



REPORT ON UNIVERSITIES' RESPONSES TO THE COMPENSATION OF ATHLETIC COACHES INQUIRY



**Committee on Ways and Means
Subcommittee on Oversight**



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INTRODUCTION

The Committee on Ways and Means Subcommittee on Oversight continually reviews the Federal tax laws, regulations, and filing requirements that affect tax-exempt organizations. As part of this review, the Subcommittee evaluates tax law compliance and public disclosures related to the activities of tax-exempt organizations. During this Congress, the Subcommittee held a hearing on Expanding Access to Higher Education and the Promise it Holds. The President and CEO of the National Association of College and University Business Officers testified that “[a]dministrative decisions, from budget allocation to program development, space allocation to infrastructure investment, are all extensions of efforts to deliver on the educational, research, and public service goals of colleges and universities.”

In furtherance of its review of tax-exempt colleges and universities, between December 2021 and March 2022, Representative Bill Pascrell, Jr., the Chair of the Committee on Ways and Means Subcommittee on Oversight, sent letters to the presidents of nine universities asking whether spending on lucrative football and basketball programs aligns with their federal tax-exempt status. Chair Pascrell requested answers from these universities about their missions, employee compensation for Division I football and basketball programs, revenue and expenses related to these athletics programs, and student aid.

Educational organizations, including public and private universities, comprise one of the largest segments of the tax-exempt sector. In 2019–20, total revenues at degree-granting postsecondary institutions in the United States were \$694 billion (in constant 2020–21 dollars). Total revenues were \$438 billion at public institutions, \$242 billion at private nonprofit institutions, and \$14 billion at private for-profit institutions.[1] While most activities on a college campus undoubtedly further a university’s educational mission and exempt purposes, the rising compensation of Division I men’s football and basketball coaches highlight a significant university investment in coaching staff rather than students. Research of the National Collegiate Athletic Association (NCAA) indicates that overall NCAA intercollegiate athletic expenses in 2020 totaled \$18.5 billion and nearly 20 percent of that spending involved the compensation of coaches.[2] Further, many universities have had to pay millions in excise taxes under Section 4960 of the Internal Revenue Code because of million-dollar coaching contracts. Chair Pascrell has significant concerns about whether these universities are operating in a manner consistent with, and in furtherance of, their tax-exempt purpose.

Contracts for coaches typically include varied combinations of the following: base salary, bonuses, deferred compensation, retention bonuses, automatic extensions, outside income, summer camps, guarantee games, and buyout provisions.[3] Many contracts are multiyear and guaranteed. These contracts are a stark contrast to the benefits received by student athletes, whose labor the coaches are profiting from. Chair Pascrell wrote to the following nine universities with notable football or basketball head coach salaries: Auburn University, Duke University, Louisiana State University, Michigan State University, Rutgers University, Stanford University, University of Miami, University of Southern California, and Villanova University.

[1] [COE - Postsecondary Institution Revenues \(ed.gov\)](https://nces.ed.gov/ipeds/data/postsecondaryinstitutionrevenues/)

[2] [Finances of Intercollegiate Athletics Database - NCAA.org](https://www.ncaa.org/athletics/finances/)

[3] <https://athleticdirector.uconn.edu/articles/making-sense-of-college-coaching-contracts/>



CHAIR PASCRELL'S LETTER

The text of Chair Pascrell's letter is below.

Dear NAME,

The Committee on Ways and Means of the U.S. House of Representatives has a long history of oversight of organizations granted Federal tax exemption. Much of that oversight is conducted through its Oversight Subcommittee (Subcommittee), which I chair. I understand that UNIVERSITY qualifies for Federal tax exemption as [a wholly-owned State instrumentality and as an organization described in Section 501(c)(3) of the Internal Revenue Code]. I write today to request important information about how the university's lucrative athletics program is furthering the educational purposes for which UNIVERSITY receives tax exemption.

Educational organizations, including [public/private] universities like UNIVERSITY, comprise one of the largest segments of the tax-exempt sector. Undoubtedly, most of the activities undertaken by UNIVERSITY further the university's exempt purposes. However, reports about compensation that UNIVERSITY pays its current and former football [and/or basketball] coaches have raised significant concerns about whether the university is operating consistent with its tax-exempt status. [Language specific to UNIVERSITY compensation omitted.]

It is unclear how such lucrative compensation contracts further the overall educational mission of UNIVERSITY and benefit your student body as a whole. These contracts also present a stark contrast to the benefits received by the university's student-athletes, whose grants-in-aid each semester pale in comparison to their coaches' compensation. Student-athletes make an enormous commitment of time and effort as team members, but it is the coaches that are profiting handsomely from their labor. These issues are not confined just to Division I football programs either. Men's basketball programs merit scrutiny as well, given the compensation provided to coaches.

To help us understand how UNIVERSITY sets compensation for your Division I football and men's basketball programs, as well as how these programs protect athletes and contribute to the university's educational purpose, the Subcommittee requests answers to the questions below by no later than [DATE].

Compensation:

1. How many university employees have a compensation package (amounts provided in pay and benefits) above \$1 million each year? How many of these employees work for the athletics department? What departments employ the other university employees earning in excess of \$1 million? How many employees in the athletics department are paid over \$5 million each year?
2. Who is the university's highest paid employee and how much does such employee earn?



3. What categories of employees (e.g., administrators, deans, professors, development officers, athletic coaches, assistant coaches, team doctors) receive more than \$1 million in compensation each year, and how many employees are in each category?
4. Can university employees generally receive outside earnings? Is there any limit to the amount that a university employee can earn beyond his or her university salary/payroll/compensation package? From what outside activities are head football and men's basketball coaches and their coaching staffs permitted to receive earnings?
5. Does UNIVERSITY take the position that the tax under Section 4960 of the Internal Revenue Code applies to it? If so, how much tax has the university paid under Section 4960 each year since its enactment? How many employees have triggered the tax in each of those years? For employees compensated above the Section 4960 cap, what is the median and average dollar amount of the excess above the cap?
6. What factors and criteria does the university utilize to determine the size and scope of the compensation packages for the head football coach and the head men's basketball coach? Who within the university must approve these compensation packages? Who in the university negotiates with potential head coaches and their staffs?
7. What non-cash compensation is paid to the university's head football and men's basketball coaches and their coaching staffs? Please provide types of such compensation, such as health benefits, life and other forms of insurance, in-kind property (e.g., houses, cars, and planes), and university benefits (e.g., meals, tuition remission). Please specify by employee.
8. What compensation currently is being paid to former coaches under so-called "buyouts" of their contracts? How many coaches in each year over the past ten years have received such payments? What is the total amount of buyouts that has been paid over the past ten years? Please specify by sport.

Serving the university's educational mission:

1. How do your football and men's basketball programs contribute to the university's educational mission (other than the production of income)?
2. Why should the Federal government subsidize the university's athletics programs and escalating coaches' salaries and other non-cash benefits?
3. With the increasing commercialization of the university's football and men's basketball programs, how does the university distinguish its activities from professional sports leagues?

Students:

1. What is the total cost per year over the past ten years of your grants-in-aid (i.e., scholarships, including non-cash benefits) to football and men's basketball team members? How many full scholarships is each team allotted? How many partial scholarships? What is the average value of the scholarship? How does that average amount compare to the average amount of the scholarships received by non-student-athletes?



2. Could you provide a side-by-side comparison, by sport, of (i) the total cash and non-cash compensation received by your head football and men's basketball coaches compared to (ii) the total aid, including cost of attendance and any other indirect benefits, including the value of training tables, tutors, and catastrophic insurance against athletic injury, received by a student-athlete on each of those teams on an annual basis over the past ten years?
3. What is the demographic makeup of students on the football and men's basketball teams by race and family income level? Similarly, what is the demographic makeup of the football and basketball coaching staffs?
4. How many, and what percentage, of student-athletes playing football and basketball graduate from your university with a degree over four, six, and ten years?

Revenue and expenses of the athletics department:

1. What were the revenue and expenses for the university's football and men's basketball programs over each of the past ten years? Please break revenue out by category (e.g., tuition, endorsements, sponsorships, royalties, licensing, television contracts, radio programming). How much of this revenue, if any, is from booster clubs, affiliated organizations or foundations, and other alumni donations? Please separately identify recruitment expenses.
2. Do the football and men's basketball programs generate revenues in excess of program expenses? If so, are revenues used to support the non-athletic educational operations of the university? Specifically, what other operations have these revenues supported each year in the past ten years and how much per operation per year?
3. If the football and men's basketball programs are not self-sufficient or were not in any of the past ten years, did non-university entities, such as booster clubs or alumni donors, finance either program?
4. What were the five biggest non-tuition sources of revenue for the football and men's basketball programs annually over the past ten years? What percentage of the total cost of those programs do those sources provide?

Governance of the athletics department:

1. How is the annual budget set for the university's athletics department? How many years in advance are included in budget projections? Who sets the budgets for the football and men's basketball programs? To what extent is the budget coordinated with or based on representations of financial support by those outside the university (e.g., booster clubs, alumni, shoe or equipment companies)? What contracts does the athletics department have with outside contractors?
2. Who is responsible for fundraising for the athletics department? In which, if any, sports are student-athletes required to raise funds to support the team? Is it separate from the rest of the university's fundraising? Does the university's overall development program incorporate the needs of the athletics department?
3. Who makes the decision to terminate an employee in the athletics department with compensation of \$1 million or more each year? How does the need for or entitlement to a buyout factor into such a decision?



Facilities:

1. What was the cost of, and how did the university fund, the construction, renovation or rehabilitation of its newest football and basketball facilities over the past ten years?
2. Are training and practice facilities and equipment available to the student body at-large? Do student-athletes with scholarships have their own training facilities?
3. How do expensive state-of-the-art sports facilities contribute to the educational mission of the university?
4. Do any student fees go towards the maintenance of the football and basketball facilities? If so, what percentage? Do student fees support other athletics facilities?

