

**Background Paper**  
**Changes to April Draft Instructions**  
**August 19, 2008**

On April 7, 2008, the IRS released for public comment draft instructions to the Form 990, Return of Organization Exempt From Income Tax (2008). On August 19, 2008, the IRS released instructions for the Form 990 (2008), to be used for 2008 tax years (2009 filing season).

This Background Paper (1) summarizes certain significant changes made to the April draft instructions in response to public comments; (2) separately describes certain changes made to the instructions to Schedule H, *Hospitals*; (3) lists certain areas requiring further study for possible changes to instructions for 2009 and later tax years; and (4) provides a detailed description of material changes to each part of the instructions from the April draft relating to the core form and to each schedule.

For purposes of this document, the draft instructions released on April 7, 2008, are referred to as the “April Draft,” and the instructions released August 19, 2008, are referred to as the “August Release.” The Form 990 (2008) was released by the IRS on December 14, 2007. All are available at [www.irs.gov/eo](http://www.irs.gov/eo).

The August Release is stamped “draft” because it has not yet completed the process of review by IRS Forms and Publications. The IRS is releasing it now, in PDF format, in order for organizations and practitioners to review the expected content of the final instructions and prepare for the 2009 filing season. Similarly, the IRS intends to release “draft” instructions for the Form 990-EZ, Short Form Return of Organization Exempt From Income Tax (2008), in the next few weeks. Although the final version of the Form 990 (2008) instructions, which are not expected to be released until late 2008, will contain changes in wording and format from that contained in the August Release, the IRS intends that there will be no significant changes in content from the August Release.

*This Background Paper is intended to summarize information contained in the 2008 Form 990 and instructions. If there is an inconsistency between a description contained in this Background Paper and the actual form or instructions, the form or instructions govern.*

### **Public Comment Process**

The IRS released the April Draft of instructions to the 2008 Form 990 on April 7, 2008, and requested public comments by June 1, 2008. The IRS received 120 public comments totaling approximately 600 pages. The public comments included those provided by exempt organizations, leaders in the exempt sector, the accounting and legal profession, trade associations, and others. All of the public comments to the April Draft, as well as to the draft of the form released during 2007, are posted on the IRS web site at [www.irs.gov/eo](http://www.irs.gov/eo).

### **Overview of Changes from April Draft Instructions**

The revised instructions include many changes in content and format that are intended to provide greater clarity regarding the specific information sought. The revised instructions provide additional examples to illustrate key points, reduce information gathering and reporting burden in certain key areas, and establish or revise definitions or standards in certain areas (e.g., key employee, officer). The revised instructions adopt numerous format changes and conventions in response to public comments, including the adoption of the convention that terms included in the Glossary are highlighted in bold in the instructions, generally at the first place the term appears

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in a line item instruction, and the definition in the Glossary generally is not repeated in the text of the instructions.

**Summary of Certain Significant Changes to April Draft Instructions**

The following lists certain significant changes to the instructions made in response to public comments. It is not a comprehensive list of all changes made to the April Draft. A more complete list of changes is provided later in this document.

(1) Defines “key employee” for purposes of reporting executive compensation in Part VII and Schedule J, *Compensation Information*; transactions with interested persons in Schedule L, *Transactions With Interested Persons*; Part VI, *Governance, Management, and Disclosure*; and other items. In general, the three part key employee definition will require reporting as a key employee only those employees, other than officers, directors, and trustees, who:

- had reportable compensation exceeding \$150,000 for the year (the “\$150,000 Test”);
- had or shared organization-wide control or influence similar to that of an officer, director, or trustee, or managed or had authority or control over at least 10 percent of the organization’s activities (the “Responsibility Test”); and
- were within that group of the organization’s top 20 highest paid employees for the year who satisfied both the \$150,000 test and the Responsibility Test (“Top 20 Test”).

(2) Lists those countries included in each of nine geographic regions to be used for reporting foreign activities on Schedule F, *Statement of Activities Outside the United States*.

(3) Specifies reporting requirements for which the filing organization may rely on an express reasonable efforts process to obtain information required from interested persons or third parties. These are:

- Part VI, *Governance, Management, and Disclosure*, line 1b (determining the number of voting members of the governing body who are independent) and line 2 (determining whether an officer, director, trustee, or key employee had a family relationship or a business relationship with any other officer, director, trustee, or key employee);
- Part VII, Section A, *Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees* (determining compensation paid to such persons by related organizations); and
- Schedule L, *Transactions with Interested Persons*, Part III, *Grants or Assistance Benefiting Interested Persons*, and Part IV, *Business Transactions Involving Interested Persons* (determining whether an interested person was involved in a Part III or Part IV transaction).

The instructions provide examples of what may constitute reasonable efforts with respect to each of these separate reporting requirements.

(4) Revises definition of independent voting member of the governing body for Part VI, *Governance, Management, and Disclosure*, line 1b.

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- Replaces the "material financial benefit" prong of the independence test with a Schedule L reportable transaction prong
- A voting member of the governing body meets this prong if the member and his or her family members were not involved in a transaction or relationship that is reportable on Schedule L, *Transactions with Interested Persons*, or a transaction or relationship with a related organization that would be reportable on Schedule L if filed by the related organization

(5) Makes changes to Schedule H, *Hospitals*, including:

- Clarifies that Schedule H is required to be completed by an organization that operates at least one facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a "hospital" (some states do not have a licensing procedure for hospitals and this change is intended to encompass licensing-equivalents in those states);
- Revises definition of "facility" for Part V reporting to include each hospital or other facility that is licensed, registered, or similarly recognized by a state as a "health care facility," including facilities other than hospitals; requires the organization to list in Part VI the number and description of each type of other facility for which the organization reports information on Schedule H; and
- Clarifies that the generally applicable rules regarding subsidized health services apply to physician clinics and skilled nursing facilities.

Other changes to the Schedule H instructions are described below.

(6) Schedule K reporting of certain refunding bonds. The instructions exempt from reporting in Schedule K, *Supplemental Information on Tax-Exempt Bonds*, Part III, *Private Business Use*, refunding bonds issued after 2002 to refund pre-2003 bonds. For this purpose, a refunding bond issue also includes allocations and treatment of bonds of a multipurpose issue as a separate refunding issue under Regulation section 1.141-13(d). All other parts of the schedule must be completed with respect to such refunding bonds under the generally applicable rules.

(7) Clarifies compensation reporting in Part VII and in Schedule J, *Compensation Information*, Part II:

- Compensation reporting is required for two types of compensation – "reportable compensation" and "other compensation" – the instructions provide definitions and examples regarding these terms, and other guidance regarding when, how and where to report compensation included in these types
- Definition of reportable compensation. The amount to be reported as "reportable compensation" in columns (D) and (E) of Part VII and columns B(i)-(iii) of Schedule J for each person to be reported are:
  - For employees, generally, amounts reported in Box 5 (Medicare wages) of Form W-2;
  - For employees not subject to Medicare wage reporting, amounts reported in Box 1 (wages, tips and other compensation) of Form W-2; and
  - For directors or trustees, Box 7 (nonemployee compensation) of Form 1099-MISC.

