

# Instructions for Form 8942

(June 2010)



Department of the Treasury  
Internal Revenue Service

## Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program

Section references are to the Internal Revenue Code unless otherwise noted.

### General Instructions

#### Purpose of Form

Use Form 8942 to apply, under the Qualifying Therapeutic Discovery Project (QTDP) Program, for:

- Certification of qualified investments eligible for a QTDP credit, and
- A grant in lieu of the QTDP credit.

A separate Form 8942 must be filed for each project for which the applicant is requesting certification.

#### Definitions

##### Qualifying Therapeutic Discovery Project Program

Under the Patient Protection and Affordable Care Act (Public Law 111-148), the IRS and the Department of Health and Human Services (HHS) have established the qualifying therapeutic discovery project program in accordance with Notice 2010-45 to consider and award certifications for qualified investments eligible for the credit to qualifying therapeutic discovery project sponsors. An eligible taxpayer may apply for certification from the IRS of a qualified investment with respect to a qualifying therapeutic discovery project as eligible for a credit, or for certain applicants, a grant under the program. The IRS will consult with HHS in conducting this program. The total amount of qualified investments that will be certified by the IRS for all applicants under the qualifying therapeutic discovery project program will not exceed \$2 billion. The total amount of credits that may be allocated and grants that may be paid will not exceed \$1 billion.

For more information on the Qualifying Therapeutic Discovery Project Program, see Notice 2010-45, 2010-23 I.R.B. 734, available at [http://www.irs.gov/irb/2010-23\\_IRB/ar08.html](http://www.irs.gov/irb/2010-23_IRB/ar08.html).

##### Qualifying Therapeutic Discovery Project Credit

The QTDP credit is part of the investment credit for tax years beginning in 2009 or 2010. The QTDP credit for any tax year is an amount equal to 50 percent of the qualified investment (defined below) for that tax year with respect to any qualifying therapeutic discovery project (defined below) of an eligible taxpayer (defined

below). The amount that is treated as qualified investment shall not exceed the amount certified by the IRS as eligible for the QTDP credit.

##### Qualifying Therapeutic Discovery Project

A qualifying therapeutic discovery project is a project that is designed to:

1. Treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act;
2. Diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions; or
3. Develop a product, process, or technology to further the delivery or administration of therapeutics.



*Each project will be evaluated by itself without reference to other projects. Therefore, dividing a project into multiple projects may result in the projects not meeting the selection criteria under section 48D(d)(3).*

##### Qualified Investment

Generally, a qualified investment is the aggregate amount of the costs paid or incurred in a tax year beginning in 2009 or 2010 for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project.

An investment will be considered a qualified investment only if it is made in a tax year beginning in 2009 or 2010. Qualified investment does not include the following costs.

- Remuneration for any employee described in section 162(m)(3).
- Interest expenses.
- Facility maintenance expenses (defined below).
- A cost identified as a service cost under Regulations section 1.263A-1(e)(4).
- Any investment for which bonus depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).
- Any other expense determined by the IRS.

Reduce qualified investment by the amount of any grant excluded from gross income, unless the grant can only be used for costs not necessary for and

directly related to the conduct of a qualifying therapeutic discovery project.

The IRS will not certify more than \$10 million as a qualified investment for any single applicant and no applicant will be allocated more than \$5 million in QTDP credits or grants in the aggregate for 2009 and 2010, regardless of the number of projects the applicant sponsors.

The amount that is treated as qualified investment for all tax years for any qualifying therapeutic discovery project may not exceed the amount certified by the IRS as eligible for the QTDP credit.

##### Employees described in section 162(m)(3).

The following employees are described in 162(m)(3).

- The chief executive officer (or individual acting in that capacity) of any applicant as of the end of the tax year.
- An employee whose total compensation for the tax year is required to be reported to shareholders under Securities Exchange Act of 1934 because the employee is among the three highest compensated officers for the tax year (other than the principal executive officer or the principal financial officer).

For more information on employees described in section 162(m)(3), see Notice 2007-49, 2007-25 I.R.B. 1429, available at [http://www.irs.gov/irb/2007-25\\_IRB/ar01.html](http://www.irs.gov/irb/2007-25_IRB/ar01.html)

##### Facility maintenance expenses.

Facility maintenance expenses are costs paid or incurred to maintain a facility, including:

- Mortgage or rent payments,
- Insurance payments,
- Utility and maintenance costs, and
- Costs of employment of maintenance personnel.