Your answers will assist the Subcommittee in its oversight of tax-exempt universities and colleges and their engagement in intercollegiate athletics. Thank you for your prompt attention to this matter.

All nine universities responded to Chair Pascrell's inquiry. Subcommittee staff has summarized the responses to certain questions below.



STAFF SUMMARY OF RESPONSES RELATED TO EACH UNIVERSITY'S MISSION

In the letter, the Chair requested information about how each university's athletics program furthers its exempt purpose. (For background on the tax-exempt status of colleges and universities, see Appendix A, Congressional Research Service Memorandum to Congressman Pascrell dated October 17, 2022.) The Chair noted that it is unclear how lucrative compensation contracts further each university's overall mission and benefit the student body as a whole. The Chair then asked each university:

- How does your university's football and men's basketball programs contribute to the university's educational mission (other than the production of income)?
- Why should the Federal government subsidize the university's athletics programs and escalating coaches' salaries and other non-cash benefits?
- With the increasing commercialization of the university's football and men's basketball programs, how does the university distinguish its activities from professional sports leagues?

All nine of the universities addressed these questions. They stated that college athletics further the exempt purposes of their universities. Excerpts from their responses are included below.



Auburn University—Response Regarding University Athletics and Mission **(excerpt)**

Auburn welcomes the opportunity to explain how its athletics program supports the University’s educational mission, including developing critical skills for our student-athletes that ready them for the workforce, fostering a sense of community in the student body that enhances the collegiate experience for student-athletes and students alike, and promoting continued engagement with alumni whose support enables Auburn to expand its educational mission to students with diverse talents and experiences.

* * *

Serving the University’s Educational Mission

Auburn University’s athletics program (“Auburn Athletics”) sponsors 21 varsity sports. Women compete in 12 sports and men compete in 9 sports. Athletics scholarships are evenly divided between male and female student athletes. In addition, Auburn University students are eligible to participate in over 20 club sports, including climbing, cycling, field hockey, rugby, and sailing.

Auburn Athletics provides indispensable contributions to the educational and cultural function of the University. These contributions have been recognized and repeatedly affirmed by the Internal Revenue Service, which has long held that intercollegiate athletics are an “integral part” of the educational program of a university.[4] We have described below some of the many ways in which Auburn Athletics serves the University’s educational mission, providing both tangible and intangible benefits to student-athletes and the student body writ large.

First, Auburn Athletics helps student-athletes develop skills and habits that prepare them to compete in the workforce, regardless of whether they ultimately pursue a career in sports. Participation in intercollegiate athletics hones critical skills such as teamwork, self-discipline, time management, and resilience. It also promotes healthy habits off the field, including regular exercise and nutrition, which are proven to have cognitive benefits, including improved concentration, sharper memory, lower stress, and enhanced productivity.[5] Auburn Athletics employs a team of 23 full-time training staff—including licensed physicians, exercise and sports

[4] See, e.g., Rev. Rul. 67-291, 1967-2 C.B. 184 (“The athletic program of a university conducted for the physical development and betterment of the students is considered to be an integral part of its overall educational activities.”); Rev. Rul. 80-296, 1980-2 C.B. 195 (“An athletic program is considered to be an integral part of the educational process of a university, and activities providing necessary services to student-athletes and coaches further the educational purposes of the university.”)

[5] See, e.g., Ron Friedman, *Regular Exercise Is Part of Your Job*, Harvard Business Review (Oct. 3, 2014), available at <https://hbr.org/2014/10/regular-exercise-is-part-of-your-job>; Ron Friedman, *What You Eat Affects Your Productivity*, Harvard Business Review (Oct. 17, 2014), available at <https://hbr.org/2014/10/what-you-eat-affectsyour-productivity>.



scientists, and dieticians—that educate student-athletes on how to maximize their physical health, stamina, and nutrition. These lessons provide substantial benefits to student-athletes as they embark on their post-collegiate careers.

Second, Auburn’s sports programs provide valuable training opportunities for Auburn University students. For example, each year, a select number of graduate students work with Auburn Sports Medicine, including Auburn’s team doctor and world-renowned orthopedic surgeon, Dr. James Andrews. This is an invaluable educational opportunity for these Auburn students to learn under some of the best providers in the world. Graduate students will take the training that they receive through their exposure to Auburn’s Sports Medicine program to provide first-class medical and therapeutic services to communities across the United States.

Third, Auburn recognizes the essential role that mental health plays in ensuring the success of its student-athletes on the field, in the classroom, and after graduation. To that end, Dr. Douglas Hankes, an internationally recognized sports psychologist with 25 years’ experience, serves as Auburn’s Executive Director of Counseling and Sports Psychology. Dr. Hankes oversees a team of licensed psychologists, which provides treatment planning, psychological counseling, and applied sport psychology services to student-athletes, while educating and guiding coaches and staff on best practices.

Fourth, Auburn Athletics provides student-athletes valuable opportunities to improve their brand, marketability, and professional network. Student-athletes receive substantial publicity through their participation in intercollegiate athletics. Auburn Athletics prepares its student-athletes to capitalize on these opportunities by providing them media training, generating digital content highlighting their achievements, and coordinating their engagement with local and national media. Auburn Athletics is also working closely with its student-athletes to take advantage of new opportunities afforded by recent changes to the NCAA’s Name, Image, and Likeness (“NIL”) policies (described in more detail below). Participation in athletics also opens doors for Auburn’s student-athletes after graduation. Auburn has a large and devoted base of alumni eager to hire and network with former student-athletes who have publicly represented the University.

Fifth, Auburn Athletics enriches the experience of its student body, providing students the opportunity to interact outside the classroom and strengthening their sense of community. The traditions associated with Auburn Athletics are part of the cultural fabric of Auburn University. This includes the Tiger Walk, in which thousands of Auburn students, alumni, and supporters line the streets of Donahue Avenue to greet the football team as the players make their way to Jordan Hare Stadium. It also includes rallying at historic Toomer’s Corner and singing “War Eagle” after an Iron Bowl victory. These shared experiences create bonds among Auburn University



students that span generations, and are the foundation of the Auburn alumni network that has helped countless Auburn alums excel professionally post-graduation.

Sixth, Auburn Athletics preserves the connection between the University and its former students, whose support is vital to Auburn carrying out its educational mission. Each year, tens of thousands of Auburn University alumni travel from across the country to attend Auburn Athletics events. These same alumni provide tremendous financial support through generous donations that fund scholarships and financial aid to students who may not otherwise have the opportunity to attend Auburn University.

Finally, and most critically, Auburn recognizes the unique demands intercollegiate athletics imposes on its students. Over the past decade, Auburn Athletics has significantly expanded its staff of full-time academic counselors, who provide tutoring, counseling, and skills development services to student-athletes. Auburn Athletics now spends \$2.8 million annually on academic support for student-athletes, including salaries for support staff and academic programming. Auburn's investments in academic services have yielded substantial returns. In 2021, Auburn Athletics posted a Graduate Success Rate ("GSR") of 93%—the highest in the school's history—with the basketball program also achieving a program-high GSR of 86%. Auburn Athletics is committed to ensuring that these outstanding academic outcomes continue in the years to come.



Duke University—Response Regarding University Athletics and Mission ***(excerpt)***

Mission

Intercollegiate athletics is one of the defining features of American higher education. From the first college football game in 1869, when Rutgers defeated Princeton in New Brunswick, NJ, the vast majority of colleges and universities across the country have engaged in athletic competition to enhance the educational experience, support the well-being of students, create leadership opportunities, build community and school spirit, and project the identity and visibility of their institutions nearby and across the globe.

Organized athletics has been an integral part of Duke's culture since the 19th century, when Trinity College – the predecessor to Duke University – introduced physical education and intercollegiate competition at the highest level in basketball, football and several other sports. That tradition of excellence in academic and athletic achievement has been an institutional hallmark since the founding of the modern Duke University in 1924, and has been recognized by generations of Duke students, faculty and alumni as an essential and unique aspect of our educational experience.



LSU—Response Regarding University Athletics and Mission **(excerpt)**

Considering the overarching question of whether the LSU Athletics Department contributes to the broader University and the public interest, I would have to unequivocally say that it does in both tangible and intangible ways. In totality, our athletics program is a part of the flagship University, and we pride ourselves on contributing to the public good in every endeavor we pursue.

* * *

There are many benefits to having a successful Athletics program on campus. Literature shows that the more connected a student feels to their college, the more likely they are to remain enrolled and ultimately graduate. Sporting events provide a natural bonding opportunity for students to create the type of friendships and attachment to their university that support student success. Additionally, Athletics acts as a natural laboratory for the Department of Kinesiology, and the Department employs students in fields that align to their academic majors, such as marketing, graphic design, videography, finance, and athletic training. Of the roughly 6,000 colleges in the United States, only a small fraction could offer access to elite sports medicine training opportunities and internship experiences in sports management. We view these opportunities to learn as distinctive and unique.

Athletics also has a distinctly positive impact on recruiting new students. Having athletic teams competing in nationally televised events attracts many prospective students. In fact, many prospective students in the northeast United States are captivated by the colleges appearing on television, and they ultimately consider attending schools outside their region. I'll illustrate this by pointing out LSU enrolls more than 250 students from New Jersey alone. While I'm confident they came for academic reasons, it's likely that they first considered LSU because of its athletic prominence.



Michigan State—Response Regarding University Athletics and Mission **(excerpt)**

MSU Athletics is central to advancing our mission of transforming lives through the power of education. Indeed, research shows that there is a correlation between athletic participation and academic and career success. We recognize that a significant part of a student's education occurs outside the classroom. Like other co-curricular activities, athletics inculcate students with values that will serve them well throughout their lives, including integrity, respect, teamwork, hard work, and a commitment to continuous improvement.