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- The instructions provide and explain a “\$10,000 per related organization” exception to reporting reportable compensation paid by a related organization.
- Definition of other compensation. Other compensation to be reported in column (F) of Part VII, and in columns (C) and (D) of Schedule J, Part II, includes compensation not reportable on Form W-2 or 1099-MISC, including certain amounts relating to retirement plans, health benefits, deferred compensation, and nontaxable fringe benefits.
  - Clarifies that amounts for retirement plans, health benefits, and deferred compensation are reportable regardless of amount, but that such amounts may be estimated if actual amounts are not readily available; other items of “other compensation” need not be reported if they satisfy a “\$10,000-per-item exception”
  - Deferred compensation. Retains the reporting convention that such compensation generally is reported as the services are rendered rather than when vested or paid.
  - Defined benefit plans (qualified and nonqualified). Eliminates the 120% applicable federal rate (AFR) threshold for reporting accruals under defined benefit plans, and limits reporting to the increase in actuarial value, which may be estimated.
  - Defined contribution plans (qualified and nonqualified). Limits reporting to contributions; need not include earnings in qualified or nonqualified defined contribution plans.
  - Generally excludes benefits excludible under section 132, regardless of amount.
- Reporting of compensation paid by filing organization. All reportable compensation paid by the filing organization to those persons required to be listed in Part VII, section A must be reported in Part VII (and on Schedule J, if applicable). Of the “other compensation” paid by the filing organization, all amounts for retirement plan, health benefits, and deferred compensation must be reported, along with other items of other compensation if \$10,000 or more per item (if so, then report the entire amount of the item). The amounts of other compensation of various types may be estimated.
- Reporting of compensation paid by related organizations. The organization must report in Part VII reportable compensation from a particular related organization only if it exceeds \$10,000 from that related organization (if so, then report the entire amount). The organization need not report amounts of reportable compensation under the \$10,000 threshold. This \$10,000-per-related-organization exception does not apply to other compensation. The instructions clarify that of the “other compensation” paid by a related organization, all amounts of retirement plan, health benefits, and deferred compensation must be reported, along with other items of other compensation that exceed \$10,000 per item per related organization (if so, then report the entire amount). The amounts of other compensation may be estimated. The \$10,000-per-related-organization exception and the \$10,000-per-item exception apply separately to each related organization.
- Former top five highest compensated employees. Clarifies the reporting of former top five highest compensated employees, by providing that an organization must report a person who was listed as a former five highest compensated employee only if such person (1) was not an employee of the organization at any time during the calendar year; (2) received reportable compensation exceeding \$100,000 for the calendar year; and (3) received reportable compensation that would place the former employee among the organization’s current five highest paid employees if the individual had been employed by the organization during the calendar year.

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- Both the \$10,000-per-item exception and the \$10,000-per-related-organization exception apply to Part VII, section A, but neither applies to Schedule J.

(8) Narrows the scope of business relationship reporting in Part VI, *Governance, Management, and Disclosure*, line 2 by providing two exceptions from reporting:

- The ordinary course of business exception, which requires the transaction to be on the same terms as are generally offered to the public
- The privileged relationship exception – one of three privileged relationships (attorney and client, medical professional and patient, priest/clergy and penitent/communicant)

(9) Changes to Schedule L, *Transactions With Interested Persons*:

- Definition of substantial contributor. Simplifies definition of substantial contributor for purposes of Part III to mean a person that contributed at least \$5,000 to the organization during the tax year and that is required to be reported by name in Schedule B.
- Revises thresholds for Part IV reporting to provide that an organization must report with respect to an interested person if:
  - all payments during the tax year from a single transaction between the organization and the interested person exceeded the greater of \$10,000 or 1% of the filing organization's total revenues;
  - all payments during the tax year between the organization and the interested person, whether from one or from multiple transactions, exceeded \$100,000; or
  - the organization paid compensation greater than \$10,000 during the tax year to a family member of certain interested persons.
- Also clarifies that Part IV reporting is based on payments made during the year, regardless of when the transaction was entered into.

(10) Clarifies the definition of "officer" for purposes of reporting executive compensation in Part VII and Schedule J, *Compensation Information*; transactions with interested persons in Schedule L, *Transactions With Interested Persons*; Part VI, *Governance, Management, and Disclosure*; and other items, to include both:

- the "top financial official" – the person who has ultimate responsibility for managing the organization's finances; and
- the "top management official" – the person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization.

(11) Clarifies, for Part II, *Signature Block*, that paid preparers for section 4947(a)(1) nonexempt trusts may list the preparer's taxpayer identification number ("PTIN"), if available, or Social Security Number, and explains that the number (including the SSN, if provided) will be made public as part of the Form 990 subject to public inspection.

(12) Expands required narrative reporting in Schedule O to include several items listed in the Schedule O instructions (see discussion below).

### **Significant Changes to Schedule H, *Hospitals***

The following is a list of certain changes made to the instructions to Schedule H, *Hospitals*.

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- As described above, clarifies the definition of hospital and facility for purposes of determining which organizations must complete Schedule H, and which facilities must be listed in Part V of the schedule, beginning with 2008 tax years;
- As described above, clarifies that physician clinics and skilled nursing facilities are eligible for treatment as a subsidized health service in accordance with the generally applicable rules regarding subsidized health services, for purposes of reporting in Part I, line 7g, but that the amount of any costs associated with physician clinics that are reported as subsidized health services must be reported in Part VI, *Supplemental Information*;
- Clarifies that organizations do not report information from foreign hospitals located outside of the United States in Parts I, II, III, or V, but such information may be described in Part VI; information regarding foreign joint ventures and partnerships must be reported in Part IV;
- Clarifies health professions education costs include costs of all health education programs open to the general public, even if the organization's employees may participate in such programs;
- Clarifies the organization may include in Part I, line 7h the cost of internally funded research that it conducts, as well as the cost of research that is funded by a tax-exempt or governmental entity, but may not include the cost of research that is funded by an individual or an organization that is not a tax-exempt or government entity. The organization may describe in Part VI, *Supplemental Information*, any research it conducts that is externally funded by someone other than a tax-exempt or government entity;
- Adds examples of how to treat cash or in kind contributions funded by restricted grants from related organizations in Part I, line 7i;
- Adds an instruction that the organization must use the most accurate system and methodology available to it to report bad debt expense at cost in Part III, Section A, and must describe in Part VI how it accounts for discounts and payments on patient accounts in determining bad debt expense;
- Clarifies that the organization may report as costs in Part III, Section B only its allowable costs that are reported in its Medicare Cost Reports, except for those costs already reported in Part I, Line 7g (subsidized health services) and in Part I, Line 7f (health professions education);,and
- Adds an instruction that the organization may describe in Part VI the amount of any Medicare-related costs and revenues not included on its Medicare Cost Reports and in Part III. Part VI may also be used to provide a reconciliation of Medicare shortfalls or surpluses, as reported in Part III based on cost reports, to aggregate surpluses or shortfalls from the organization's participation in all Medicare programs.

**Areas Requiring Further Study**

The following is a list of certain areas that were not revised or incorporated in the August Release. The IRS intends to study the following areas for possible additions or changes to the Form 990 instructions for 2009 or later tax years.

- (1) List examples of program service accomplishments for particular sub-sectors in Part III, *Statement of Program Service Accomplishments*;

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- (2) Develop program service activity codes for Part III, *Statement of Program Service Accomplishments*;
- (3) Develop an express reasonable effort process to be used to report certain payments made to government officials or their family members for Part IX, *Statement of Functional Expenses*, line 18; and
- (4) Explore the expansion of community benefit reporting and other information reporting on Schedule H, *Hospitals*, to include benefits provided by an affiliated organization rather than by the filing organization, its disregarded entity, or a joint venture of which it is an owner.

**Material Changes to Form 990 Instructions (Core Form, Parts I through XI)**

**General Instructions**

A. Who Must File. Adds an instruction that an organization is required to file Form 990 if the organization claims exempt status under section 501(a) but has not yet established such exempt status by filing Form 1023 or Form 1024 and receiving an IRS letter recognizing tax-exempt status.

B. Organizations Not Required to File Form 990. No material changes.

C. Sequencing List to Complete the Forms and Schedules. Clarifies that the organization should determine its officers, directors, trustees, key employees, and five highest compensated employees, in addition to its related organizations, before completing the core form and the schedules, as these determinations are critical to reporting on Parts VI, VII, IX, and X of the Core Form, as well as on Schedules J, L, N, and R.

Clarifies that a public charity described in section 170(b)(1)(A)(iv) or (vi) or 509(a)(2) that is not within an advance ruling period should first complete Part II or III of Schedule A (Public Charity Status) to ensure that it qualifies as a public charity during the tax year before it completes the rest of the Form. If not, it should file Form 990-PF rather than Form 990.

