

Notice of Intent to Issue Regulations Under Section 4960

Notice 2026-36

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations under section 4960 of the Internal Revenue Code (Code)¹ pertaining to the tax on excess tax-exempt organization executive compensation. It is anticipated that the proposed regulations will address the effective date of the amendment to the definition of covered employee made by section 70416 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA) and will also propose exceptions to the definition of covered employee that are similar to the limited hours and nonexempt funds exceptions in the existing section 4960 regulations. This notice also solicits public comments on the matters addressed in this notice.

SECTION 2. BACKGROUND

.01 Overview of section 4960. Section 4960 generally imposes an excise tax on any applicable tax-exempt organization (ATEO) or related person or governmental entity that pays a covered employee remuneration in excess of \$1 million in a taxable year or an excess parachute payment.

.02 Pre-OBBBA definition of covered employee. As originally enacted in 2017 under

¹ Unless otherwise provided, all “section” references are to sections of the Code or the Regulations on Foundation and Similar Excise Taxes (26 CFR Part 53).

Section 13602 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2157 (Dec. 22, 2017), section 4960(c)(2) of the Code defined a covered employee as any employee (including any former employee) of an ATEO if the employee (1) is one of the five highest-compensated employees of the ATEO for the taxable year, or (2) was a covered employee of the ATEO (or any predecessor) for any preceding taxable year beginning after December 31, 2016. On January 19, 2021, the Treasury Department and IRS published final regulations under section 4960 in the *Federal Register* (T.D. 9938, 86 FR 6196) (section 4960 regulations).

.03 Exceptions to five highest-compensated employees under the section 4960 regulations. Section 53.4960-1(d)(2) defines the term “five highest-compensated employees” of an ATEO. Section 53.4960-1(d)(2)(ii), (iii), and (iv) provide “limited hours,” “nonexempt funds,” and “limited services” exceptions to this definition, respectively. Under the section 4960 regulations, an individual meeting any of these exceptions is disregarded for purposes of determining an ATEO’s five highest-compensated employees for a taxable year. An individual who was a covered employee of an ATEO (not qualifying for an exception to being one of the five highest-compensated employees) for any taxable year beginning after December 31, 2016, remains a covered employee for all future years because covered employee status is permanent.

.04 Reason for the exceptions in the section 4960 regulations. The limited hours exception and nonexempt funds exception were adopted in response to commenters requesting exceptions for situations in which employees of non-ATEO related organizations perform limited or temporary services for the related ATEO (in particular,

while receiving no compensation from the ATEO). The limited services exception was adopted to prevent an employee to whom the ATEO paid minimal remuneration from displacing an employee who would otherwise have been one of the five highest-compensated employees (and thus a covered employee) of the ATEO.

.05 OBBBA changes to the definition of covered employee. Section 70416 of the OBBBA revised the definition of “covered employee.” For taxable years beginning after December 31, 2025, the term “covered employee” means any employee of an ATEO (or any predecessor of an ATEO) and any former employee of an ATEO (or its predecessor) who was such an employee during any taxable year beginning after December 31, 2016. Thus, after the OBBBA, the definition of covered employee in section 4960 is no longer limited to an ATEO’s five highest-compensated employees, and the section 4960 regulations’ exceptions to the “five highest-compensated employees” of an ATEO no longer apply by their terms.

SECTION 3. APPLICABILITY OF POST-OBBBA DEFINITION OF COVERED EMPLOYEE

Section 70416(b) of the OBBBA provides that the amendment to the definition of covered employee applies to taxable years beginning after December 31, 2025. The Treasury Department and the IRS interpret this effective-date provision to broaden the definition of covered employee only for taxable years of an ATEO beginning after December 31, 2025, and to retain the prior definition of covered employee for taxable years beginning on or before December 31, 2025, including for purposes of determining for a taxable year beginning after December 31, 2025, whether a former employee was a covered employee in a taxable year beginning on or before December 31, 2025.

Accordingly, the definition of covered employee under section 4960(c)(2), as amended by the OBBBA, includes only—

- Any individual who was an employee of an ATEO in any taxable year beginning after December 31, 2016, and on or before December 31, 2025, if the individual was a covered employee for the taxable year under prior law, and
- Any individual who is an employee of an ATEO in any taxable year beginning after December 31, 2025 (subject to any exceptions provided in future guidance, such as those described in section 4.01 of this notice).