**Qualified progress expenditures.** For costs paid for property subject to depreciation, rules similar to rules of section 46(c)(4) and (d) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) apply. For more information, see *Qualified Progress Expenditures* in the Instructions for Form 3468.

**At-risk limit for individuals and closely held corporations.** The cost or basis of depreciable property included in qualified investment for the QTDP credit or grant may be limited if you borrowed against the property and are protected against loss, or if you borrowed money from a person who is related or who has an interest (other than as a creditor) in the business activity. The cost or basis must be reduced by the amount of the

nonqualified nonrecourse financing related to the property as of the close of the tax year in which the property is placed in service. Generally, if the applicant is a partnership or S corporation, whether any financing is non-qualified nonrecourse financing is determined at the partner or shareholder level.

If, at the close of a tax year following the year property was placed in service, the nonqualified nonrecourse financing for any property has increased or decreased, then the credit base for the property changes accordingly. The changes may result in an increased QTDP credit (but not greater than 50% of the qualified investment that was certified) or a recapture of the QTDP credit or grant in the year of the change. See sections 49 and 465 for details.

## Eligible Taxpayer

An eligible taxpayer is a taxpayer who employs not more than 250 full-time and part-time employees in all businesses of the taxpayer at the time the application is filed. In figuring the number of full-time and part-time employees, do not include leased employees. In determining the number of employees, include the employees of all members of the following that the applicant is a member of:

- A controlled group of corporations (defined in section 52(a));
- A group of trades or businesses under common control (defined in section 52(b)); and
- An affiliated service group (defined in section 414(m)).

A corporation is a member of a controlled group of corporations if it is a member of either a parent-subsidiary group (defined in section 1563(a)) or a brother-sister group (defined in section 1563(a), except that "more than 50%" is substituted for "at least 80%" each place it appears in section 1563(a)(1)), even if it is an excluded member for purposes of being a component member of a controlled group (for example, a foreign corporation subject to tax under section 881).

## Certification of Qualified Investment

The IRS will determine whether to certify an applicant's qualified investment for a qualifying therapeutic discovery project under the qualifying therapeutic discovery project program, for which an application has been filed, only if:

1. HHS determines that the applicant's project is a qualifying therapeutic discovery project;
2. HHS determines that the applicant's project 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; and

3. The IRS determines that the applicant'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.

A certification and allocation by the IRS is not a determination that the costs described in the application were or will be, in fact, paid or incurred or that the costs were or will be necessary for and directly related to the conduct of a qualified therapeutic discovery project under section 48D(b).

## Project Information Memorandum

The Project Information Memorandum is an HHS form the applicant must complete and file with Form 8942 as part of a complete application for certification.

HHS will review the Project Information Memorandum to determine whether a project meets the definition of qualifying therapeutic discovery project and whether the applicant has demonstrated that its project shows a reasonable potential to meet one or more of the goals referred to in item (2) under *Certification of Qualified Investment*, above.

The Project Information Memorandum form is available at [http://grants.nih.gov/grants/funding/QTDP\\_PIM/index.htm](http://grants.nih.gov/grants/funding/QTDP_PIM/index.htm).

## Election of a Grant in Lieu of a Credit

Generally, an applicant may elect to treat the application for certification of qualified investment for a QTDP credit as a request for a QTDP grant in lieu of a QTDP credit. However, the following types of entities are not eligible for a QTDP grant.

1. Any Federal, state, or local government (or any political subdivision, agency, or instrumentality thereof).
2. Any organization described in section 501(c) and exempt from tax under section 501(a).
3. An entity referred to in section 54(j)(4), including:
  - a. A clean renewable energy bond lender,
  - b. A cooperative electric company, or
  - c. A governmental body.
4. Any partnership or other pass-through entity, any partner or other holder of an equity or profits interest of which is described in (1), (2), or (3), above.

A partnership or other pass-through entity must determine if any of its partners or other holders of any equity or profits interest is described in (1), (2), or (3),

above, before the partnership or the pass-through entity may apply for a QTDP grant.

The QTDP Program uses the Payment Management System for payment of grants. Therefore, notwithstanding Notice 2010-45, section 8.02(4), an applicant electing to request a QTDP grant need not register with the Central Contractor Registration. The IRS will send applicants the forms necessary to process grant payments.

**Consistency requirement.** An election for a QTDP grant will be effective only if an applicant makes the same election on all the applicant's applications for that tax year. If the applicant's applications are inconsistent, then the election for a QTDP grant will be invalid and the applicant will be considered for certification of a credit only. The applicant may file an amended Form 8942 requesting a QTDP grant for the inconsistent project, thus making all elections for a QTDP grant for the same year effective.