D. Accounting Periods and Methods. Clarifies that for an organization's short year ended prior to December 31, 2008, it may use the 2007 Form 990 (rather than the new form) to file for such short year.

E. When, Where, and How to File. Adds an instruction that foreign organizations (including U.S. possession organizations) must mail their Form 990 to a new address for the Internal Revenue Service Center in Ogden, Utah.

F. Extension of Time to File. No material changes.

G. Amended Return/Final Return. Adds an instruction that the organization must state in Schedule O which parts of an amended Form 990 return were amended and describe the amendments. Also notes that state law may require the organization to file a copy of an amended

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Form 990 with the state, and/or to file an amended Form 990 to satisfy state reporting requirements even if the original return was accepted by the IRS.

H. Failure-to-File Penalties. No material changes.

I. Group Return. No material changes.

J. Requirements for a Properly Completed Form 990. Adds an instruction that all filers must file Schedule O, because certain questions (including several in Part VI) require all organizations to provide a supplemental explanation in Schedule O. Also adds an instruction listing four specific items that must be filed as attachments to the Form 990 (amendments to organizational documents in the case of a name change; list of subordinate organizations included in a group return; request and determination letter regarding termination of exempt status; and articles of merger or dissolution, resolutions, and plans of liquidation or merger required by Schedule N instructions).

### **Specific Instructions**

**Completing the Heading to Form 990.** No material changes.

**Part I, Summary.** No material changes.

**Part II, Signature Block.** Cautions that any preparer's identifying number (whether a Social Security Number or a PTIN) provided by a paid preparer will be disclosed to the public, as the IRS is not authorized to redact that information from the filed return.

### **Part III, Statement of Program Service Accomplishments**

Examples of program service accomplishments for different sub-sectors. Contrary to the intent expressed in the Highlights document released on April 7, 2008 with the draft instructions, the instructions do not contain specific indicators of program service accomplishments for particular sub-sectors such as nursing homes, hospitals, colleges and universities, social clubs, and trade associations. The IRS expects to continue to work with the sector to develop these lists for various sub-sectors, and to develop activity codes for use in 2009 or later tax years.

Line 1. Mission statement. Replaces instruction to leave this line blank if organization has no mission statement with an instruction to state "None."

### **Part IV, Checklist of Required Schedules**

Clarifies that an organization may answer "no" to a particular question in Part IV if it is not required to provide any information on a schedule or part of a schedule because of the application of a reporting threshold or exception described in the instructions of the pertinent schedule or part of the schedule.

Line 1 (Schedule A). Clarifies that filing Schedule A is required if the organization claims section 501(c)(3) status but has not yet filed a Form 1023 application or received a determination letter recognizing its 501(c)(3) status.

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Line 5 (Schedule C, Part III). Clarifies that organizations need not complete the section 6033(e) notice and potential proxy tax reporting if the organization has not received membership dues, assessments, or similar payments.

Line 6 (Schedule D, Part I). Provides examples of an “other similar fund or account” (other than a donor advised fund) for this purpose, by reference to the types of funds or accounts described as exceptions to the definition of a donor advised fund in the Glossary.

Line 9, Escrow account liability, custodial arrangements, or credit counseling (Schedule D, Part III). Refers to the Glossary definition of an “escrow or custodial account.”

Line 12 (Schedule D, Parts XI-XIII, reconciliations of financial statement items). Clarifies that an organization may not answer “Yes” if it was included in a consolidated audited financial statement, unless the organization also received a separate audited financial statement. Also clarifies that an accountant’s compilation or review of financial statements is not considered to be an audit, and does not produce an audited financial statement. Explains that an organization that answers “no” but has prepared an unaudited financial statement may (but is not required to) provide the reconciliations in Sch. D, Parts XI-XIII.

Line 20 (Schedule H). To address those instances where a state does not “license” hospitals, clarifies the Schedule H reporting trigger to be whether an organization operates at least one facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a “hospital.”

Lines 24a-d (Tax-Exempt Bonds). Clarifies instructions for these items.

Line 37 (Schedule R, Part VI). Clarifies that the 5% activities test is satisfied if either the 5% gross revenue test or 5% total assets test is satisfied. Also references the exception from Schedule R, Part VI reporting for any unrelated partnerships (1) from which 95% or more of the organization’s gross revenue from the partnership is described in sections 512(b)(1)-(3) and (5), such as interest, dividends, royalties, rents, and capital gains; and (2) for which the primary purpose of the filing organization’s investment in the partnership is the production of income or appreciation of property, not the conduct of a charitable activity.

**Part V, Statements Regarding Other IRS Filings and Tax Compliance**

Line 5 (prohibited tax shelter transactions). Defines “prohibited tax shelter transaction” by reference to listed transactions described in section 6707A(c)(2), and “prohibited reportable transaction” by reference to Regulations sections 1.6011-4(b)(3) and 1.6011-4(b)(4).

Line 7g (qualified intellectual property). Defines “qualified intellectual property” as any patent, copyright (other than certain self created copyrights), trademark, trade name, trade secret, know-how, software (other than “canned” or “off-the-shelf” or self-created software), similar property, or applications or registrations of such property.

Line 10 (section 501(c)(7) organizations). Adds a tip regarding reporting of unrelated business income.

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**Part VI, Governance, Management, and Disclosure**

The introduction to Part VI instructions includes an explanation that this part requests information regarding policies and practices that are not required by the Internal Revenue Code, and that an organization should consider its particular facts and circumstances, including its size, type and culture, when it considers whether to adopt or modify its governance policies or practices. Particular line item instructions are revised to indicate the time at which the determination requested by the line item is to be made (e.g., end of year).

Line 1a. Number of voting members of governing body. Adds instruction that if the organization's governing body delegated broad authority to act on its behalf to an executive committee or similar committee, the organization should describe in Schedule O the composition of the committee, whether any of the committee's members are not on the governing body, and the scope of the committee's authority.

Line 1b. Independent voting members. Replaces the April 2008 draft instruction's 4-prong test for determining independence of a particular voting member of the organization's governing body with a 3-prong test. The first two tests regarding compensation as an employee or independent contractor remain the same. The third and fourth tests regarding "material financial benefits" are replaced with a single Schedule L transaction test. A voting member of the governing body meets this third prong if neither the member nor a family member thereof was involved in either (1) a transaction with the organization that is reportable on Schedule L, *Transactions with Interested Persons*, or (2) a transaction with a related organization that would be reportable on Schedule L if filed by the related organization.

Religious exception. Clarifies that a member of the governing body is not considered to lack independence merely because the member has taken a bona fide vow of poverty and either (1) receives compensation as an agent of a religious order or a section 501(d) religious or apostolic organization, if the member did not receive any taxable income; or (2) belongs to a religious order that receives sponsorship payments or other payments from the organization which do not constitute taxable income to the member.

Reasonable efforts. Provides a new instruction setting forth an express reasonable efforts process that the reporting organization may rely on to obtain information required from members of its governing body regarding whether they qualify as independent for purposes of Part VI, Question 1b. Such reasonable efforts may include sending an annual questionnaire to each governing body member that asks whether the member meets all 3 prongs of the independence test described in the instructions for line 1b.

Membership organizations. Retained the instruction that a governing body member is not considered to lack independence merely because the member receives financial benefits from the organization solely in the capacity of being a member of the charitable or other class served by the organization, but eliminated the specific example for a membership organization that is no longer needed given the elimination of the material financial benefit test for independence.

Line 2. Family or business relationships among officers, directors, trustees, and key employees. New examples of family and business relationships are provided.

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Ordinary course of business exception. Adds a new instruction that business transactions in the ordinary course of either party's business, on the same terms as are generally offered to the public, are not "business relationships" that must be reported in line 2 or in Schedule O.

Privileged relationships exception. Adds a new instruction that a "business relationship" does not include a relationship between (1) attorney and client, (2) medical professional (including psychologist) and patient, or (3) priest/clergy and penitent/communicant.

