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If you have any comments on this draft, you can submit them to us on our IRS.gov page titled Comment on Forms and Publications, where you may make comments anonymously if you wish. You can also email us at taxforms@irs.gov. Please include the form or publication number in the subject. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each suggestion. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

Instructions for Form 1125-E

(Rev. December 2012)

Compensation of Officers

Department of the Treasury
Internal Revenue Service

DRAFT AS OF August 31, 2012

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

Future Developments

For the latest information about developments related to Form 1125-E and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form1125e*.

What's New

For tax years beginning in 2012, real estate investment trusts (REITs) must use Form 1125-E to report compensation of officers if the REIT has total receipts of $500,000 or more. See *Who Must File*, below.

General Instructions

Purpose of Form

Certain entities with total receipts of $500,000 or more use Form 1125-E to provide a detailed report of the deduction for compensation of officers.

Who Must File

Form 1125-E must be completed and attached to Form 1120, 1120-C, 1120-F, 1120-RIC, or 1120-REIT, if the entity has total receipts (defined below) of $500,000 or more, and deducts compensation for officers.

Definitions and Special Rules

Total Receipts

For purposes of Form 1125-E, total receipts are determined as follows:

- Form 1120, page 1, line 1c, plus lines 4 through 10;
- Form 1120-C, page 1, line 1a, plus lines 4 through 9;
- Form 1120-F, page 3, Section II, line 1a, plus lines 4 through 10;
- Form 1120-RIC, Part I, line 8, plus net capital gain from Part II, line 1, and Form 2438, line 9a;
- Form 1120-REIT, Part I, line 8, plus net capital gain from Part III, line 10, and Form 2438, line 9a.

Golden Parachute Payments

A portion of the payments made by a corporation to key personnel that exceeds their usual compensation may not be deductible. This occurs when the corporation has an agreement (golden parachute) with these key employees to pay them these excess amounts if control of the corporation changes. See section 280G and Regulations section 1.280G-1.

Disallowance of Deduction for Employee Compensation in Excess of $1 Million

Publicly held corporations cannot deduct compensation to a "covered employee" to the extent that the compensation exceeds $1 million. Generally, a covered employee is:

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

For this purpose, compensation does not include the following.

- Income from certain employee trusts, annuity plans, or pensions.
- Any benefit paid to an employee that is excluded from the employee's income.

The deduction limit does not apply to:

- Commissions based on individual performance,
- Qualified performance-based compensation, and
- Income payable under a written, binding contract in effect on February 17, 1993.

The $1 million limit is reduced by amounts disallowed as excess parachute payments under section 280G.

See section 162(m) and Regulations section 1.162-27. Also see Notice 2007-49, 2007-25 I.R.B. 1429.

Limitations on tax benefits for executive compensation under the Treasury Troubled Asset Relief Program (TARP). The $1 million compensation limit is reduced to $500,000 for executive remuneration and deferred deduction executive remuneration paid to covered executives by any entity that receives or has received financial assistance under TARP. The limit applies for each period in which obligations arising from financial assistance under TARP remain outstanding. The $500,000 is reduced by any amounts disallowed as excess parachute payments. See section 162(m)(5) for definitions and other special rules. Also see Notice 2008-94, 2008-44 I.R.B. 1070, for additional guidance.

In addition, a portion of any parachute payments made to a covered executive by an applicable employer participating in a Treasury troubled asset relief program is not deductible as compensation if the payments are made because of a severance from employment during an applicable tax year. For this purpose, a parachute payment is any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued. These limits do not apply to a payment already treated as

a parachute payment. See section 280G(e) and Notice 2008-94.

Specific Instructions

Line 1

Complete columns (a) through (f), for all officers. Enter each officer's total deductible compensation. A corporation determines who is an officer under the laws of the state/country where it is incorporated.

If a consolidated return is filed, this information must be furnished for each officer of the affiliated group.

Line 3

Enter compensation of officers deductible elsewhere on the return, such as amounts included in cost of goods sold, elective contributions to a section 401(k) cash or deferred arrangement, or amounts contributed under a salary reduction SEP agreement or a SIMPLE IRA plan.

If the corporation claims a credit for any wages paid or incurred, it may need to reduce its deduction for officer's compensation. See Section 280C. If the corporation provided taxable fringe benefits to its officers, such as personal use of a car, do not deduct as wages the amount allocated for depreciation and other expenses claimed elsewhere on the return.

Line 4

Enter the amount from line 4 on Form 1120, page 1, line 12 or the appropriate line of the applicable return. See the instructions for the applicable return.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. 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.

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 the following form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 2 hrs., 37 mins., Learning about the law or the form, 47 mins., Preparing and sending the form to the IRS, 52 mins.

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.

DRAFT AS OF August 31, 2012