MSU student-athletes are students first, and our graduation rates underscore our commitment to their success. In the NCAA's most recent Graduation Success Rate, MSU student-athletes posted an all-time high of 92%. MSU's student-athlete four year Federal Graduation Rate (FGR) of 80% is comparable to the all-student mark. Significantly, Black male and female student-athletes post a better four-year FGR than all Black male and female students combined on our campus.

Athletic programs support and strengthen our academic reputation. During games, viewers see the university's promotional commercials, as well as the pride and enthusiasm of Spartan fans. As a crucial source of fostering belonging among Spartans, our successful athletic programs increase the number of applications from high-achieving students and thereby elevate the overall excellence of the university's student body.

MSU Athletics also bolsters our commitment to diversity, equity, and inclusion. Through our 23 teams, we open the door of opportunity to promising students of all backgrounds who, in some cases, might otherwise find a college education inaccessible and unaffordable. Our student-athletes also serve as role models for building an inclusive community. As members of a team, they learn to navigate their differences and unite as one to achieve shared objectives.

* * *

Serving MSU's educational mission:

- 1. How do MSU's football and men's basketball programs contribute to the university's educational mission (other than the production of income)?*

MSU's athletic programs – both men's and women's – contribute greatly to the educational mission of the university and the educational outcomes of our student-athletes. And the revenue resulting from successful football and men's basketball programs allows Michigan State athletics to support 23 teams with more than 700 student-athletes.



It is well documented that participation in collegiate sports helps develop the skills employers in a 21st century economy are looking for, including teamwork and cooperation, competitiveness and critical thinking.

Equally important to our educational mission is our commitment to creating a more diverse, inclusive and equitable institution and our athletic programs helps further that commitment.

Furthermore, studies have shown that success in intercollegiate athletic programs at our institution results in an increased number of applicants and attendees with higher average SAT scores. All of this results in a more robust learning environment for students who are attending a university with an enhanced academic reputation.

2. Why should the Federal government subsidize the university's athletics programs and escalating coaches' salaries and other non-cash benefits?

Tax dollars are not used to fund MSU's athletics department, including its facilities and its coaching staff. In fact, university general funds, which includes tuition revenue, do not fund MSU Athletics – they are a self-sustained auxiliary unit that operates on the revenue generated from ticket sales, sponsorships, media rights and the generous philanthropic contributions of our donors.

3. With the increasing commercialization of the university's football and men's basketball programs, how does the university distinguish its activities from professional sports leagues?

MSU's athletic programs always emphasize that student-athletes are students first and foremost. The institution supports 23 teams that include more than 700 student-athletes across disciplines. Our commitment to their academic excellence is highlighted by the most recent Graduation Success Rate data released by the NCAA that shows an all-time high of 92% among our student-athletes. Similarly, Spartans achieved a four-year Federal Graduation Rate of 80%, which matches the University's all-student rate.



Rutgers—Response Regarding University Athletics and Mission **(excerpt)**

Our athletics programs, including our football and men’s basketball programs, are central to our mission. They are the front door, if you will, through which visitors from across America are welcomed and introduced to a great university.

* * *

When I look at the athletics program, I see an embodiment of the beloved community. I see a program unafraid of doing hard work on and off the field, and one that is able to withstand external scrutiny and maintain a focus on its mission. Our Scarlet Knights demonstrate regularly that Rutgers is able to compete in the classroom and on the field in an elite athletics conference in which thirteen of its schools, including Rutgers, are in the Association of American Universities—the top sixty-six universities in North America.

Admittedly, athletics is expensive, but that is not just a Rutgers story, it is a national story, and leaders in higher education must find a way to restore a measure of balance into the equation. At Rutgers, we will continue to fight to be competitive, we will not take shortcuts, and we are building a financial model that accurately captures and explains our capital investment in athletics, our financial aid practices, and the revenue streams associated with our high-profile sports.

The tax treatment that Rutgers receives—as a public institution of higher education that by statute has delineated public responsibilities, as a Land Grant institution providing resources to residents across the state, and as an instrumentality of the State of New Jersey—is right and proper. I believe that because of our clear and compelling public missions, all our undertakings should receive the same tax treatment at the local, state, and federal levels.

Intercollegiate athletics has changed dramatically in recent years. Court decisions regarding name, image, and likeness, questions of whether intercollegiate athletes should be considered employees and thus permitted to unionize, the ongoing evolution of Title IX, and so many other issues make fluid the future of intercollegiate athletics.

One thing is certain: intercollegiate athletics is vastly different from professional sports. Less than one percent of college athletes will pursue a career in professional sports. Intercollegiate athletics has, over the past century, provided hundreds of thousands of students with scholarships that, for many, were the only pathway to higher education. While these student athletes did not move on to the Super Bowl or the NBA Championship, they have gone on to be business leaders, doctors, lawyers, and engineers. Their college educations have led them to be upstanding, productive, and important members of their communities. They have become our leaders. And their brilliance in collegiate athletic competition has brought lasting excitement, pride, and school loyalty to their alma maters.”



Stanford—Response Regarding University Athletics and Mission **(excerpt)**

Stanford Athletics

At Stanford, we are extremely proud of the breadth and success of our varsity athletics program, which has won 128 NCAA championships. It is an important piece of our university's cultural fabric, and a component of our educational mission. We have built a successful athletic program at Stanford because of our focus on our responsibility to provide the best possible educational experience for all of our students. Athletics is not something pursued at the expense of academics, or even separate and apart from it. Instead, each enhances the other.

Stanford student-athletes, who comprise approximately 11% of Stanford's undergraduate population, contribute to the diversity of background, thought, and talent of our student body. They help to build and strengthen our campus communities and connections with our alumni. But our student-athletes are not a separate group of people off on their own, having a separate experience from the rest of the student body. They are in the very same classes, laboratories, libraries, and undergraduate housing with other students from every conceivable background and walk of life. They have the same exam schedules – even if it means taking a proctored examination on the road at the site of a competition – and the same degree-completion requirements as other students. They also select challenging majors in subjects including human biology; science, technology and society; engineering; management science and engineering; and political science. They have access to a range of academic support services as other students do, including an academic adviser, a major adviser, and skill-building programs in various areas of interest to them. This is a robust educational experience, in close touch with world-class faculty and elbow-to-elbow with other talented students from across the nation and around the world.

Former Stanford athletes have made tremendous achievements in their professional careers outside of athletics. They are United States Senators, university presidents, chief executive officers, astronauts, physicians as well as Olympians. We work to provide an integrated experience in which participation in intercollegiate athletics serves to enhance and supplement the student-athlete's primary academic experience by offering further opportunities to develop relevant skills and leadership capacity. With guidance and support from coaches and staff who are expected to be educators to the same degree they are expected to be competitors, Stanford student-athletes develop and refine valuable skills and qualities like grit, resilience, emotional intelligence, teamwork, accountability, communication, discipline, and time management. In turn, Stanford student-athletes leave the university well prepared to become leaders in their respective postgraduate endeavors and to make meaningful contributions to society.



We firmly believe that the most important thing our student-athletes walk out the door with when they leave Stanford is not a varsity letter or a national championship ring – it is a Stanford degree. This focus has led Stanford athletes to achieve consistently high graduation rates. Stanford Athletics registered an overall graduation rate of 96% in the NCAA's latest Graduation Success Rate (GSR), and specifically a 100% GSR in men's basketball and a 93% GSR in football.



University of Miami—Response Regarding University Athletics and Mission **(excerpt)**

The University's Educational Mission. As noted in our letter of February 14, the Department of Intercollegiate Athletics makes a substantial contribution to furthering the educational opportunities and community-building experiences of the entire student body at the University of Miami. Through the University's 18 sports programs, the approximately 400 student-athletes who compete on behalf of the University provide members of the student body with a shared experience that is an essential aspect of their academic journey and campus life. At the University, as at other universities, a student's inclusive experience is enriched by the atmosphere and opportunities that college sports provide. Because a student's university experience should go beyond the classroom, the leadership at the University of Miami firmly believes that the educational purpose of the University must focus on all aspects of student life, including ensuring that students are connected with and contribute to their surrounding community.

The football and men's basketball programs are particularly important programs in this respect. Moreover, as noted in our letter of February 14, these two sports programs help support the University's Title IX commitments, ensuring that women student-athletes have equal opportunities to participate as members of NCAA Division I sports teams and contribute to an enhanced experience for all students.

In the University's announcement [omitted] that Mario Cristobal would be returning to the University as football head coach, President Julio Frenk noted in particular that "Mario's legacy as a student-athlete at the [University] is well established. And the standard for competitive excellence that he and his teammates helped establish is one to which we continue to aspire. . . . [W]e have found a head coach who shares our belief in providing student-athletes with the very best opportunities to succeed on and off the field." (Coach Cristobal is a double-alumnus, having earned a bachelor's degree in business administration and a master's degree from the University.) Coach Cristobal shares President Frenk's vision. As he noted in the same announcement, "I can't wait to compete for championships and help mold our student-athletes into leaders on and off the field who will make our University, our community, and our loyal fan base proud."

The University's primary focus is to ensure that all student-athletes receive a high-quality education, not just an opportunity to play a sport they love. The University's core mission is thus fundamentally different than that of teams in professional sports leagues, which do not provide those life-changing academic experiences.