\$10,000 threshold for reporting business transactions. Increases the line 2 reporting threshold amount for business transactions from \$5,000 to \$10,000.

Reasonable efforts. Adds an instruction setting forth an express reasonable efforts process that the filing organization may rely on to obtain information required from its officers, directors, trustees, and key employees regarding whether they had a family relationship or a business relationship with any other officer, director, trustee, or key employee of the filing organization. Such reasonable efforts may include sending an annual questionnaire to each officer, director, trustee, or key employee that asks whether the person has any of the family or business relationships described in the instructions for line 2.

Line 3. Delegation of management to management company. Clarifies that for purposes of line 3, management duties do not include administrative services (such as payroll processing) that do not involve significant managerial decision-making.

Line 4. Changes to organizational documents. Clarifies that changes to policies that are not contained within the organization's organizing document or bylaws are not significant changes that must be reported on line 4.

Line 5. Material diversion of assets. Clarifies that the gross dollar amount, for purposes of determining whether a diversion is considered material, does not take into account the amount of restitution, insurance, or similar recoveries related to the diversion.

Line 6. Members or stockholders. Defines "member," solely for purposes of Part VI, as any person who has the right to participate in the organization's governance, or to receive distributions of income or assets from the organization.

Line 10. Governing body review of Form 990. Clarifies, through an example, that the organization may answer "Yes" if it provided the final version of the Form 990 to each board member by email before the form was filed with the IRS, even if no board member reviewed the form either before or after its filing. In any case, the organization must describe in Schedule O its review process, if any.

Line 16. Joint venture policy. Defines "joint venture or similar arrangement" for this purpose as any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity.

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Line 18. Public availability of Forms 1023/1024, 990, and 990-T. Adds an instruction that the organization must explain in Schedule O if it does not make publicly available upon request any of the Forms 1023/1024, 990, or 990-T that are required by law to be disclosed upon request.

Line 20. Location of books and records. Clarifies that if the organization's books and records are kept at more than one location, the organization must provide the name, address, and telephone number of the person responsible for coordinating the maintenance of the books and records, and that the organization can provide the person's business rather than personal address.

**Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Revises the overview section to more fully explain the general principles regarding compensation reporting in Part VII and in Schedule J, *Compensation Information*.

Revises definitions of "key employee" and "officer." See explanation of Glossary changes to definitions of both terms.

**Section A, Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees.**

Reporting of compensation paid by filing organization. Clarifies that all reportable compensation (Box 5 of Form W-2) paid by the filing organization to those persons required to be listed in Part VII, section A must be reported in section A (and on Schedule J, if applicable). Also clarifies that of the other compensation paid by the filing organization, all deferred compensation, health and retirement plan benefits must be reported, along with other items of other compensation if \$10,000 or more per item (if so, then report the entire amount). The amounts of other compensation may be estimated if actual amounts are not readily available.

Reporting of compensation paid by related organizations. Clarifies that the organization should report reportable compensation from a particular related organization only if it exceeds \$10,000 per related organization (if so, then report the entire amount). This \$10,000-per-related-organization exception applies only to reportable compensation, not to other compensation. Also clarifies that of the other compensation paid by a related organization, all deferred compensation, health and retirement plan benefits must be reported, along with other items of other compensation if over \$10,000 per item per related organization (if so, then report the entire amount). The amounts of other compensation may be estimated if actual amounts are not readily available. The \$10,000-per-related-organization exception and the \$10,000-per-item exception apply separately to each related organization.

Reasonable efforts for related organization compensation reporting. Provides a new instruction setting forth an express reasonable efforts process that the reporting organization may rely on to obtain information required to be reported in Part VII, section A regarding compensation from related organizations. Such reasonable efforts may include sending an annual questionnaire to each person listed in section A that asks whether the person received any compensation from related organizations, as described in the instructions for section A.

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\$10,000 exceptions apply only to Part VII, section A, not to Schedule J. Clarifies that neither the \$10,000-per-related-organization exception nor the \$10,000-per-item exception apply for purposes of Schedule J.

Non-Medicare/Social Security employees. Clarifies that for certain kinds of employees for whom compensation is not reported in Box 5 of Form W-2, such as members of the clergy and religious workers who are not subject to Social Security and Medicare taxes as employees, their “reportable compensation” is the amount required to be reported in Box 1 of Form W-2, both from the filing organization and related organizations.

Five former highest compensated employees. Adds an instruction to report only former five highest compensated employees who (1) are not employees of the organization at any time during the calendar year; (2) received reportable compensation exceeding \$100,000 for the calendar year; and (3) received reportable compensation that would place the former employee among the organization’s current five highest compensated employees if the individual were still employed during the calendar year. Adds several examples to illustrate reporting requirements.

Provides a special transition rule for 2008 tax years for non-(c)(3) organizations that must now report compensation of their top 5 highest compensated employees. Such organizations need not report in Part VII “former” top 5 highest compensated employees who were not required to be reported in a pre-2008 Form 990, 990-EZ, or 990-PF.

Management companies. Clarifies that management companies are reportable on Part VII only if they are among the organization’s top five highest paid independent contractors listed in section B. However, if a current or former officer, director, trustee, or key employee has a relationship with a management company that provides services to the organization, then that relationship may be reportable in Schedule L, Part IV. Also clarifies that compensation from a management company to a current or former officer, director, trustee, key employee, or highest compensated employee listed in section A must be reported in section A, columns E and/or F only if the management company is a related organization.

Defined benefit plans (qualified and nonqualified). Eliminates the 120% applicable federal rate (AFR) threshold for reporting increases in actuarial value under defined benefit plans, and limits reporting to the annual increase in the actuarial value of such plans, which may be estimated if the actual amount is not readily available.

Defined contribution plans (qualified and nonqualified). Eliminates requirement to report earnings on amounts in defined contribution plans.

Revises the compensation table contained in the instructions to section A to make corrections and eliminate redundancies.

**Section B, Independent Contractors**

Clarifies that examples of the five highest compensated independent contractors reported in Part VII, section B include professional fundraisers, law firms, accounting firms, publishing companies, management companies, and investment management companies.

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**Part VIII, Statement of Revenue**

Line 1. Contributions, gifts, grants and similar amounts received. Clarifies that contributions are reported on line 1 regardless of whether they are deductible by the contributor. Also clarifies that the non-cash portion of contributions reported on lines 1a through 1f is also reported on line 1g.

Lines 2a-e, 11a-c. Program service revenue; other revenue. Clarifies that use of business codes from Form 990-T instructions for Part VIII reporting does not imply that the business activity is unrelated to the organization's exempt purpose.

Line 4. Income from investment of tax-exempt bond proceeds. Clarifies that only investment income from the proceeds of a tax-exempt bond issue which are under the control of the organization—not the control of the government issuer—must be reported.

**Part IX, Statement of Functional Expenses**

Lines 5 and 6. Compensation of current officers, directors, trustees, key employees, and disqualified persons. Clarifies that pension plan contributions and other employee benefits paid to current officers, directors, trustees, and key employees should be reported in these lines.

Line 11d. Lobbying fees. Clarifies that this line should include amounts expended for activities intended to influence foreign, national, state, or local legislation, including direct and grassroots lobbying, but should not include amounts expended for activities to influence actions by executive, judicial, or administrative officials or bodies, or other advocacy services, which should be reported on line 11g.

Lines 11e and 24. Professional fundraising fees. Clarifies that if the organization is able to distinguish between professional fundraising fees and amounts paid for fundraising expenses such as printing, postage, and equipment rental, it should report professional fundraising fees on line 11e and other fundraising expenses on line 24. If it is unable to distinguish between these fees and expenses, it should report all on line 11e.

Line 18. Payments of travel or entertainment expenses for any federal, state, or local public officials. Eliminated the requirement that each separate expenditure related to a government official or family member of such official that exceeds \$200 should be reported here. Provides that amounts expended for travel or entertainment for a public official or a family member of such official should be reported only if aggregate expenditures for the year relating to such official and family members of such official exceed \$1,000.