## When to File

File Form 8942 on or before July 21, 2010. Applications filed after July 21, 2010, will not be considered.

Applications will be deemed submitted on October 1, 2010, for purposes of 48D(d)(2)(B) only. For all other purposes, the application date will be the date the application is filed as determined under section 7502.

## Private Delivery Services

Applicants can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing" rule under section 7502. These private delivery services include only the following.

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell the applicant how to get written proof of the mailing date.

## Where to File

File Form 8942 by United States mail, private delivery service, or hand delivery (between the hours of 8 a.m. and 4 p.m. EST, Monday through Friday) to:

Internal Revenue Service  
201 W. Rivercenter Blvd.  
Stop 5701G  
Covington, KY 41011.

## Who Must Sign

Form 8942 must be signed and dated by a person who:

- Has personal knowledge of the facts stated in the application, and
  - Is authorized to bind the applicant.
- A stamped signature or faxed signature is not permitted.

**Note:** Form 8942 must be signed by the same person who signs the attached Project Information Memorandum.

For a corporation, the form must be signed and dated by:

- The president, vice president, treasurer, assistant treasurer, chief accounting officer; or
- Any other corporate officer (such as tax officer) authorized to sign.

For a partnership, the form must be signed and dated by a general partner. For a limited liability company classified as a partnership, the form must be signed by a member or manager who would be authorized to sign the partnership's Form 1065. For more information on who can sign for a partnership, see the Instructions for Form 1065.

For an estate or trust, the form must be signed by the fiduciary, or an authorized representative. If there are joint fiduciaries, only one is required to sign the form.

If the form is filed on behalf of the applicant by a receiver, trustee, or assignee, the fiduciary must sign the form.

## Paid Preparer

If an employee of the applicant completes the form, the paid preparer's space should remain blank. Anyone who prepares the form but does not charge the applicant should not complete that section. Generally, anyone who is paid to prepare the form must sign it and fill in the "Paid Preparer's Use Only" area.

The paid preparer must complete the required preparer information and:

- Sign the form in the space provided for the preparer's signature.
- Give a copy of the form to the applicant.

## Assembling the Application

To ensure that the application is correctly processed, attach all documents and other forms in the following order.

1. Form 8942.
2. Form 2848, Power of Attorney and Declaration of Representative. See the instructions to line 13.
3. Project Information Memorandum.
4. Consent to Public Disclosure of Certain Qualifying Therapeutic Discovery Project Program Application Information (if the applicant elects to consent to certain limited disclosure). See section 10.02 and Appendix B in Notice 2010-45.

Complete every applicable entry space on Form 8942. Do not enter "See

Attached" instead of completing the entry spaces. If more space is needed, attach separate sheets using the same size and format as the printed forms. If there are supporting statements and attachments, arrange them in the same order as the lines they support and attach them last. Show the totals on the Form 8942. Enter the applicant's name and TIN on each supporting statement or attachment.



*An application is not complete if it does not include a Project Information Memorandum. See Project Information Memorandum, above, for more information.*

## Amended Application

File an amended Form 8942 to:

- Correct an error on a Form 8942 already filed. Check the box for an amended application at the top of page 1. Attach a statement that identifies the line number of each amended item, the corrected amount, treatment, description, or characterization of the item, and an explanation of the reasons for each change.

- Request a QTDP grant for an applicant that requested certification of qualified investment for a QTDP credit for its 2009 tax year, 2010 tax year, or both, but did not request a QTDP grant on Form 8942 for such tax year(s) at the time it filed its application. The applicant can make a request for a QTDP grant by filing an amended Form 8942 requesting a QTDP grant not later than the due date (including extensions) for filing the tax return for the applicant's tax year in which the certified qualified investment to which the QTDP grant relates was made.

- Correct the amount of qualified investment previously reported if the applicant requested a grant. If the applicant requested a grant and the amount of actual costs paid or incurred for qualified investment is less than the amount included on line 35 for which certification was requested, file an amended Form 8942 within 15 days after the close of the applicant's tax year to show the actual costs paid or incurred for qualified investment. In addition, if the applicant completed column (a) and the amount of actual costs paid or incurred as of September 30, 2010, for qualified investment is less than the amount shown on line 34, column (a) of the Form 8942 filed, file an amended Form 8942 by October 15, 2010, to show the actual costs for that period.