University of Southern California—Response Regarding University Athletics and Mission (excerpt)

USC is particularly proud of its successful athletics programs and how those programs advance its educational mission, student experience, institutional pride, and support to local communities. Just like its students who are accomplished actors, artists, dancers, and musicians, the University's student-athletes bring extraordinary talent and dedication to their endeavors at the University. The University takes great pride in its student-athletes and their integral role in building a close-knit community, known as "the Trojan Family," which consists of more than 450,000 living alumni all over the world. Before addressing the specific questions raised by the Committee, we believe it important to provide some relevant context for how the athletics programs at USC advance its educational mission.

* * *

In addition to the educational benefits our student-athletes experience, our athletic programs benefit USC as a whole. Athletic events, particularly our home football games, provide an important platform for our alumni, donors, and supporters to engage with the University's leadership, faculty, students, and staff. Football and basketball games bring back our alumni, attract new students, and allow the University to highlight its faculty and achievements. In a typical year, USC Athletics generates more than \$100 million in broadcast media exposure for the University. This level of media exposure fuels prospective students' interest in attending USC, facilitates the recruitment of faculty, and strengthens the University's ties with existing alumni and donors. For those 19,500 of our undergraduate students who are not student-athletes, the ability to attend athletic events is a highlight of the college experience that helps build a sense of community. More than 12,000 students regularly attend USC home football games.

* * *

Serving USC's educational mission:

1. How do USC's football and men's basketball programs contribute to the university's educational mission (other than the production of income)?

The University's football and men's basketball programs contribute greatly to the overall student experience, the wider community of alumni, fans, and employees, and the long-term success of student-athletes themselves. With respect to students who play football and basketball, as with all student-athletes, the University provides all of the support needed for them to advance both academically and athletically. In particular, USC provides its student-athletes with academic support, mentorship from coaches and training staff, and education on maintaining sound physical and mental health. USC Athletics is regarded as having one of the top student-athlete academic support and sports psychology programs in the country. Students who participate in any sport also receive advanced instruction on exercise, eating habits,



and the maintenance of their physical and mental health that provides lifelong benefits. Athletic participation also provides student-athletes the opportunity to travel to and explore different parts of the country and, in some cases, the world. The ability to travel to and learn to navigate new places is an important life skill. USC's Student Athletic Experience Task Force, which is cochaired by Provost Charles F. Zukoski and Athletic Director Mike Bohn, is focused on providing positive experiences for all USC student-athletes.

Our student-athletes also benefit from the scholarship support they receive. USC Athletics provides \$22 million in athletic scholarships, allowing many student-athletes to attend college who might otherwise be denied the opportunity due to their economic circumstances. Because of their athletic scholarships, many student-athletes graduate from USC without debt; this provides the financial flexibility to attend graduate school or work in public service, and further increases the probability of enhanced lifetime earnings and positive outcomes.

Participation in student-athletics has a direct, positive correlation with graduation rates, academic performance, and physical and mental health. Indeed, it was many of these considerations that led Congress to increase athletic participation for women when Title IX was enacted. When attendance at football and basketball games is strong, those programs provide revenues in excess of expenses that assist the University in supporting non-revenue sports for both male and female athletes.

Athletic events, and in particular home football games, also provide important social and bonding opportunities for students, faculty, and the larger community, as well as with alumni and donors who contribute gifts for academic and research work at the University. The University's Associate Senior Vice President for Alumni Relations describes the ability of alumni to come together at a football game as a "brand accelerator" that brings alumni together to support the educational mission of the University. The University uses football games to showcase its faculty through what is known as the "Faculty Spotlight," which shows a faculty member on the big screen at a football game in a manner that highlights their research and teaching. On broadcasts of its football and basketball games, USC is provided the opportunity to advertise and promote the University's educational and research mission, which assists in recruiting faculty and students. The ability to utilize athletic events as media platforms to highlight the University's academic achievements, research, and faculty shows current donors the value that their gifts create and attracts additional philanthropic support for the University's educational mission.

Athletic events also help the University recruit potential students who enjoy and want to attend competitive athletic events involving highly-skilled athletes. The University's athletics facilities are an important draw for prospective students and are featured on student tours. The ability to attend athletics events is a highlight for many students as shown by their significant levels of attendance at USC football and basketball games,



and televised games provide important exposure not just to the University's athletic teams but to the University as a whole.

The success of USC's athletics program also builds philanthropic interest from non-alumni who are fans and followers of USC sports. Athletic donors tend to support multiple areas across USC in addition to athletics, including academic scholarships, research, community outreach programs, health, and student programs. The strong, proud tradition of USC Athletics serves to introduce many fans, both young and old, to USC as an academic institution. These alumni and friends contribute philanthropically to USC, and also serve as mentors, advisory board members, and volunteers.

In 2020-21, 616 University students participated in varsity sports, including 332 who are paying tuition. The University has an additional 300 spirit and band students who are drawn to the University for a number of reasons, including participation in high-profile athletics events. Research also indicates that a successful athletics program positively influences individuals across the USC ecosystem, including students, faculty, and staff, and that successful athletics and the success of a university as a whole tend to move in the same direction.

2. Why should the Federal government subsidize the university's athletics programs and escalating coaches' salaries and other non-cash benefits?

As set forth in the response to the prior question, athletics at USC is an important part of the fabric of the University that enhances our educational mission and the experiences of everyone associated with the University, including students, faculty, staff, and alumni. As detailed in the response to the next question, successful athletics programs enhance those positive effects, and a successful football program is the most significant source of revenue for an athletics department, including USC's. Coaching talent is by far the best predictor of team performance, team performance directly relates to revenue production, and the University's football program's excess revenues are vital to funding non-revenue and lower-revenue sports.

Overall, approximately 500,000 students participate in NCAA sports each year and NCAA member institutions distribute more than \$3 billion in scholarships to its participants. College athletics creates immeasurable opportunity for so many young Americans for whom higher education may otherwise not be possible. College athletics has also elevated the global platform of women's empowerment through sport. Importantly, college athletics also enhances campus diversity as the percentage of Black/African-American student-athletes is typically much greater than the Black/African-American population among general students. Athletics supports the University's overall mission in numerous ways and is worthy of the subsidy it receives from the Federal government.



3. With the increasing commercialization of the university's football and men's basketball programs, how does the university distinguish its activities from professional sports leagues?

The University's athletics programs are not comparable to professional sports leagues, and the differences between intercollegiate athletics and professional sports are profound.

First and foremost, the students participating in the University's athletics activities are both students and athletes. Professional sports leagues do not award academic degrees that support enhanced lifetime earnings and positive outcomes. Academic performance and progress toward degree requirements are not merely aspirational for the University's student-athletes – they are required for their very participation in their athletic activities.

While many view college athletics and commercialization solely through the lens of football and men's basketball athletes, 80 percent of USC's student-athletes participate in other sports. Like their football and men's basketball counterparts, these USC student-athletes greatly value their education, which is one of the primary motivators for why they choose to attend USC. USC's student-athletes attend USC by choice and not because they were drafted by a professional team, which is another significant differentiator between college and professional sports. USC believes that its student-athletes chose USC because of the opportunities it affords them academically, athletically, professionally, and culturally.

Second, the business models of college athletics programs and professional sports teams are very distinct. Professional sports organizations are usually single entities that manage a single team as part of a league that focuses on a single sport with a primary goal of generating profit. In contrast, college athletics programs exist within an academic ecosystem of a university and manage more than a dozen sport programs. At USC, the athletics department is responsible for the well-being of more than 600 athletes. A single professional sports team could be responsible for as few as 15 players. USC surrounds its student-athletes with sizable support staffs to assist them with all aspects of their education, life, growth, and development, and their parents are routinely involved in the relationships between player and coach. Professional athletes are simply expected to perform and behave like professionals.

Third, USC Athletics operates with the expectation that most of its sports teams will not generate revenues to cover their costs. Last year, USC's non-revenue or lower-revenue sport programs operated at a loss of more than \$30 million. Per USC's NCAA financial reporting, those same sport programs have accounted for a deficit of about \$238 million over the past 10 years. USC estimates that approximately 85-90 percent of its athletics revenues are connected, directly or indirectly, to its football program. Without a vibrant football program, the ability of the athletics department to fund the significant costs of its other programs would be severely strained.



Professional sports teams do not invest significant percentages of their revenue into activities that operate at a deficit.

Universities choose to support non-revenue sports because they provide opportunities to student-athletes, enhance the overall student experience, and contribute to the University's educational mission. USC is proud to support all 21 of its athletics programs to the best of its ability – regardless of whether or not they generate any revenue. If college athletics were managed strictly like a business, universities would dramatically reduce funding for all non-revenue and lower revenue sports, or even eliminate them altogether. With so much at stake for hundreds of student-athletes in non-revenue sports, it is critical that universities be permitted to manage their extraordinarily complex business operations, including hiring and compensation decisions, in a manner that allows all of their sport programs – both revenue-producing programs like football and men's basketball, as well as non-revenue producing sport programs – to succeed.

Fourth and finally, there is a stark contrast between the treatment of student-athletes as college students and the treatment of professional athletes as full-time employees. Student-athletes entering college are free to choose which school they want to attend. Student-athletes are at USC because they want to be at USC, unlike professional athletes who are typically drafted to whichever team selects them. Student-athletes, despite signing letters of intent and financial aid agreements, are typically free to transfer to a different university at any time without penalty. Professional athletes are beholden to their contracts, which can generally be reassigned to other teams without their consent. Student-athletes are not subject to termination for poor performance, do not lose scholarships due to injury, and are protected by restrictions that prevent universities from unilaterally canceling their financial aid agreements. Professional athletes always perform under the threat of being fired and can generally have their contracts terminated for any reason. Student-athletes are not subjected to excessive fines for rules violations or inappropriate conduct. Professional athletes are routinely fined for such conduct.