Line 26. Joint costs. Clarifies that any costs reported in this line are not to be deducted from the other lines in Part IX on which they are reported.

**Part X, Balance Sheet**

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Lines 1-2. Cash (non-interest bearing); savings and temporary cash investments. Clarifies that these lines should not include cash balances held in an investment account with a financial institution and reported on lines 11 through 13.

Lines 3, 5. Pledges and grants receivable, net; receivables from current officers, directors, trustees, key employees, or other related parties. Clarifies that pledges made by officers, directors, trustees, key employees, or other related parties are reported in line 3, rather than in line 5.

Line 10. Land, buildings, and equipment. Clarifies that the cost or other basis of both property held for investment purposes and property used for the organization's exempt functions are included in this line.

Lines 12, 13, 15. Investments—other securities; program-related investments; other assets. Clarifies that if any amount reported on these lines is 5% or more of the amount reported on Part X, line 16 (Total assets), then the organization must answer "Yes" to Part IV, line 11 and complete the applicable part of Schedule D (i.e., VII, VIII, or IX).

Lines 26, 33, 34. Total liabilities; total net assets or fund balances; total liabilities and net assets/fund balances. Clarifies that all filers must enter a zero or a dollar amount on these lines (as they must also do for line 16, total assets)

Lines 27-29. Unrestricted net assets; temporarily restricted net assets; permanently restricted net assets. Clarifies that if the organization is subject to the Uniform Prudent Management of Institutional Funds Act (UPMIFA) or FASB staff position 117-a, this may affect the amounts reported in lines 27-29.

## **Part XI, Financial Statements and Reporting**

Line 1. Accounting method. Adds an instruction that the organization must explain in Schedule O its accounting method if it checked a box other than cash or accrual, or if it changed its method of accounting from a prior year.

Line 2. Financial statements and independent accountant. Adds an instruction defining independent accountant as one who is independent under standards set forth by the AICPA, PCAOB, or a similar body.

Clarifies that the organization must answer "No" if its financial statements were compiled, reviewed, or audited as part of a consolidated financial statement only, and that it may explain in Schedule O if its financial statements were compiled, reviewed, or audited on a consolidated basis.

## **Glossary**

Adds definitions for the following terms:

- 35% controlled entity
- Central organization
- Controlled entity

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- Credit counseling services
- Debt management plan services
- Employee
- Escrow or custodial account
- Fundraising events
- Generally accepted accounting principles
- Joint venture
- Management company
- Possession of the United States (U.S. possession)
- Reasonable effort
- Religious order
- Subordinate organization
- Top financial official
- Top management official
- Total assets
- Unrelated organization

Revises definitions for the following terms:

- Contributions. Revises definition to be donations, gifts, bequests, grants, and other transfers of money or property to the extent that adequate consideration is not provided in exchange and that the contributor intends to make a gift, whether or not made for charitable purposes. A transaction may be partly a sale and partly a contribution.
- Control. Revises definition to distinguish between types of control among parent/subsidiary organizations and brother/sister organizations, and to clarify the means of determining indirect control.
- Disqualified person. Revises definition to distinguish between disqualified persons for purposes of (1) section 4958, Part IX, and Schedule L, and (2) section 4946, section 509(a)(3), and Schedule A.
- Hospital. Clarifies that the definition of hospital, for purposes of Schedule H, includes an organization that is licensed, registered, or similarly recognized by a state as a hospital.
- Hospital (or cooperative service organization). Adds new definition, for purposes of Schedule A, and to distinguish this type of hospital from hospital as defined for purposes of Schedule H.
- Independent voting member of governing body. Revises definition to conform to revised instructions for Part VI, question 1b.
- Key employee. Revises definition to be an employee of the organization (other than an officer, director or trustee) who meets all three of the following tests:
  - \$150,000 Test: Receives reportable compensation from the organization and all related organizations exceeding \$150,000 for the calendar year.
  - Responsibility Test:
    - has responsibilities, powers, or influence over the organization as a whole that is similar to those of officers, directors, or trustees;
    - manages a discrete segment or activity of the organization that represents 10% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

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- has or shares authority to control or determine 10% or more of the organization's capital expenditures, operating budget, or compensation for employees.
- Top 20 Test: Is one of the organization's 20 employees (other than officers, directors, and trustees) with the highest reportable compensation from the organization and related organizations who satisfy both the \$150,000 Test and the Responsibility Test.
- Officer. Revises definition of officer to include the organization's top financial official—the person who has ultimate responsibility for managing the organization's finances.
- Publicly traded securities. Revises definition to include common and preferred stocks, bonds, and mutual fund shares that are listed and regularly traded in an over the counter market or established exchange and for which market quotations are published or otherwise readily available.
- Significant disposition of net assets. Clarifies that a disposition is significant if it exceeds 25% of the fair market value of the organization's net assets during the year. Also clarifies that a significant disposition of net assets includes a contraction of net assets resulting from a grant or charitable contribution of assets to another organization described in section 501(c)(3).
- State of legal domicile. Revises definition to be the state of incorporation, or country of incorporation for a foreign corporation formed outside the United States. For a trust or other entity, it is the state whose law governs the organization's internal affairs.

## **Appendices**

*Appendix A, Exempt Organizations Reference Chart.* No material changes.

*Appendix B, How to Determine Whether an Organization's Gross Receipts Are Normally \$25,000 (or \$5,000) or Less.* No material changes.

*Appendix C, Special Gross Receipts Test for Determining Exempt Status of Section 501(c)(7) and 501(c)(15) Organizations.* Clarifies what gross receipts do and do not include, and explains that a 501(c)(7) organization may receive up to 35% of its gross receipts from sources outside its membership and remain tax-exempt.

*Appendix D, Public Inspection of Returns.* Is updated to include new disclosure requirements for Form 990-T applicable to section 501(c)(3) organizations.

*Appendix E, Group Returns: Reporting Information on Behalf of the Group.*

Group return EIN (Heading, Item D). Clarifies that a group return filer should list in the Heading the special EIN (separate from the filer's EIN) that is issued solely for purposes of the group return.

Family and business relationships (Part VI, question 2). Clarifies that a group return filer should report only family and business relationships between officers, directors, etc. of the same subordinate, not between officers, directors, etc. of one subordinate and officers, directors, etc. of another subordinate.

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Compensation of officers, directors, trustees, and key employees (Part VII, section A). Clarifies that group filers must file a single consolidated Part VII showing all officers, directors, trustees, and key employees of each subordinate included in the group return, and a single consolidated Schedule J, Part II. Also clarifies that group filers must report their five highest compensated employees above \$100,000, and their five highest compensated independent contractors above \$100,000 for the whole group of subordinates, not for each subordinate.

Reason for public charity status (Schedule A, Part I). Adds a new instruction that if any 509(a)(3) organizations are among the subordinates in the group return, then the group filer should check the box on line 11e and complete lines 11f through 11h.

Contributors (Schedule B). Clarifies that the group filer should apply the dollar and percentage thresholds (including the greater of \$5,000 or 2% threshold for organizations described in section 509(a)(1) and 170(b)(1)(A)(vi)) subordinate by subordinate, not on a group basis.

Related organizations (Schedule R). Clarifies that central organizations and subordinate organizations of a group exemption are not required to be listed as related organizations in Schedule R, Part II, and all other related organizations of the central organization or of a subordinate organization are required to be listed in Schedule R in the applicable part.

*Appendix F, Disregarded Entities and Joint Ventures; Inclusion of Activities and Items.* Consolidates the instructions and clarifies the generally applicable rule regarding disregarded entities. Also clarifies that in general, the organization must report joint venture activities based on its proportionate interest in the joint venture, and eliminates the requirement that the organization report on the basis of the greater of its profits or capital interest in the venture.

*Appendix G, Section 4958 Excess Benefit Transactions.* No material changes.

*Appendix H, Forms and Publications To File or Use.* No material changes.

*Appendix I, Use of Form 990, or Form 990-EZ, To Satisfy State Reporting Requirements.* Adds this as a new Appendix I.