## Recapture

If the project ceases to be a qualified therapeutic discovery project, the applicant may need to recapture the amount of the QTDP credit or grant.

If the amount of the QTDP grant exceeds the amount allowable as a QTDP grant, the excess must be recaptured as if the investment to which the excess portion of the QTDP grant related had ceased to be a qualified

investment immediately after the QTDP grant was made.

If a QTDP credit was figured with respect to the investment for any tax year ending before a QTDP grant is made:

- The applicant's tax for the tax year that the QTDP grant is made will be increased by the amount of the QTDP credit allowed under section 38;
- The applicant's general business carryforwards under section 39 will be adjusted to recapture the portion of the QTDP credit that was not allowed under section 38; and
- The amount of the QTDP grant will be determined without regard to any reduction in the basis of any property subject to depreciation because of the QTDP credit.

For information generally on the recapture of the investment credit, see Form 4255 and the Instructions to Form 3468.

## Specific Instructions

### Line 2. Taxpayer Identification Number

Enter the applicant's employer identification number (EIN) if the applicant:

- Has an EIN;
- Has employees;
- Is a corporation, partnership, trust, estate, or other entity required to have an EIN; or
- Is electing on line 17 to apply for a QTDP grant.

If the applicant is required to but does not have an EIN, the applicant must apply for one on Form SS-4, Application for Employer Identification Number. An EIN can be applied for:

- Online—Click on the EIN link at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small). The EIN is issued immediately once the application information is validated.
- By telephone at 1-800-829-4933.
- By mailing or faxing Form SS-4.

The applicant must have received an EIN by the time Form 8942 is filed in order for the form to be processed. For more information about EINs, see Publication 1635.



*For the IRS to pay a QTDP grant, an application for a QTDP grant must include the applicant's EIN.*

### Lines 3 and 4

Enter the address of the location of the applicant's principal place of business. Include the suite, room, or other unit number after the street address. For purposes of Form 8942, a P.O. box number is not a valid street address.

### Line 7

Check the box that applies.

An affiliated group is one or more chains of includible corporations (section

1504(a)) connected through stock ownership with a common parent corporation. The common parent must be an includible corporation and the following requirements must be met.

1. The common parent must own directly stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of at least one of the other includible corporations.

2. Stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of each of the other corporations (except for the common parent) must be owned directly by one or more of the other includible corporations.

For this purpose, the term “stock” generally does not include any stock that (a) is nonvoting, (b) is nonconvertible, (c) is limited and preferred as to dividends and does not participate significantly in corporate growth, and (d) has redemption and liquidation rights that do not exceed the issue price of the stock (except for a reasonable redemption or liquidation premium). See section 1504(a)(4). See section 1563(d)(1) for the definition of stock for purposes of determining stock ownership.

## Lines 9 through 12

Enter the name, address, and EIN of the common parent. See the instructions for Lines 3 and 4 for entering address information.

## Line 13

Enter the name and address of the contact person. See the instructions for Lines 3 and 4 for entering address information.

The contact person is the person the IRS or HHS may contact if there is an issue with the application. If the contact person does not have legal authority to bind the applicant, the applicant must attach to Form 8942 a properly executed Form 2848. On Form 2848, line 3, enter “Section 9023 of the Affordable Care Act” as the type of tax. Leave the entry spaces for Tax Form Number and for Year(s) or Period(s) blank. Check the box on line 4.

## Line 14

On line 14a, enter the name of the project. If the applicant is filing applications for more than one project, select names for the different projects that are readily distinguishable from each other.

On line 14b, enter a brief description of the project. Limit the description to 50 words or fewer.

## Lines 15 and 16

Enter the number of employees in all businesses of the applicant on the date the application is filed. In determining the number of employees, include the employees of all members of the following that the applicant is a member of.

- A controlled group of corporations (defined in section 52(a)). For the definition of a controlled group of corporations, see *Eligible Taxpayer*, earlier.
- A group of trades or businesses under common control (defined in section 52(b)).
- An affiliated service group (defined in section 414(m)).

Attach a statement listing the name, address, and EIN of each of the other members.

For purposes of this section, the term employee includes both full-time and part-time employees but does not include leased employees.

## Line 17

Complete line 17 to elect to apply for a QTDP grant for tax year 2009, 2010, or both. If the applicant elects to apply for a QTDP grant, complete lines 18 and 19. Otherwise, skip to line 20.