We would also note that USC does not cut ties with its student-athletes who leave to play professional sports but remains supportive of their obtaining degrees. An important thread that connects student-athletes and professional athletes at USC is the Former Athlete Degree Achievement Program (FADAP), which allows former student-athletes who turn professional and leave USC in good academic standing to receive scholarship funding to return to the University to complete their degrees. Over the past five years, 102 former student-athletes have received FADAP funding to assist with the completion of their undergraduate degrees, which accounts for more than \$2.7 million in tuition dollars spent by USC Athletics on its former student-athletes.



Villanova University—Response Regarding University Athletics and Mission **(excerpt)**

Serving Villanova's educational mission:

You have asked how Villanova's men's basketball program and related sports facilities contribute to Villanova's educational mission, and as such, why the Federal Government should continue to subsidize Villanova's athletics programs. Further, you have asked how Villanova distinguishes its activities from professional sports leagues.

The men's basketball program contributes to Villanova's educational mission in a number of ways beyond the revenues generated for Villanova. As noted above, the unique purpose of any institution of higher learning is to provide a comprehensive educational experience for its students. The scope of a comprehensive educational experience includes enabling students to acquire knowledge through coursework and academics for the purpose of ultimately establishing a career path consistent with the student's goals and hard work; however, just as importantly, a comprehensive educational experience also includes opportunities for students to participate in activities that supplement coursework and other academic endeavors. For some students, such opportunities may consist of participating in a dance team, writing for a student newspaper, acting in a student theater group, singing in a student choir, campaigning for a student government position; for others, such opportunities may consist of participating in an athletics program and excelling at a sport for which the student has dedicated hundreds, if not, thousands of hours of practice and hard work. Despite the varying facets of each of the foregoing activities, it is clear that each such activity is a key component of a university's mission to educate its students by enabling them to learn and develop key lessons that will serve them as they become productive citizens going forward.

As noted above, Villanova strives to provide its students with an Augustinian education based, in part, on the ideals of forming a community and respecting the obligation to serve the community, in each case as part of a comprehensive educational experience. Villanova's athletics program, and in particular its men's basketball program, is a key component of Villanova's vision and mission in a number of significant ways. The men's basketball program is a nationally recognized Division I program that is a leading promoter of school spirit and unity, which enables students to take pride in and be connected to Villanova. In doing so, the men's basketball program serves to strengthen the bond that students have with Villanova, resulting in additional alumni support and participation in Villanova's events and initiatives, including, but not limited to, assisting current students with internships and job opportunities, among other things. Further, the men's basketball program provides an important opportunity for historically underrepresented individuals to receive higher education at an affordable cost. As noted above, the men's basketball program



provides student-athletes with critical life lessons in leadership, perseverance, responsibility, time management, verbal communication with peers and adults, sportsmanship, and other similar traits, all of which will enable them to be future leaders in their professions and communities. In fact, relevant data supports this conclusion. The Harvard Business Review recently reported that half of the top female executives in the world are former college athletes, indicating that participation in a college athletics program in-part provides significant opportunities to gain lifelong lessons that are key to future growth in the student-athletes' professional and personal lives. In addition, the men's basketball program serves as a key platform for student-athletes who wish to become professional athletes by providing such students with recruiting, training and other opportunities to stand-out as professional sports leagues commence their selection processes.

Ultimately, Villanova's athletics program is as important to the comprehensive educational experience of student-athletes as singing in a student choir is to student singers, dancing in a student dance team is to student dancers, participating in a model-UN team is to students interested in foreign affairs, participating in a student debate team is for students interested in debate, campaigning for student-elected political positions is to campus leaders, and others. If you asked any of the foregoing students to describe a formative experience from their college years that served them well for their future life endeavors, it is reasonably likely that the dancer would cite his or her student dance team, the singer would cite his or her student choir, the debater would cite his or her debate team, and indeed, the student-athlete would cite his or her sports team. To discount the impact and opportunities for learning that Villanova's athletics program provides to student-athletes as part of its mission to provide a comprehensive Augustinian educational experience would be akin to discounting the impacts of each of the other foregoing activities that undoubtedly have significant impacts on the applicable students who participated thereof. Similarly, Villanova makes a number of investments and expenditures to its campus designed to enhance such experiences for its students, ranging from construction on Villanova's new performing arts center, including a 400-seat proscenium-style theater and 200-seat courtyard theater, to state of the art athletic facilities, among other things. Villanova investments in athletic facilities is as important to the comprehensive educational experience of student-athletes and nonstudent-athletes who use such facilities for recreational purposes as its investments in performing arts centers, studios and other facilities are for students involved in theater, music, dance, and other related activities that are each part of the student's comprehensive educational experience. Many of the facilities are used for University events and purposes that are not related to Athletics. Without the Finneran Pavilion or Villanova Stadium, Villanova would not have sufficient space for Commencement, career fairs and other student events. The Finneran Pavilion and Villanova Stadium also benefit the local community in their use of them for high school graduations, high school college fairs, and other community events.



Your letter indicates, "Educational organizations, including private universities like Villanova, comprise one of the largest segments of the tax-exempt sector. Undoubtedly, most of the activities undertaken by Villanova further Villanova's tax exempt purposes". Further, your letter raises the question of how Villanova distinguishes its activities from professional sports leagues. The underlying goal behind the tax-exempt status of educational organizations is to educate students, and in doing so, provide a comprehensive educational experience thereof. Villanova's athletics department is vastly different from a professional sports league. The underlying goal of a professional sports league is to focus on a sport and produce a profit for the applicable team's owner(s). In contrast, the underlying goal of Villanova's athletics program, including the men's basketball team, is to provide opportunities for young men and women to participate in a sport of his or her choosing to which he or she has devoted hundreds if not thousands of hours of their life via practice and hard work for the purpose of providing a comprehensive higher educational experience. The foregoing, in addition with other data provided in this letter, indicates that Villanova's athletics program, including its men's basketball program, is a key component to satisfying this goal.

In sum, Villanova's underlying mission is exemplified by its motto, "Veritas, Unitas, Caritas", or truth, unity, love. Villanova seeks to exemplify this motto in all of its endeavors to prepare students to be leaders in the future. The men's basketball program serves as a means not only to benefit student-athletes; instead, it is a critical component of Villanova's culture and school spirit by providing a values-based, co-curricular opportunity for athletes and non-athletes to come together in this unique experience.



STAFF SUMMARY OF RESPONSES AND INFORMATION RELATED TO COMPENSATION AND THE EXCISE TAXES ON CERTAIN COMPENSATION UNDER SECTION 4960 OF THE INTERNAL REVENUE CODE

For background on excise taxes applicable to certain compensation paid by tax-exempt organizations, see *Appendix A*. In the letter, the Chair asked the following questions with respect to compensation paid by each university:

- How many university employees have a compensation package (amounts provided in pay and benefits) above \$1 million each year? How many of these employees work for the athletics department?
- How many employees in the athletics department are paid over \$5 million each year?
- Does [UNIVERSITY] take the position that the tax under Section 4960 of the Internal Revenue Code applies to it? If so, how much tax has the university paid under Section 4960 each year since its enactment?

The universities reported various benefits as part of the compensation packages provided to their coaches. Typical benefits included insurance (health, life, and disability), retirement benefits, travel and transportation benefits, use of or loans for a personal residence, tuition reimbursement, membership at a local country club or social club, a clothing allowance, and severance/termination payments. With respect to transportation, universities reported that coaches may be entitled to chartered air travel, family travel or, in one case, a stipend of \$275,000 for personal air travel, and most coaches are provided vehicle leases, stipends, or dealership courtesy vehicles. Further, some universities reported tickets to games were provided to coaches with club or prime seats. Finally, compensation packages included signing bonuses and various incentives for post-season participation, coach recognition awards, academic achievements by players, and long-term employment.

The detailed responses are below. Also, noted below is information provided by Internal Revenue Service Form 990 (Return of Organization Exempt from Income Tax), if available.

	Comp. > \$1 million	Comp. >\$5 million	Excess Comp. Tax/4960
Auburn University	Three employees in the athletic department had compensation over \$1 million.	Men's Basketball Head Coach and Football Head Coach.	No response.



	Comp. > \$1 million	Comp. >\$5 million	Excess Comp. Tax/4960
Duke University	Twelve employees had compensation over \$1 million and four are in the athletic department. As reported on Form 990 (2019): Coach \$6.3M in reportable compensation; Coach \$2.8M in reportable compensation; Coach \$1.3M in reportable compensation; VP Athletics \$2.3M in reportable compensation.	Men's Basketball Head Coach	Yes. "Since Section 4960 of the IRS Code went into effect, Duke has paid \$7,213,068 in excise taxes for executive compensation."
LSU	Seven employees in the athletic department have base salaries and supplemental compensation of over \$1 million. References publicly available contracts on its website. Per reference, four head coaches (football, baseball, men's basketball, and women's basketball), two assistant football coaches, and the Director of Athletics each have a base salary and supplemental compensation (media packages) in excess of \$1 million.	Football Head Coach	"In addition, as a political subdivision of the state, LSU is not subject to federal income tax by virtue of an implied statutory immunity."
Michigan State	Three employees have compensation over \$1 million and two are in the athletic department.	Football Head Coach	Yes. "Form 4720 Excise tax paid: 2020-\$3,293,212, 2019- \$1,335,383, 2018-\$299,451"
Rutgers	Twenty-six employees have compensation over \$1 million and four are in the athletic department.	None reported	Yes. "Approximately \$420,000 of excise tax paid each year since the effective date of Section 4960." Expected tax will be \$807,000 for football coach in 2021.
Stanford University	Fourteen employees have compensation over \$1 million and one is in the athletic department. As Stanford reported: "As reflected in the University's 2019 Form 990, [the head coach of the Stanford Football team] earned total compensation of \$8,924,683."	Football Head Coach	Yes. "Paid \$6,262,194 since the executive compensation excise tax went into effect in 2018."