## **Schedules**

### **Schedule A. Public Charity Status and Public Support**

Part I, line 3. Hospital or cooperative hospital service organization. Clarifies that the definition of hospital for purposes of Schedule A is different than the definition of hospital for purposes of Schedule H, and that an organization that checks the box for “hospital” in Schedule A may or may not need to complete Schedule H.

Part I, line 8. Community trust. Clarifies that a community trust claiming it qualifies as a public charity should check the box on line 8 whether it is structured as a corporation or a trust.

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Part I, line 11h, column (iv). Information regarding supported organizations. Clarifies that an organization that supports non-designated publicly supported organizations and meets the requirements of Regulations section 1.509(a)-4(d)(2)(i) should not complete column (iv) but should provide a statement in Schedule A, Part IV explaining how it meets these requirements.

Part II, line 1; Part III, line 1. Adds instruction that the organization should not include the names of grantors of unusual grants in Part IV because it will be made available for public inspection. Also adds instruction that if an organization reports any contributions on line 1 of this Part which it also does not report as revenues in Part VIII or as assets in Part X of the Form 990, it must explain in Schedule A, Part IV the basis for characterizing such transfers as contributions but not as revenues and/or assets.

Part II, lines 9, 12; Part III, lines 10-11. Adds instructions regarding treatment of membership fees, depending upon whether they are payments to purchase admissions, merchandise, services, or the use of facilities in an activity that is a related activity or an unrelated business.

Part III, line 4. Adds instruction that the organization report tax revenues levied for the organization's benefit by a government unit and either paid to the organization or expended on its behalf.

**Schedule B, Schedule of Contributors.** No material changes.

**Schedule C, Political Campaign and Lobbying Activities**

Lobbying expenditures. Clarifies that lobbying expenditures include allocable overhead and administrative costs paid or incurred for the purpose of attempting to influence legislation.

Direct lobbying communications. Clarifies that direct lobbying communications include attempts to influence legislation through communication with the public in a referendum, initiative, constitutional amendment, or similar procedure.

Part I-A. Political activity of exempt organizations. Clarifies that the organization should report the total number of volunteer hours in the conduct of its section 527 exempt function activities, in addition to in the conduct of its political campaign activities.

Part II-B. Lobbying activity. Clarifies that organizations that have revoked a previous election under section 501(h), in addition to organizations that have not made such an election, should complete Part II-B.

**Schedule D, Supplemental Financial Statements**

Part I. Donor Advised Funds. Adds new instruction that examples of other similar funds or accounts to be reported in column (b) include, but are not limited to, the funds or accounts that are prescribed by statute as excepted from the meaning of a donor advised fund.

Part II. Conservation Easements. Adds a definition for "certified historic structure."

Part III. Organizations Maintaining Collections of Art, Historical Treasures, and Other Similar Assets. Clarifies that organizations that receive contributions of works of art, historical

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treasures, and similar assets that do not maintain collections as described in SFAS 116 are not required to complete Part III.

Part IV. Trust, Escrow and Custodial Arrangements. No material changes.

Part V. Endowment Funds.

Lines 1c and 1f. Adds new instruction that for earnings reported net of transaction costs, the organization should enter the net amount in line 1c; for earnings reported on a gross basis, enter the transaction costs in line 1f.

Line 2. Clarifies that if the organization is subject to UPMIFA or FASB staff position 117-a, this may affect the amounts reported in lines 2a-2c.

Parts VI-XIV: Supplemental Financial Statements. No material changes.

**Schedule E, Schools.** No changes.

**Schedule F, Statement of Activities Outside the United States**

Adds a list of countries included in each of the nine regions to be used to report activities and other information in Schedule F beginning in 2008.

Part I. General Information on Activities Outside the United States. Clarifies that the types of activities to be reported in column (d) include grantmaking, fundraising, an unrelated trade or business, and program services. Also clarifies that column (f) foreign expenditures are to be reported consistently with how the organization accounts for such expenses on its financial statements.

Part II. Grants and Other Assistance to Organizations or Entities Outside the United States. Clarifies that the purpose of grant funds, as reported in column (d), may include general support. Also clarifies that a recipient foreign organization may be reported in line 2 if the grantmaker has made a good faith determination, based on an affidavit from the grantee or an opinion of counsel, that the grantee is the equivalent of a public charity.

Part III. Grants and Other Assistance to Individuals Outside the United States. Clarifies where to report in Part II or Part III, based on whether the payment is designated to or for the benefit of a foreign individual or a foreign organization or general public. For example, grants or assistance to foreign individuals reported in Part III may include a payment designated to cover the medical expenses of a foreign individual to a hospital located outside the United States, whereas a contribution designated to provide a service to the general public or to unspecified charity patients and made to a hospital located outside the United States should be reported in Part II.

Part IV. Supplemental Information. Adds instruction that the organization should use Part IV to describe the method it used to account for expenditures reported in Part I.

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**Schedule G, Supplemental Information Regarding Fundraising or Gaming**

Part I, line 2a. Clarifies that the organization must report agreements for professional fundraising services regardless of the form of the agreement (i.e., written or oral).

Part I, line 2b, column (v). Clarifies that if the agreement for professional fundraising services does not distinguish between fees for such services and payment of fundraising expenses (e.g., for printing, mailing), then the organization must report in column (v) the gross amount paid to (or withheld by) the fundraiser.

Part II, column (c). Clarifies that organizations should only report in column (c) revenues and expenses, in the aggregate, for events with gross receipts greater than \$5,000 each.

Part II, line 5; Part III, line 3 (non-cash prizes). Clarifies that organizations must enter the fair market value of non-cash prizes paid or given out for each fundraising event (Part II, line 5) and each type of gaming conducted (Part III, line 3).

Part III, line 6. Describes how the volunteer labor percentages should be calculated.

Part III, lines 13a, 13b, 14. Adds instructions for these lines pertaining to the percentage of gaming activity operated in the organization's own facilities or outside facilities, and the name and address of the person who prepares the gaming/special events books and records.

**Schedule H, Hospitals**

Schedule H reporting trigger. Clarifies that if an organization operates at least one facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a "hospital," then it must file Schedule H.

Foreign hospitals and facilities. Clarifies that organizations are not to report information from foreign hospitals located outside of the United States in Parts I, II, III, or V, but that information concerning foreign hospitals and facilities may be described in Part VI. Foreign joint ventures and partnerships must be reported in Part IV.

Part I, lines 7a-7b. Charity care at cost; unreimbursed Medicaid. Clarifies that Medicaid provider taxes paid by the organization should be allocated between Worksheets 1 and 3 (and lines 7a and 7b of Part I) based on the primary purpose of such taxes or payments (i.e., Worksheet 1 and line 7a if primary purpose is to offset costs of charity care, Worksheet 3 and line 7b if primary purpose is to offset costs of Medicaid) or, if the state has not clarified a primary purpose, then based on a reasonable estimate of which portions of such payments are intended for charity care and which are intended for Medicaid.

Clarifies that for purposes of calculating the cost of Medicaid services, organizations should use care not to double count community benefit expenses that are accounted for elsewhere in the Part I table.

Line 7f. Health professions education. Eliminates the requirement that if the organization offers education or training programs to the general public, it must report only expenses related to

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providing education or training to persons who are not its employees or members of its medical staff. Rather, it may report all such expenses in Part I, line 7f.

Line 7g. Subsidized health services. Clarifies that physician clinics and skilled nursing facilities will be eligible for treatment as a subsidized health service in accordance with the generally applicable rules regarding subsidized health services, for purposes of reporting in Part I, line 7g. Adds a new instruction that an organization that includes any costs associated with physician clinics as subsidized health services must describe that it has done so and report the amount of such costs in Part VI.

Line 7h. Research. Clarifies that the organization may include the cost of internally funded research that it conducts, as well as the cost of research that is funded by a tax-exempt or governmental entity, but may not include the cost of research that is funded by an individual or an organization that is not a tax-exempt or government entity. However, the organization may describe in Part VI any research it conducts that is not funded internally or by tax-exempt or government entities.