*If the applicant is filing multiple applications, the elections made on all of the applications must be consistent. See Consistency requirement, above.*

## Line 18

Enter the applicant’s unique nine-digit Data Universal Numbering System (D-U-N-S) number from Dun and Bradstreet. If the applicant does not already have a D-U-N-S number, it may request one at no cost by calling the dedicated toll-free D-U-N-S number request line at 1-866-705-5711. Information on obtaining a D-U-N-S number may be obtained at [www.grants.gov/applicants/org\\_step1.jsp](http://www.grants.gov/applicants/org_step1.jsp).

## Line 19

Entities referred to in section 54(j)(4) are the following.

- Cooperative electric company. This is a mutual or cooperative electric company described in section 501(c)(12) or 1381(a)(2)(C), or a not-for-profit electric utility that has received a loan or loan guarantee under the Rural Electrification Act.
- Clean renewable energy bond lender. This is a lender that is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and including any affiliated entity which is controlled by such lender.
- Governmental body. This is any state, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof.

## Line 21

Enter the number of full-time and part-time employees in the United States whose work is directly billed to the project and the average salaries of the employees in each category.

**Note.** For this purpose, both actual employees of the applicant and leased employees may be included.

## Lines 26 and 27

The applicant can attach a statement, not to exceed 250 words, supporting line 26 and a statement, not to exceed 250 words, supporting line 27.

## Part III. Qualified Investment

Enter on lines 28 through 33 the amount of qualified investment in each listed category. Qualified investments may include expenses for wages, supplies and lab costs, depreciable property, contractor costs, and any other costs that would be considered part of the qualified investment for the project. Applicants for QTDP grants for tax year 2009 whose 2009 tax year ends after the date the application is filed must complete column (a) and columns (b) and (c), as applicable. All other applicants, complete only columns (b) and (c), as applicable.

Qualified investments do not include amounts paid or incurred to another person for research services relating to the project if the research services were not performed on behalf of the applicant.

If the applicant is filing applications for multiple projects, qualified investment included for any project on any one Form 8942 cannot include amounts included in qualified investment for any other project on any other Form 8942. Qualified investments related to multiple projects, must be allocated between the projects using a reasonable method.

**Column (a).** Enter in column (a) of each line qualified investment that is the sum of:

- Qualified investment actually paid or incurred as of the date the application is filed; and
- Qualified investment projected to be paid or incurred between the date the application is filed and the earlier of the end of the 2009 tax year or September 30, 2010.

**Column (b).** Enter the total amount paid or incurred (including the amount projected to be paid or incurred) for the 2009 tax year for each cost on line 28 through line 33.

**Column (c).** Enter the total amount paid or incurred (including the amount projected to be paid or incurred) for the 2010 tax year for each cost on line 28 through line 33.

## Line 31

Qualified investment derived from third-party contractors only includes amounts paid or incurred on behalf of the applicant pursuant to an agreement that is entered into prior to the performance of the research services relating to the project and the agreement required that the research services be performed on behalf of the applicant. If research services are not performed on behalf of

the applicant, then the applicant cannot include costs relating to those services in the qualified investment.

**Line 33**

Enter the amount of qualified investment derived from depreciable property that is attributable to qualified progress expenditures.

**Project Information Memorandum**

Attach a completed Project Information Memorandum to Form 8942.

The Project Information Memorandum form is available at [http://grants.nih.gov/grants/funding/QTDP\\_PIM/index.htm](http://grants.nih.gov/grants/funding/QTDP_PIM/index.htm). See Notice 2010-45 for additional information on the Project Information Memorandum.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on these forms to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. Our authority to ask for the information on this form is Internal Revenue Code section 48D. Section 6109 requires applicants and return preparers to provide their

identifying numbers on the form . You are required to provide the information requested on this form if you wish to apply for certification of qualified investments for purposes of the Qualifying Therapeutic Discovery Project Program. We need it to determine whether your investments meet the requirements for certification. If you do not provide this information, we may be unable to process your certification request. Providing false or fraudulent information may subject you to penalties. We may disclose this information to Federal agencies as authorized by law, including to the Department of Health and Human Services to obtain information regarding your eligibility for this credit or grant and to the Department of Justice for civil or criminal litigation. We may disclose this information to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to Federal and state agencies to enforce Federal nontax criminal laws, or to Federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is

subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for taxpayers who file this form is shown below:

<b>Recordkeeping</b> . . . . .	8 hrs., 36 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 03 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	2 hrs., 26 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.