	Comp. > \$1 million	Comp. >\$5 million	Excess Comp. Tax/4960
Univ. of Miami	Response was an attached Form 990. Seven employees have compensation over \$1 million and two are in the athletic department. As reported on Form 990 (2019): Head Coach, Football \$9.5M in reportable compensation; Head Coach, Basketball \$2.4M in reportable compensation.	Football Head Coach	Yes. The University's Form 990 (2019) states it is subject to the 4960 excise tax on remuneration or excess parachute payment(s) during the year.
USC	Forty-two employees have annual compensation over \$1 million and seven are in the athletic department. As reported on Form 990 (2019): Head Football Coach \$4.6M in reportable compensation; Head Basketball Coach \$3.2M in reportable compensation	None reported	Yes. In FY19 tax liability of \$1,742,835; FY20 tax liability of \$3,109,183; and FY21 tax liability of \$2,805,099.
Villanova	One employee has annual compensation over \$1 million. Non-cash compensation: membership to a country club as well as an automobile or allowance to acquire an automobile; access to clothing and gear; and tuition remission (for all employees) is available. As reported on Form 990 (2019): Coach, Men's Basketball \$6.1M in reportable compensation	Former Men's Basketball Head Coach	Yes. "With respect to taxable years 2018, 2019, and 2020, ... Villanova paid the following amounts in tax pursuant to Section 4960 of the IRC (a) \$558,396; (b) \$1,083,563; and (c) \$1,005,927 respectively".



STAFF SUMMARY OF RESPONSES AND INFORMATION RELATED TO REVENUE AND EXPENSES

In the letter, the Chair requested information regarding the revenue and expenses of the athletics programs. Specifically, the Chair asked the following:

- What were the revenue and expenses for the university's football and men's basketball programs over each of the past ten years? Please break revenue out by category (e.g., tuition, endorsements, sponsorships, royalties, licensing, television contracts, radio programming). How much of this revenue, if any, is from booster clubs, affiliated foundations, and other alumni donations? Please separately identify recruitment expenses.
- Do the football and men's basketball programs generate revenues in excess of program expenses? If so, are revenues used to support the non-athletic educational operations of the university? Specifically, what other operations have these revenues supported each year in the past ten years and how much per operation per year?
- If the football and men's basketball programs are not self-sufficient or were not in any of the past ten years, did non-university entities, such as booster clubs or alumni donors, finance either program?
- What were the five biggest non-tuition sources of revenue for the football and men's basketball programs annually over the past ten years?

All nine universities answered these questions to varying degrees. In this report, the Subcommittee staff summarized the general expenses and revenue for the university's men's football and basketball teams and whether these programs are self-sustaining. Excerpts from their responses are available below. Further, for comparison purposes, the Subcommittee staff utilized the most recent publicly available revenue and expense data from the Department of Education Equity in Athletics Data Analysis (EADA) database.^[6] This data is from the reporting period for the 2020-2021 academic year. All co-educational institutions of higher education that receive Title IV federal student financial assistance program funding and have an intercollegiate athletics program are required to submit to this database annually.

[6] Equity in Athletics (ed.gov).



Auburn University—Response Regarding Revenue and Expenses

Auburn University included information related to its athletic department’s revenue and expenses and how the department was impacted by the COVID-19 pandemic. It also stated, “Auburn Athletics is largely self-sustaining.” Regarding the revenues and expenses of the men’s basketball team, it noted, “In the 2021 Fiscal Year, the Auburn men’s basketball program generated approximately \$17 million in revenue and incurred approximately \$10 million in expenses. The majority of this operating revenue was derived from the sale of media rights.”

Auburn University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$9,917,360	\$4,160,913	\$14,078,273
Football	\$51,651,237	N/A	\$51,651,237
Total Revenues of All Sports, Except Football and Basketball Combined	\$9,947,191	\$16,936,929	\$26,884,120
Total Revenues Men’s and Women’s Teams	\$71,515,788	\$21,097,842	\$92,613,630
Not Allocated by Gender/Sport	N/A	N/A	\$35,742,865
Grand Total for All teams	N/A	N/A	\$128,356,495



Duke University—Response Regarding Revenue and Expenses

Duke University included a chart with the men’s basketball team revenue and expenses for the past 10 years, and further stated:

. . . [T]he men’s basketball program generates revenues in excess of program expenses. These funds support the overall mission of the Department of Athletics and help provide support for Duke’s 27 varsity sports and 700 college athletes. This support includes health, wellness, nutrition, travel, equipment, academic advising, life-skills and career counseling and other services, as well as investments in people and facilities that serve the Department of Athletics and the university as a whole. Such funding allocations are critically necessary for the maintenance of a well-rounded program of athletic and student-development opportunities, since in the majority of our intercollegiate sports, and in our student club sport and recreational programs, expenses generally exceed revenues.

Duke University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$22,513,062	\$3,395,867	\$25,908,929
Football	\$37,347,689	N/A	\$37,347,689
Total Revenues of All Sports, Except Football and Basketball Combined	\$8,752,474	\$19,022,465	\$27,774,939
Total Revenues Men’s and Women’s Teams	\$68,613,225	\$22,418,332	\$91,031,557
Not Allocated by Gender/Sport	N/A	N/A	\$16,083,675
Grand Total for All teams	N/A	N/A	\$107,115,232



Louisiana State University—Response Regarding Revenue and Expenses

Louisiana State University included a link to its athletics website, which provides the public with multiple financial documents related to concessions, employment, equipment, games, multimedia rights, and NCAA financial reports. While football and men’s basketball are its main revenue-generating sports, it stated, “LSU has clearly demonstrated its funds are being used in support of the 500+ student-athletes, most of whom are not on the football or men’s basketball team. Our department uses every allowable avenue to financially provide support for our student-athletes in their quest to obtain a world-class education at LSU.”

Louisiana State University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$7,428,061	\$2,122,016	\$9,550,077
Football	\$38,825,886	N/A	\$38,825,886
Total Revenues of All Sports, Except Football and Basketball Combined	\$3,255,157	\$17,793,648	\$21,048,805
Total Revenues Men’s and Women’s Teams	\$49,509,104	\$19,915,664	\$69,424,768
Not Allocated by Gender/Sport	N/A	N/A	\$44,563,041
Grand Total for All teams	N/A	N/A	\$113,987,809

Louisiana State University and Agricultural & Mechanical College provided additional funds to cover expenses incurred by our varsity teams this year. Typically, some of our men’s teams provide enough revenue to cover the costs of our other varsity teams. However, these teams did not generate enough revenue due to the constraints that occurred along with the COVID-19 pandemic. The institution allocated \$5,916,152 to the Men’s teams and \$18,677,101 to the Women’s teams to cover these costs.



Michigan State University—Response Regarding Revenue and Expenses

Michigan State University included an attachment with detailed revenue and expense data for the past ten years and also noted that “[t]he football and men's basketball programs have both been self-sufficient in all the past ten years.”

Michigan State University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men's Teams	Women's Teams	Total
Basketball	\$12,266,921	\$3,750,020	\$16,016,941
Football	\$37,448,047	N/A	\$37,448,047
Total Revenues of All Sports, Except Football and Basketball Combined	\$9,750,312	\$12,432,841	\$22,183,153
Total Revenues Men's and Women's Teams	\$59,465,280	\$16,182,861	\$75,648,141
Not Allocated by Gender/Sport	N/A	N/A	\$12,364,700
Grand Total for All teams	N/A	N/A	\$88,012,841

Revenues were significantly lower in 2020-21 due to the COVID pandemic. Fans were not permitted at most competitions, so there were no ticket sales or other game day revenue and broadcast revenue was reduced due to limited schedules. Expenses were also down due to COVID limitations and restrictions, as well as intentional budgets cuts, including salary reductions and furloughs. To show revenues at least equal to expenses, per EADA guidelines, the net loss for each sport was added back as revenue, assuming the losses were covered by department reserves and arrangements with MSU administration. Also, the EADA format excludes capital expenditures and debt service revenue totaling \$16.7 million. If contributions were not received for a specific project or sport, but expenses were incurred, the revenue "not allocated by gender/sport" was reduced. If contributions were received toward a project/sport for which expenses were incurred, both the revenue and expense for that sport was reduced.



Rutgers University—Response Regarding Revenue and Expenses

Rutgers University included tables with the past ten years of revenue and expenses for the men’s football and basketball programs and a table with the level of donor contributions to these teams over the past 10 years. In its response, Rutgers noted that the most recent revenue totals were largely reduced due to the impact of COVID-19. It also stated:

While not all of our varsity sports generate income, the football and men’s basketball programs do generate revenues in excess of their costs. Those excess revenues are used to support the operations of the entire athletic department, including the non-revenue Olympic sports. These revenues also support opportunities for female student athletes in accordance with Title IX.

Rutgers University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$7,925,210	\$4,912,809	\$12,838,019
Football	\$35,075,181	N/A	\$35,075,181
Total Revenues of All Sports, Except Football and Basketball Combined	\$9,434,656	\$15,770,527	\$25,205,183
Total Revenues Men’s and Women’s Teams	\$52,435,047	\$20,683,336	\$73,118,383
Not Allocated by Gender/Sport	N/A	N/A	\$17,596,232
Grand Total for All teams	N/A	N/A	\$90,714,615



Stanford University—Response Regarding Revenue and Expenses

In an appendix, Stanford University included ten-year information on student-athlete benefits as well as revenue and expenses for the football and men's basketball programs. In its response, it also stated, "While football and men's basketball generate net revenue, primarily through TV contracts and ticket sales, our other 34 sports do not. All of the revenue the University receives from football and men's basketball is used to support our intercollegiate athletics program, including the 87% of student-athletes who participate in the 34 sports that do not generate net revenue."