SECTION 4. FORTHCOMING PROPOSED REGULATIONS

.01 Intent to issue regulations. The Treasury Department and the IRS intend to issue proposed regulations (forthcoming proposed regulations) revising the section 4960 regulations by removing references to an ATEO's five highest-compensated employees and making conforming changes. It is anticipated that the forthcoming proposed regulations would provide the interpretation of the post-OBBBA definition of covered employee described in section 3 of this notice. It is also anticipated that the proposed regulations would provide covered employee exceptions for limited hours and nonexempt funds similar to those in section 53.4960-1(d)(2)(ii) and (iii), but would not provide a limited services exception to the amended definition of covered employee because the concern that motivated that exception—displacement of an employee who would otherwise have been one of the five highest-compensated employees of the ATEO—is no longer relevant. The forthcoming proposed regulations may also address other issues, such as issues reserved in the existing section 4960 regulations.

.02 Prospective changes. It is anticipated that the forthcoming proposed regulations

would be prospective and would not apply to taxable years beginning before the issuance of final regulations.

SECTION 5. RELIANCE

.01 Interpretation of the post-OBBBA definition of covered employee and limited hours and nonexempt funds exceptions. Until the forthcoming proposed regulations are issued, ATEOs may rely on the rules described in section 4.01 of this notice that are anticipated to be included in the proposed regulations.

.02 Example.

Facts. ATEO 1 (an ATEO) and CORP 2 (a taxable-related organization) use a calendar taxable year. Employees A and B have been employees of CORP 2 and ATEO 1 since 2017. Employee A was a covered employee for ATEO 1's taxable year beginning on January 1, 2025, because Employee A was one of ATEO 1's five highest-compensated employees and did not qualify for an exception to such status for 2025. Employee B has never been one of the five highest-compensated employees of ATEO 1 and meets the requirements of the limited hours exception for ATEO 1's taxable year beginning on January 1, 2026. Employee C has been an employee of CORP 2 since 2017 and was an employee of ATEO 1 only in 2020, but not one of its five highest-compensated employees because there were more than 5 individuals with higher remuneration than Employee C for the 2020 taxable year.

Conclusion. Employee A is a covered employee of ATEO 1 for taxable year 2026 because Employee A was a covered employee for 2025 and covered employee status, once obtained, is permanent.

In accordance with section 5.01 of this notice, ATEO 1 may rely on the interpretation of the post-OBBBA definition of covered employee described in section 3

of this notice and the limited hours exception to determine that Employee B is not a covered employee of ATEO 1 for taxable year 2026.

In accordance with section 5.01 of this notice, ATEO 1 may rely on the interpretation of the post-OBBBA definition of covered employee described in section 3 of this notice to determine that Employee C is not a covered employee of ATEO 1 for taxable year 2026 by reason of being a former employee of ATEO 1. Although Employee C was an employee of ATEO 1 in 2020, Employee C was not a covered employee for that taxable year under the interpretation of the post-OBBBA definition of covered employee described in section 3 of this notice and thus was not a covered employee for any taxable year through 2025 under prior law. If Employee C becomes an employee of ATEO 1 in a post-2025 taxable year and does not meet any applicable exception to covered employee status, Employee C will be a covered employee of ATEO 1 for that taxable year and all future taxable years.

SECTION 6. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments regarding all issues raised by this notice, in particular: (1) any changes that are needed or appropriate to adapt the current limited hours and nonexempt funds exceptions to the new definition of covered employee under the OBBBA and the appropriateness of applying these exceptions to officers of the ATEO, and (2) any other issues that should be addressed in the forthcoming proposed regulations.

SECTION 7. SUBMISSION OF COMMENTS

.01 Written comments should be submitted on or before **August 4, 2026**.

Consideration will be given, however, to any written comment submitted after such date, if such consideration will not delay the issuance of guidance. The subject line for the

comments should include a reference to Notice 2026-36. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2026-0233 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2026-36), Room 5503, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to the IRS's public docket on www.regulations.gov.

SECTION 8. DRAFTING INFORMATION

The principal authors of this notice are Robert C. Weedman and Ward L. Thomas of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Mr. Weedman at (202) 317-3517 or Mr. Thomas at (202) 317-6173 (not a toll-free call).