Line 7i. Cash and in-kind contributions to community groups. Adds several examples of how to treat cash or in kind contributions funded by restricted grants from related organizations.

Part II. Community Building Activities. Adds an instruction that if the organization makes a grant to another organization to be used to accomplish one of the community building activities listed in Part II, the organization should include the amount of the grant on the appropriate line of the table in Part II.

Adds an instruction that the organization may not report as “environmental improvements” either expenditures it made to comply with environmental laws and regulations, or to reduce the environmental hazards caused by, or the environmental impact of, its own activities.

Part III, Section A. Bad Debt Expense. Clarifies that the IRS does not require organizations to adopt HFMA Statement 15 or use it to determine bad debt expense or charity care costs for Schedule H, Part III.

Adds instruction that the organization must use the most accurate system and methodology available to it to report bad debt expense at cost, and must describe in Part VI how it accounts for discounts and payments on patient accounts in determining bad debt expense.

Clarifies that organizations must describe in Part VI the method they use to determine the amount of bad debt that reasonably could be attributable to patients who likely would qualify for financial assistance under their charity care policy if sufficient information had been available to make a determination of their eligibility.

Adds instruction that if an organization’s financial statements do not include a footnote discussing bad debt expense, the organization should explain in Part VI how its financial statements account for bad debt, if at all.

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Part III, Section B. Medicare. Clarifies that organizations are to include in this section only those allowable costs that are reported in its Medicare Cost Reports.

Adds an instruction that the organization may list in Part VI the amount of any Medicare-related costs and revenues not included on its Medicare Cost Report and in Part III, Section B, and may provide a reconciliation of the amounts reportable in this section and the total revenues and costs attributable to all of its Medicare programs.

Adds an instruction that if the organization has more than one Medicare provider number, it must aggregate the costs and related revenues from the Medicare Cost Reports of all Medicare provider numbers, and report the aggregate costs and revenues in lines 5 and 6.

Adds an instruction to line 8 that the organization must describe in Part VI the costing methodology used to determine the Medicare allowable costs reported in the organization's Medicare Cost Report.

Part IV. Management companies and joint ventures. Clarifies that the aggregate percentage share of profits or stock ownership of officers, directors, trustees, key employees, and physicians is measured as of the earlier of the close of the organization's tax year or the last day the organization was a member of the joint venture.

Part V. Facility Information. Defines "facility" for Part V reporting to be a hospital or other facility that is licensed, registered, or similarly recognized by a state as a health care facility, including facilities other than licensed hospitals.

Adds instruction requiring the organization to describe in Part VI the number of each type of facility, other than those that are required to be licensed, registered, or similarly recognized as a health care facility under state law and reported in Part V, for which the organization reports information on Schedule H (e.g., 2 rehabilitation clinics, 4 diagnostic centers, 3 skilled nursing facilities).

**Schedule I, Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.**

Part II. Grants and Other Assistance to Governments and Organizations in the United States. Clarifies that the purpose of grant funds, as reported in column (h), may include general support.

**Schedule J, Compensation Information**

Clarifies that Schedule J-2 should be used as a continuation sheet for Part VII of the Core Form, but not be used as a continuation sheet for Schedule J.

Part I, line 1a. Certain benefits. Clarifies that first-class travel does not include intermediate classes between first class and coach, such as business class on commercial airlines. Also clarifies that charter travel includes any travel on an airplane or boat that is owned or leased by the organization.

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Line 2. Substantiation of expenses. Adds instruction that an organization may answer “Yes” if it checked the “discretionary spending account” box on line 1 and required substantiation of expenses under an accountable plan for all benefits listed in line 1 other than for discretionary spending accounts.

Line 3. Methods of establishing compensation. Adds instruction that the filing organization does not check any boxes for methods used by a related organization, rather than the filing organization, to establish compensation of the filing organization’s top management official. However, if applicable, the filing organization should explain in Schedule J, Part III that it relied upon a related organization to establish the compensation of the filing organization’s top management official.

Line 4b. Supplemental nonqualified retirement plan. Clarifies that retirement plans described in section 457(f) are included on this line, but plans described in section 457(b) are not included.

Part II. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Clarifies that any type and amount of compensation that was excluded from Part VII of the Core Form pursuant to either the \$10,000-per-item exception or the \$10,000-per-related-organization exception must be included in Schedule J, Part II.

Clarifies that for certain kinds of employees for whom compensation is not reported in Box 5 of Form W-2, such as members of the clergy and religious workers who are not subject to Social Security and Medicare taxes as employees, the amount required to be reported in Box 1 of Form W-2 must be reported in Part II, columns B(i), B(ii), and B(iii), as appropriate.

Defined benefit plans (qualified and nonqualified). Eliminates 120% applicable federal rate (AFR) threshold for reporting increases in actuarial value under defined benefit plans, and limits reporting to the annual increase in the actuarial value of such plans.

Defined contribution plans (qualified and nonqualified). Eliminates requirement to report earnings on amounts in defined contribution plans.

**Schedule K, Supplemental Information on Tax-Exempt Bonds**

Clarifies that for purposes of completing Schedule K, an escrow established with the proceeds of a refunding issue to defease a prior issue is referred to as a refunding issue, rather than a defeasance escrow.

Part I, column (e). Issue price. Adds instruction that if the issue price is not identical to the issue price listed on the filed Form 8038, the organization should use Schedule O to explain the difference.

Part I, column (f). Description of purpose. Adds instruction that if bond proceeds are used to construct or equip a single facility, the expenditures should be aggregated and identified with the stated purpose of “construct and equip facility” where the identification of the facility is distinguishable from other bond-financed facilities, if any.

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Part III. Private business use. Revises instruction to exempt refunding bonds issued after 2002 to refund pre-2003 bonds from having to be reported in Part III. A refunding bond issue for this purpose also includes allocations and treatment of bonds of a multipurpose issue as a separate refunding issue under Regulation section 1.141-13(d). All other parts of the schedule must be completed with respect to such refunding bonds under the generally applicable rules.

Part III, line 3a. Clarifies that the organization must indicate whether any management or service contract which may result in private business use was effective at any time during the year with respect to property financed by the bond issue. The organization should answer “Yes” even if it has determined that the management or service contract meets the safe harbor under Rev. Proc. 97-13 and will not result in actual private business use.

Part III, line 3b. Clarifies that the organization must indicate whether any research agreement which may result in private business use was effective at any time during the year with respect to property financed by the bond issue. The organization should answer “Yes” even if it has determined that the research agreement meets the safe harbor available under Rev. Proc. 2007-47, and will not result in actual private business use.

Part III, lines 4-5. On each line, changes “Report the highest percentage” to “Report the average percentage . . .” Also on each line, clarifies that the organization should not include as private business use any use relating to either a management or service contract identified in line 3a which the organization has determined meets the safe harbor under Rev. Proc. 97-13 or a research agreement identified in line 3b which the organization has determined meets the safe harbor available under Rev. Proc. 2007-47.

### **Schedule L, Transactions with Interested Persons**

Purpose of Schedule. Notes that Schedule L is also used to determine the independence of a voting member of the organization’s governing body for Part VI, line 1b.

Specific Instructions. Adds an introductory paragraph to explain applicable thresholds, reasonable efforts, and that the definition of “interested persons” is different for each Part.

Part II. Loans to and from Interested Persons. Clarifies that loans originally between the organization and a third party who was not an interested person, but that were transferred so as to become a debt outstanding between the organization and an interested person, should be reported in Part II.

Part III. Grants or Assistance Benefiting Interested Persons.  
Clarifies that a grant includes the gift portion of a part-sale, part-gift transaction.

Definition of substantial contributor. Simplifies definition of substantial contributor for purposes of Part III to mean a person that contributed at least \$5,000 during the tax year and that is required to be reported by name in Schedule B.