Stanford University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 09/01/2020 – 08/31/2021)

Varsity Teams	Men's Teams	Women's Teams	Total
Basketball	\$6,660,155	\$6,160,030	\$12,820,185
Football	\$27,585,061	N/A	\$27,585,061
Total Revenues of All Sports, Except Football and Basketball Combined	\$14,571,244	\$22,348,570	\$36,919,814
Total Revenues Men's and Women's Teams	\$48,859,632	\$28,710,071	\$77,569,703
Not Allocated by Gender/Sport	N/A	N/A	\$50,084,261
Grand Total for All teams	N/A	N/A	\$127,653,964

Women's squash did not compete in any intercollegiate games or competitions during the EADA reporting year due to COVID-19 and has therefore been excluded from the above. For the purposes of EADA, revenue allocated to varsity teams includes institutional support used to pay for team expenses.



University of Miami—Response Regarding Revenue and Expenses

The University of Miami provided its Form 990 to the Chair for review. The University also stated, “As we noted in our letter of February 14, the football and men’s basketball programs collectively generated necessary revenue over the past 10 years to fund the University’s other 16 NCAA-sponsored programs and the athletic administrative expenses for all 18 athletics programs. In addition, these two sports programs help support the University’s Title IX commitments.”

The University of Miami also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 06/01/2020 – 05/31/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$7,643,768	\$5,003,061	\$12,646,829
Football	\$34,421,031	N/A	\$34,421,031
Total Revenues of All Sports, Except Football and Basketball Combined	\$8,202,726	\$12,714,225	\$20,916,951
Total Revenues Men’s and Women’s Teams	\$50,267,525	\$17,717,286	\$67,984,811
Not Allocated by Gender/Sport	N/A	N/A	\$24,534,519
Grand Total for All teams	N/A	N/A	\$92,519,330



University of Southern California- —Response Regarding Revenue and Expenses

The University of Southern California included various charts related to revenue, including a chart which provided the revenues for the football and men’s basketball teams in 2020, a chart that listed the total operating expenses for the football and men’s basketball teams in 2020, and a chart that had the full revenue and expenses for the football and men’s basketball teams over the last ten years. It stated, “The University’s football and men’s basketball programs do not draw from its tuition income, but are generally self-funded through a mix of ticket sales, media rights, and other income. The football program in most years generates more revenue than expenses, which allows the University to fund other activities and athletics programs.” Relatedly, it also stated, “Generally, the football program generates revenues in excess of expenses, while the men’s basketball program generates expenses in excess of revenues. Any such excess revenues from the football and men’s basketball programs are paired with other athletics department revenues and utilized to fund the University’s 19 other sports.”

The University of Southern California also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 07/01/2020 – 06/30/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$7,145,203	\$3,221,775	\$10,366,978
Football	\$29,432,107	N/A	\$29,432,107
Total Revenues of All Sports, Except Football and Basketball Combined	\$9,648,781	\$16,936,595	\$26,585,376
Total Revenues Men’s and Women’s Teams	\$46,226,091	\$20,158,370	\$66,384,461
Not Allocated by Gender/Sport	N/A	N/A	\$55,961,365
Grand Total for All teams	N/A	N/A	\$122,345,826

Due to COVID, revenue for FY21 was uncharacteristically low. Therefore, additional institutional supported was allocated in this section so that revenues covered total expenses.



Villanova—Response Regarding Revenue and Expenses

Villanova University included a set of spreadsheets with the athletics department’s revenues and expenditures for the men’s basketball team for fiscal years 2012-2021. Villanova also noted:

[T]he revenues associated with the men’s basketball program typically exceed expenses associated with the program. For the athletic department as a whole, operating expenses regularly exceed annual revenues. The operating shortfall for the athletics department as a whole is subsidized by Villanova. Any revenues in excess of operating expenses for the men’s basketball program serve to reduce the overall institutional subsidy for the athletic department. Lastly, the men’s basketball program is currently self-sufficient and was not self-sufficient twice in the last ten years. The shortfall during the applicable two instances was subsidized by Villanova.

Villanova University also publicly reports its athletic team revenue in the EADA database. Its most recent information contains the chart below.

Total Revenues by Team
(Reporting Year: 06/01/2020 – 05/31/2021)

Varsity Teams	Men’s Teams	Women’s Teams	Total
Basketball	\$12,019,905	\$2,807,561	\$14,827,466
Football	\$5,968,838	N/A	\$5,968,838
Total Revenues of All Sports, Except Football and Basketball Combined	\$5,225,221	\$9,360,522	\$14,585,743
Total Revenues Men’s and Women’s Teams	\$23,213,964	\$12,168,083	\$35,382,047
Not Allocated by Gender/Sport	N/A	N/A	\$10,383,583
Grand Total for All teams	N/A	N/A	\$45,765,630



**APPENDIX A: CONGRESSIONAL RESEARCH
SERVICE MEMORANDUM TO CONGRESSMAN
BILL PASCRELL, JR. PROVIDING
“INFORMATION ON THE TAX-EXEMPT STATUS
OF COLLEGES AND UNIVERSITIES AND
SECTIONS 4960 AND 4958 OF THE INTERNAL
REVENUE CODE” (OCTOBER 17, 2022)**



MEMORANDUM

October 17, 2022

To: Congressman Bill Pascrell, Jr.
From: Erika K. Lunder, Section Research Manager, elunder@crs.loc.gov, 7-4538
Subject: **Information on the Tax-Exempt Status of Colleges and Universities and Sections 4960 and 4958 of the Internal Revenue Code**

This memorandum responds to your request for a brief description of the tax-exempt status of colleges and universities, the tax imposed under Section 4960 of the Internal Revenue Code (IRC) on excess remuneration, the Internal Revenue Service (IRS) guidance regarding the application of Section 4960 to state colleges and universities, IRS regulations addressing avoidance of the tax, and the tax imposed under IRC Section 4958 on excess benefit transactions.¹

Tax-Exempt Status of Colleges and Universities

Private nonprofit colleges and universities may qualify for federal tax-exempt status as educational organizations described in Section 501(c)(3).² A private college or university must apply to the IRS for 501(c)(3) status and, if approved, is to receive a determination letter confirming the status.

The issue is more complicated for state colleges and universities. Like private nonprofit colleges and universities, state colleges and universities may be able to qualify for federal tax-exempt status as Section 501(c)(3) educational organizations. A state college or university seeking such recognition must apply to the IRS and, if approved, is to receive a determination letter just like a private college or university.

The complication arises because this is not the only way that state colleges and universities may be exempt from federal income taxes. Specifically, they may qualify for exemption under two methods that are distinct from Section 501(c)(3) and are based on their relationship with a state: the doctrine of implied statutory immunity or Section 115(l). The doctrine of implied statutory immunity applies to states, their political subdivisions, and entities that are integral parts of a state or political subdivision (“governmental units”). Under this doctrine, the income of states, political subdivisions, and governmental units is not subject to federal taxation unless there is a specific statutory authority to tax that income.³ An entity may be treated as a political subdivision of a state if it has the authority to exercise the state’s sovereign powers (i.e., the power to tax, power of eminent domain, or police powers) and may be treated as an “integral part” of a state if the state has a sufficient degree of control over and financial commitment to

¹ All sections referred to in this memorandum are in the Internal Revenue Code of 1986.

² Section 501(c)(3) describes entities “organized and operated exclusively” for religious, charitable, educational and other specified purposes, whose net earnings do not inure to the benefit of any private shareholder or individual, and who engage in an insubstantial amount of lobbying and no electioneering activities.

³ See, for example, IRS Rev. Rul. 87-2, 1987-1 C.B. 18 (Jan. 1987).

the entity.⁴ Section 115(1) excludes “income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof...” The IRS’s interpretation of the scope of Section 115(1) is discussed below.

Excise Tax Under Section 4960

Section 4960 imposes an excise tax on tax-exempt organizations that, during the year, pay remuneration of at least \$1,000,000 to a covered employee or make an excess parachute payment to a covered employee. An excess parachute payment is a payment made upon an employee’s separation from employment that exceeds an amount based on a statutory formula. Covered employees are the organization’s five highest compensated employees during the year, as well as any individuals who were covered employees for any taxable year beginning after December 31, 2016. The tax is imposed at the corporate income tax rate of 21% on the amount of remuneration in excess of \$1,000,000 plus the amount of any excess parachute payment.

The tax is imposed on applicable tax-exempt organizations (ATEOs), which are:

- Organizations that are exempt from tax under Section 501(a). This includes the nonprofit organizations described in Section 501(c)(1)⁵ to (29), such as 501(c)(3) charitable, educational, and religious organizations, among others.
- Farmers’ cooperatives that are exempt from tax under Section 521.
- Political organizations that are exempt from tax under Section 527. These organizations have the primary purpose of engaging in electioneering and similar activities.
- Organizations that have income excluded from tax under Section 115(1). As mentioned, that section excludes “income derived from ... the exercise of any essential governmental function and accruing to a State or any political subdivision thereof...”

