



TaxNewsFlash

Exempt Organizations

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Notice 2026-36: Intent to issue proposed regulations under section 4960 on tax on tax-exempt organization compensation

The IRS today released [Notice 2026-36](#), announcing that the Treasury Department and IRS intend to issue proposed regulations under section 4960 pertaining to the excise tax on “excess” tax-exempt organization executive compensation.

As explained in the related IRS release—[IR-2026-73](#)—the “One Big Beautiful Bill Act” (OB3) expanded the application of excise tax on excess compensation by broadening the definition of covered employee of an applicable tax-exempt organization (ATEO). Previously, the tax applied to covered employees defined as the ATEO’s five highest compensated employees for the tax year. Under the post-OB3 definition of covered employee, the tax may apply to any employee receiving compensation exceeding \$1 million or an excess parachute payment in a tax year.

Notice 2026-36 indicates that the amended definition of covered employee, which will be addressed in the forthcoming proposed regulations, is expected to include:

- An individual who was an employee of an ATEO in a tax year beginning after December 31, 2016, and on or before December 31, 2025, only if the individual was a covered employee for that tax year under prior law
- All individuals who are employees of an ATEO in a tax year beginning after December 31, 2025 (unless a covered employee exception applies)

The notice also states that it is expected that the forthcoming proposed regulations will include exceptions from the definition of covered employee similar to those for limited hours and nonexempt funds under the existing section 4960 regulations and allows ATEOs to rely on those exceptions in determining their covered employees under the post-OB3 definition until further guidance is issued. As written in the existing regulations, the limited hours and nonexempt funds exceptions only disregard individuals “for purposes of determining an ATEO’s five highest-compensated employees,” a concept that was only relevant under prior law. Notice 2026-36 allows ATEOs to apply the limited hours and nonexempt funds exceptions to disregard individuals for purposes of determining their covered employees until further guidance is issued. The limited services exception is expected to no longer have applicability.

The forthcoming proposed regulations are expected to apply to tax years beginning after the issuance of final regulations.

Comments on Notice 2026-36 are requested by August 4, 2026. In particular, comments are requested on 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 OB3 and the appropriateness of applying these exceptions to officers of an ATEO.

For more information, contact your usual KPMG tax professional or one of the following Washington National Tax professionals:

Ruth Madrigal | ruthmadrigal@kpmg.com
Preston Quesenberry | pquesenberry@kpmg.com

kpmg.com/socialmedia



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