# IRS Releases Revised Form 990 With Changes Affecting Joint Ventures, Compensation and Hospitals

## Nonprofit Alert - January 30, 2012

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On January 21, 2012, the Internal Revenue Service (IRS) released a revised version of Form 990 and accompanying instructions and schedules for tax year 2011. Notable changes to Form 990 and its associated schedules relate to joint ventures, investment partnerships, compensation disclosure and hospitals. In addition, the instructions to the revised form include many clarifications that were lacking in previous guidance.

Most organizations that are exempt from federal income tax under section 501(a) of the Internal Revenue Code must file an annual information return (Form 990 or Form 990-EZ) or submit an annual electronic notice (Form 990-N). Generally, an organization's gross receipts and total assets determine which filing the organization must make, although different filing criteria apply to certain organizations; for example, private foundations must file Form 990-PF and supporting organizations do not have the option to file Form 990-N. Organizations with either (i) gross receipts of $200,000 or more or (ii) total assets of $500,000 or more must file Form 990.

**Joint Ventures and Investment Partnerships**

The revised Form 990 requires organizations to report revenues, expenses and assets related to joint ventures and investment partnerships using amounts reported on Schedule K-1, rather than amounts derived from the organization's books and records. This represents a significant departure from the reporting requirements under previous versions of Form 990, and may pose bookkeeping hurdles for reporting organizations.

**Compensation Disclosure**

Schedule J to Form 990, used by organizations to report compensation information for certain officers, directors, individual trustees and key employees, underwent revision as well. Notably, in Part I, an organization that is part of a related group of organizations will be required to provide a narrative description of any reliance by such organization on a related organization to establish the compensation of any of the reporting organization's officers, directors, trustees or key employees. Revised Schedule J also requires additional narrative descriptions of, among other items, compensatory benefits awarded by the reporting organization and any severance or change-of-control payments made by the reporting organization or a related organization.

**Hospitals**

Schedule H to Form 990, which must be completed by hospital organizations, underwent revision and requires significantly greater disclosure than was required prior to 2011. Principally, Part V of the revised Schedule H contains 21 questions relating to a community health needs assessment (a “Needs Assessment”), financial assistance policies, billing and collections policies, and emergency medical care policies. These questions require substantive disclosures in the form of written narratives on these topics. Responding to the questions regarding a Needs Assessment is optional for tax years beginning in 2011.

For tax years beginning after March 23, 2012, however, (i) hospital organizations will be required to take into account input from persons who represent the broad interests of the community served by the hospital facility in developing a Needs Assessment, (ii) Needs Assessments must be made widely available to the community, and (iii) each hospital facility will be required to conduct a Needs Assessment at least once every three years.

**Clarifications Regarding Governance, Compensation, etc.**

The revised form and instructions include numerous modifications and clarifications, including:

1. Organizations that provided more than $5,000 of grants and other assistance to organizations or individuals outside the United States or inside the United States for foreign activity must complete certain sections of Schedule F. *(Part IV, Lines 15 and 16)*

2. If a governing body delegates broad authority to an executive committee or similar committee, this must be explained in Schedule O. *(Part V, Line 1a)*

3. Examples illustrating when Board chair compensation is considered to compensate the Board chair as an officer or an employee of the organization. *(Part V, Line 1(b))*

4. An organization is not considered to have provided a complete copy of its Form 990 to all members of its governing body prior to filing the form merely by making the form available upon request. *(Part V, Line 11)*

5. Only one position box should be checked for each person listed in the compensation table, unless the individual is both an officer and a director/trustee of the organization. *(Part VII, Section A, Column C)*

6. Although an organization may report revenue on line 1 of Part VIII under SFAS 116, the value of donated services or the use of donated materials, equipment or facilities may not be reported.

7. “Term endowment” is renamed “Temporarily restricted endowment” and includes not only endowment funds established by donor-restricted gifts for a specified period, but all other temporarily restricted net assets held in a donor-restricted endowment, including certain income from permanent endowments. *(Glossary)*

We are available to assist organizations and their boards in navigating the requirements imposed by the revisions to Form 990 and its accompanying schedules. For more information, please contact Sharon C. Lincoln at Foley Hoag.

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