



LIFE SCIENCES PRACTICE AND TECHNOLOGY & VENTURE FINANCE PRACTICE

ALERT

Section 48D Qualifying Therapeutic Discovery Project – Update

By Jeffrey H. Nicholas, Alfred J. Monte and Jennifer S. Murphy

- Awards of up to \$5 million for qualifying 2009/2010 expenditures
- Applications to be accepted from June 21 through July 21
- Awards to be announced by October 29
- You should be working now on the Project Information Memorandum

The expansive health care reform legislation signed into law in March 2010 created a new Internal Revenue Code Section 48D that established a \$1 billion investment tax credit for certain expenditures made in taxable years beginning in 2009 or 2010 related to “Qualifying Therapeutic Discovery Projects” (QTDPs).

The new investment tax credit could provide small to mid-sized life science companies, those with fewer than 250 employees, with a federal credit equal to **50 percent of the aggregate costs paid or incurred in a taxable year that are directly related to a QTDP, up to a maximum credit or grant of \$5 million per company.** Unlike typical R&D credits, taxpayers must receive a certification from the Treasury that they have a QTDP **before** they claim the credit on the return. The new provision also permits the Treasury to provide taxpayers with a **grant in lieu of the tax** credit—which is great news for the typical pre-revenue, young life science company.

The regulations are extensive, but in summary, a QTDP is defined as a project designed to develop a product, process or therapy to diagnose, treat or prevent diseases and afflictions by:

- Conducting pre-clinical activities, clinical trials, clinical studies and research protocols; or

- Developing technology or products designed to diagnose diseases and conditions, including molecular and companion drugs and diagnostics, or to further the delivery or administration of therapeutics.

The listed criteria for selection as a QTDP include projects that show a reasonable potential to:

- Result in new therapies
- Treat unmet medical needs
- Prevent, detect or treat chronic or acute diseases and conditions
- Advance the goal of curing cancer within 30 years
- Create or sustain high quality, high paying jobs in the United States
- Advance U.S. competitiveness in the fields of one of the biological or medical sciences

There are three principal parts of the application for 48D certification:

- IRS Form 8942—which is not yet available but may be available by June 14;
 - A Project Information Memorandum—which is a complete and succinct description of how the project satisfies the announced criteria; and
 - Consent to public disclosure of the application information.
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What You Need To Do NOW

Even though the IRS Form 8942 is not yet available, the regulations that were released provide a great deal of guidance for the types of programs and projects that could be eligible for the monies and the materials that will be required along with the application form. Officials expect thousands of applications, and it is unknown whether the dollars will be spread around in a larger number of smaller awards or whether the approach will be to award 200 grants at \$5 million each.

The professionals at Fox Rothschild's Life Sciences Practice Group and Technology & Venture Finance Practice Group can begin working immediately with potential applicants to determine their eligibility, gather

the information necessary to complete the Project Information Memorandum and submit a timely application.

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