For purposes of Section 4960, remuneration includes amounts paid with respect to employment of the employee by entities “related” to the ATEO, with the ATEO and other entities then each generally liable for a portion of the tax. The statute provides that an entity is related to an ATEO if it controls or is controlled by the ATEO, is controlled by one or more persons who controls the ATEO, or has certain specified relationships with the ATEO.⁶

Section 4960 was enacted by P.L. 115-97, commonly referred to as the Tax Cuts and Jobs Act, and is effective for taxable years beginning after December 31, 2017. The House Report accompanying the bill that became P.L. 115-97 explained that:

The Committee believes that tax-exempt organizations enjoy a tax subsidy from the Federal government because contributions to such organizations are generally deductible and such organizations are generally not subject to tax (except on unrelated business income). As a result, such organizations are subject to the requirement that they use their resources for specific purposes, and the Committee believes that excessive compensation (including excessive severance packages) paid to senior executives of such organizations diverts resources from those particular purposes. The Committee further believes that alignment of the tax treatment of excessive executive compensation (as top executives may inappropriately divert organizational resources

⁴ See, for example, 26 C.F.R. § 1.103-1(b); IRS Rev. Rul. 77-164, 1977-1 C.B. 20 (Jan. 1977); IRS Rev. Rul. 77-165, 1977-1 C.B. 21 (Jan. 1977); IRS Rev. Rul. 87-2, 1987-1 C.B. 18 (Jan. 1987); IRS Priv. Ltr. Rul. 200210024 (Nov. 29, 2001); and IRS Priv. Ltr. Rul. 200307065 (Nov. 5, 2002).

⁵ The IRS is considering the treatment of certain federal instrumentalities described in Section 501(c)(1). See Internal Revenue Service, “Tax on Excess Tax-Exempt Organization Executive Compensation,” 80 *Federal Register* 6196, January 19, 2021, p. 6197 (hereinafter “Final Regulations”).

⁶ 26 U.S.C. § 4960(c)(4).

into excessive compensation) between for-profit and tax-exempt employers furthers the Committee's larger tax reform effort of making the system fairer for all businesses.⁷

IRS Guidance Regarding State College and Universities and the Section 4960 Tax

In 2019, the IRS issued Notice 2019-09 to provide interim guidance under Section 4960.⁸ One issue addressed in the Notice is the applicability of Section 4960 to state colleges and universities, with the IRS explaining that “a governmental unit (including a state college or university) that does not have a determination letter recognizing its exemption from taxation under section 501(a) and does not exclude income from gross income under section 115(1) is not an ATEO...”⁹

In other words, state colleges and universities are ATEOs only if they (1) had applied to the IRS for tax-exempt status under section 501(a), presumably as a 501(c)(3) educational organization, and received a determination letter¹⁰ or (2) excluded income during the year under Section 115(1). As mentioned above, this is not the entire universe of state colleges and universities as they may also qualify for exemption from federal taxation under the doctrine of implied statutory immunity. As the IRS explained in the Notice, this is distinct from Sections 501(a) and 115(1) and, as such, a state college or university or other entity *solely* exempt as a governmental unit is not an ATEO, although it may be liable for the Section 4960 tax if it is related to an ATEO.¹¹ The IRS provided the same explanation in the preamble to regulations proposed in 2019.¹²

Key to understanding how the IRS reached this conclusion is the scope of Section 115(1). Section 115(1) exempts from tax the “income derived from ... the exercise of any essential governmental function and accruing to a State or any political subdivision thereof” While an initial reading of this language might suggest that it applies to the income earned by a state or its political subdivision, the IRS has long interpreted Section 115 to apply only to the income earned by an entity that a state establishes as separate from the state, such as an investment fund, and not to the income earned directly by the state or its political subdivisions.¹³ In contrast, as the IRS explained in the Notice, the income of governmental units is generally exempt from tax “under the doctrine of implied statutory immunity . . . in the absence of specific statutory authorization for taxing that income.”¹⁴ Finding no such statutory authority in Section 4960, the IRS pointed to Section 511(a)(2)(B) as an example of what such statutory authority might look like.¹⁵ Section 511(a)(2)(B) imposes a tax on the unrelated business income of state colleges and universities and it reads:

The tax . . . shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or

⁷ U.S. Congress, House Committee on Ways and Means, *Tax Cuts and Jobs Act*, 115th Cong., 1st sess., 2017, 409 (Washington: GPO, 2017), p. 333.

⁸ Internal Revenue Service, *Interim Guidance Under Section 4960*, Notice 2019-09, Jan. 22, 2019.

⁹ Notice 2019-09, p. 40.

¹⁰ As noted in Notice 2019-09, a governmental unit may choose to relinquish its tax-exempt status under Section 501(a).

¹¹ Notice 2019-09, p. 40.

¹² Internal Revenue Service, “Tax on Excess Tax-Exempt Organization Executive Compensation (Notice of Proposed Rulemaking),” 85 *Federal Register* 35746, June 11, 2020, p. 35747.

¹³ Notice 2019-09, p. 39.

¹⁴ *Ibid.*

¹⁵ *Ibid.*; see also U.S. Congress, Joint Committee on Taxation, *General Explanation of Public Law 115-97*, 115th Cong., 2nd sess., December 2018, JCS-1-18, p. 264 (stating that ATEOs “are intended to include State colleges and universities,” although “[a] technical correction may be necessary to reflect this intent”). In 2019, Representative Brady released a draft technical and clerical corrections bill that would have amended the ATEO definition to include entities described in Section 511(a)(2)(B). The draft legislation is available at https://republicans-waysandmeansforms.house.gov/uploadedfiles/tax_technical_and_clerical_corrections_act_discussion_draft.pdf.

operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

Anti-Avoidance Provisions in the Section 4960 Regulations

Section 4960(d) directs the IRS to prescribe regulations “as may be necessary to prevent avoidance of the tax under this section, including regulations to prevent avoidance of such tax through the performance of services other than as an employee or by providing compensation through a pass-through or other entity to avoid such tax.”

The IRS issued final regulations in 2021.¹⁶ In the preamble to the final regulations, the IRS explained that under the regulations “a payment may be treated as remuneration or a parachute payment if, based on the facts and circumstances, the payment is structured such that it has the effect of avoiding the tax applicable under section 4960,” including in situations where an individual is misclassified as an independent contractor or an amount is paid to a limited liability company or other entity owned by the employee or an unrelated entity.¹⁷ Additionally, the IRS took several positions in the regulations that were narrower than those suggested by commentators due to concerns that the commentators’ proposed reading of the statute could lead to tax avoidance. For example, the regulations provide that remuneration paid to an ATEO’s covered employee includes remuneration paid by a related entity for services performed as an employee of the related entity.¹⁸ The IRS explained that an alternative reading of the statute to limit remuneration to that paid solely with respect to services provided to the ATEO could allow related entities to take coordinated actions to avoid tax by mischaracterizing the services or misallocating the remuneration.¹⁹ Another example is the regulations adopt a 50% control threshold for purposes of determining whether an entity is “related” to an ATEO, with the IRS explaining that a higher threshold was rejected because it “would allow potentially abusive compensation arrangements among organizations that are related to a lesser degree.”²⁰

Section 4958 Tax on Excess Benefit Transactions

Separate from Section 4960, an excise tax may apply when certain 501(c) organizations provide an excess benefit to organizational insiders. Section 4958 imposes a tax when specified types of 501(c) organizations, including those described in Section 501(c)(3), provide an economic benefit to a “disqualified person” if the benefit’s value exceeds the value of consideration provided in return. An example of an excess benefit is excessive remuneration paid to a disqualified person. The test for whether remuneration is excessive is whether it is unreasonable, looking at “the amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances” and taking into account the total benefits provided and the rate at which any deferred compensation accrues.²¹

¹⁶ The regulations are found at 26 C.F.R. §§ 53.4960-1 to 53.4960-6.

¹⁷ Final Regulations, p. 6212; see also 26 C.F.R. § 53.4960-1(f)(1) (defining “employer”); 26 C.F.R. § 53.4960-1(f)(2) (treating the sole owner of a disregarded entity as the employer of an employee of the disregarded entity); 26 C.F.R. § 53.4960-3(d)(6) (treating a payment as contingent on the separation of an employee, and therefore as a parachute payment, under certain circumstances); and 26 C.F.R. § 53.4960-4(d)(3) (providing for reallocation of parachute payments in certain situations).

¹⁸ 26 C.F.R. § 53.4960-2(b)(2).

¹⁹ Final Regulations, pp. 6204-6205. The IRS articulated a similar rationale for the requirement in 26 C.F.R. § 53.4960-1(d)(2)(i) that remuneration paid for services performed as an employee of an ATEO and related entities be aggregated when determining if an individual is one of the ATEO’s five highest compensated employees. Final Regulations, pp. 6198-6199.

²⁰ Final Regulations, p. 6203; 26 C.F.R. § 53.4960-1(i)(2).

²¹ 26 C.F.R. § 53.4958-4(b)(1)(ii).

The tax is imposed on the disqualified person at the rate of 25% of the excess benefit, and a separate tax may be imposed at the rate of 10% of the excess benefit on organization managers who knowingly participated in the transaction. Additionally, if the transaction is not corrected (i.e., undone), a second tax is imposed on the disqualified person that is equal to 200% of the excess benefit, limited to \$20,000.

Of note for purposes of this memorandum, a “disqualified person” includes a person who, at any time during the previous 5 years, was in a position to exercise substantial influence over the organization’s affairs, or a family member of such an individual.²² IRS regulations specify that certain people, such as the organization’s officers and voting members of its governing body, are treated as being in a position to exercise substantial influence, while others, such as non-highly compensated employees, are treated as not being in that position.²³ The determination of whether other individuals are in a position to exercise substantial influence depends on the facts and circumstances of each case. Some of the factors that indicate an individual is in such a position include that the individual is a substantial contributor to the organization; the individual’s compensation is primarily based on revenues derived from the organization’s activities or of a particular department or function that the individual controls; the individual has or shares authority to control or determine a substantial portion of the organization’s capital expenditures, operating budget, or compensation for employees; and the individual manages a discrete segment or activity of the organization that represents a substantial portion of its activities, assets, income, or expenses.²⁴

²² 26 U.S.C. § 4958(f)(1).

²³ 26 C.F.R. § 53.4958-3(c) and (d).

²⁴ 26 C.F.R. § 53.4958-3(e).