Charitable class exception. Adds instruction that certain grants or assistance to an interested person as a member of the charitable class or other class that the organization intends to benefit

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in furtherance of its exempt purpose should not be reported in Part III if the grant or assistance is provided on similar terms as provided to other members of the class.

Reporting grants or other assistance to substantial contributors. Clarifies that organizations not required to file Schedule B are not required to report transactions with substantial contributors and their related persons in Part III.

Clarifies that a “related person” to a substantial contributor includes an employee (or child of an employee) of a substantial contributor or of a 35% controlled entity that received the grant or assistance (a) by the direction or advice of the substantial contributor or 35% controlled entity, or (b) pursuant to a program funded by the substantial contributor that was intended primarily to benefit such employees (or their children).

Adds instructions to protect the confidentiality of substantial contributors. In particular, if a person reported in column (a) is a substantial contributor, a family member thereof, a 35% controlled entity thereof, an employee thereof, or an employee of a 35% controlled entity thereof, then the organization should enter “substantial contributor” or “related to substantial contributor” instead of the interested person’s name in column (a); and enter “substantial contributor” or the person’s relationship to the substantial contributor (e.g., child of employee of 35% controlled entity of substantial contributor) in column (b).

Clarifies that business transactions between the organization and an interested person that contain a gift element should be reported in Part III.

Adds instruction that compensation to a person listed in Form 990, Part VII, section A should not be reported in Schedule L, Part III.

Reasonable efforts. Adds instruction setting forth an express reasonable efforts process that the reporting organization may rely on to obtain information required from an interested person regarding a grant or other assistance to such person. Such reasonable efforts may include sending an annual questionnaire to each of the organization’s current or former officers, directors, trustees, and key employees listed in Part VII, Section A and each member of its grant selection committees which asks whether the person received any grant or other assistance of the type reportable in Schedule L, Part III.

#### Part IV. Business Transactions Involving Interested Persons.

Clarifies that reporting is based on payments received, regardless of when the transaction was entered into.

Revises the reporting thresholds for business transactions, so that an organization must report in Part IV with respect to an interested person if:

- (1) all payments during the year between the organization and the interested person exceeded \$100,000;
- (2) all payments during the tax year from a single transaction between such parties exceeded the greater of \$10,000 or 1% of the filing organization’s total revenues; or

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- (3) the organization paid compensation greater than \$10,000 during the tax year to a family member of a current or former officer, director, trustee, or key employee listed in Part VII, section A.

Adds a new 5% threshold for the ownership interest of a current or former officer, director, trustee, and key employee listed in Part VII, section A in a partnership or professional corporation, for purposes of determining whether that partnership or professional corporation is treated as an interested person in Part IV.

Large board exception. Eliminated this exception as unnecessary given the reasonable efforts instruction (see below).

Reasonable efforts. Adds instruction setting forth an express reasonable efforts process that the reporting organization may rely on to obtain information required from an interested person regarding a business transaction between the person and the filing organization. Such reasonable efforts may include sending an annual questionnaire to each of the organization's current or former officers, directors, trustees, and key employees listed in Part VII, section A that asks whether the person engaged in any business transaction with the organization of the type reportable in Schedule L, Part IV.

Adds several examples of business transactions involving the organization, and describes whether and how they should be reported in Part IV.

### **Schedule M, Non-Cash Contributions**

Adds instruction that non-cash donated items must be reported as non-cash contributions on Schedule M, even if the organization sold them immediately after receiving them.

Clarifies that donation of the use of facilities or services must not be reported as non-cash contributions on Schedule M.

Line 23. Adds new definition of scientific specimens.

Lines 25-28. Adds instruction that archival records must be listed separately as a type of non-cash contribution in lines 25-28, and adds a definition of archival record. Adds instruction that donations of items used at a charitable auction (other than goods sold by the charity at the auction), such as food served at the event or floral centerpieces, may be separately reported on these lines.

### **Schedule N, Liquidation, Termination, Dissolution, or Significant Disposition of Assets**

Part I, line 7c. Adds instruction that if the organization avoided the need for a defeasance of bonds, such as through the transfer of assets to another section 501(c)(3) organization, the organization must provide the name of the transferees of such assets, the CUSIP number of the bond issue, and a description of the terms of such arrangements in Part III of Schedule N.

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Part II. Sale, Exchange, Disposition, or Other Transfer of More Than 25% of the Organization's Assets. Clarifies that "more than 25% of the organization's assets" means more than 25% of the *fair market value* of the organization's net assets.

Adds a new example of a transaction required to be reported in Part II: a contraction of net assets resulting from a grant or charitable contribution of assets to another organization described in section 501(c)(3).

Adds several examples of situations that are not required to be reported in Part II:

- (1) the change in the composition of publicly traded securities held in the organization's passive investment portfolio;
- (2) asset sales made in the ordinary course, such as gross sales of inventory;
- (3) a decrease in the value of net assets due to market fluctuations in the value of assets held by the organization; and
- (4) transfers to a disregarded entity of which the organization is the sole member.

Clarifies that a significant disposition of net assets is determined by reference to the fair market value of an organization's net assets (its total assets less total liabilities) at the beginning of the tax year. In the case of a series of related dispositions that commenced in a prior year, the fair market value is determined at the beginning of the tax year during which the first disposition was made.

**Schedule O, Supplemental Information to Form 990**

Clarifies that the following additional information must be reported in Schedule O:

- Late returns: if the return is not filed by the due date (including any extension granted), provide a statement giving the reasons for not filing on time;
- For amended returns, listing of amendments;
- Part VI: material differences in voting rights among governing board members reported in line 1a;
- Part VI: description of reasonable efforts undertaken in regard to line 2;
- Part VII, section A: estimate of average hours per week (if any) devoted to related organizations;
- Part XI, line 1: change in accounting method, or description of other accounting method used;
- Part XI, line 2c: change in committee oversight review from prior year;
- Part XI, line 3b: explanation of "no" response to line 3b;
- Schedule G: if applicable, use Schedule O to describe payments of fundraising expenses or reimbursements, as required in Part I, line 2b, column (v);
- Schedule K: if applicable, use Schedule O to describe the organization's use of alternative 12-month reporting periods with respect to bond issues reported on Schedule K;
- Schedule L: use Schedule O if additional space is needed to report information required by Schedule L; and

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- Schedule R: if applicable, use Schedule O to provide an explanation of the group exemption relationships described in Schedule R.

**Schedule R, Related Organizations and Unrelated Partnerships**

Definition of control. Clarifies that in the case of a parent/subsidiary relationship between nonprofit organizations, control means the power to remove and replace (or to appoint or elect, if such power includes a continuing power to appoint or elect periodically or in the event of vacancies) a majority of the nonprofit organization's or other organization's directors or trustees; or a management or board overlap where a majority of the subsidiary organization's directors or trustees are trustees, directors, officers, employees, or agents of the parent organization.

Clarifies that to determine indirect control through constructive ownership of a corporation, rules under section 318 shall apply, and that similar principles shall apply for purposes of determining constructive ownership of another entity (a partnership or trust). Adds several examples of how this indirect ownership rule applies in determining whether control exists.

Clarifies that in the case of a brother/sister relationship between nonprofit organizations, control means that the same persons constitute a majority of the members of the governing body of both organizations.

Group exemptions. Clarifies that central organizations and subordinate organizations of a group exemption are not required to be listed as related organizations in Schedule R, Part II. Provides instructions regarding which organizations must be reported as related organizations by a group affiliate, in case it is filing an individual return or is included in a group return.

Parts III, IV, and VI. Adds an instruction that some of the information requested in these parts should be derived from Schedule K-1 of Form 1065 issued to the organization, but that if the Schedule K-1 is not available, the organization should provide a reasonable estimate of the required information.

Part V, column (c). Clarifies that any reasonable method is acceptable for determining the fair market value of the amount required to be reported in this column.

Part VI. Unrelated Organizations Taxable as a Partnership. Adds new instruction explaining how the percentage of the filing organization's activities, as measured by both its total assets and its gross revenue, must be determined.