significantly advance the goal of curing cancer within the next 30 years, as well as
 - Create and sustain high quality, high-paying U.S. jobs, and
 - Advance U.S. competitiveness in the life sciences.
- Treasury will publish rules for the recapture of credits and grants for projects that cease to be eligible after the grant or credit has been received.
- Expenditures resulting in tax credits or grants under the program will not qualify for certain existing tax benefits, such as the R&D credit, orphan drug credit, or accelerated depreciation deductions.
- Treasury will disclose the identity of, and dollar amount allocated to, each successful applicant.

For more information on the new legislation, please contact any of the attorneys listed above, or your regular Cooley contact.

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