



# U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS  
1139 LONGWORTH HOUSE OFFICE BUILDING  
Washington, DC 20515

April 16, 2025

## Request for Information: Activities of Tax-Exempt Organ Procurement Organizations

The Committee on Ways and Means has jurisdiction over tax policy under Rule X of the Rules of the U.S. House of Representatives, which includes entities that are tax-exempt under Title 26, Section 501 of the United States Code (“U.S.C.”).<sup>1</sup> Since the beginning of the 118<sup>th</sup> Congress, the Committee on Ways and Means (“Committee”) has engaged in comprehensive oversight of the tax-exempt sector. From nonprofit hospitals to the international funding sources and activities of tax-exempt entities in the U.S., and the role of certain organizations in fostering antisemitism on college campuses, the Committee has remained steadfast in ensuring that all tax-exempt organizations operate in accordance with the requirements of their exempt status.<sup>2</sup> Public reporting,<sup>3</sup> congressional investigations,<sup>4</sup> and an ongoing federal investigation<sup>5</sup> have raised

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<sup>1</sup> Rules of the House of Representatives, 119th Cong., <https://rules.house.gov/sites/evo-subsites/rules.house.gov/files/documents/houserules119thupdated.pdf> (Jan. 16, 2025).

<sup>2</sup> *Tax-Exempt Hospitals & the Community Benefit Standard: Hearing before the H. Comm. on Ways and Means*, 118<sup>th</sup> Cong. (April 26, 2023), <https://waysandmeans.house.gov/event/hearing-on-tax-exempt-hospitals-and-the-community-benefit-standard/>; Letter from Jason Smith et al., Chairman, H. Comm. on Ways and Means, *Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code* (Aug. 14, 2023), <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/09/UPDATED-RFI-on-501c3-and-c4-Activities-FINAL.docx87.pdf>; Press Release, H. Comm. on Ways and Means, Ways and Means Chairman Smith Demands IRS Revoke Tax-Exempt Status of Organizations Fueling Chaos, Illegal Conduct, and Antisemitic Activity in U.S., including those with Possible Ties to Terrorist Networks (Sep. 24, 2024), <https://waysandmeans.house.gov/2024/09/24/ways-and-means-chairman-smith-demands-irs-revoke-tax-exempt-status-of-organizations-fueling-chaos-illegal-conduct-and-antisemitic-activity-in-u-s-including-those-with-possible-ties-to-terrorist-ne/>.

<sup>3</sup> Brian M. Rosenthal, Mark Hansen and Jeremy White, *Organ Transplant System ‘in Chaos’ as Waiting Lists Are Ignored*, THE NEW YORK TIMES (Feb. 26, 2025), <https://www.nytimes.com/interactive/2025/02/26/us/organ-transplants-waiting-list-skipped-patients.html>; Brody Mullins, *Chamber CEO’s Rare Washington Perk: Private Jet Service, Even for Vacations*, WALL STREET JOURNAL (Jun. 6, 2019) <https://www.wsj.com/articles/chamber-ceos-rare-washington-perk-private-jet-service-even-for-vacations-11559825503>.

<sup>4</sup> Letter from Sen. Charles Grassley et al., Chairman, S. Comm. on Finance, to Joanne M. Chiedi, Acting Inspector Gen., Office of Inspector Gen., U.S. Dep’t of Health and Human Serv. (Dec. 18, 2019), [https://www.finance.senate.gov/imo/media/doc/CEG.Young%20to%20HHSOIG%20\(OPO%20Oversight\)%20Dec.18.2019.pdf](https://www.finance.senate.gov/imo/media/doc/CEG.Young%20to%20HHSOIG%20(OPO%20Oversight)%20Dec.18.2019.pdf); *A System in Need of Repair: Addressing Organizational Failures of the U.S.’ Organ Procurement and Transplantation Network: Hearing before S. Comm. on Finance*, 118th Cong. (Aug. 3, 2022), <https://www.finance.senate.gov/imo/media/doc/UNOS%20Hearing%20Memo.pdf>; Press Release, H. Comm. on Energy and Commerce, *E&C Launches Bipartisan Oversight Inquiry into Organ Transplant Contractor and Implementation of Bipartisan Reforms* (Mar. 21, 2024), <https://energycommerce.house.gov/posts/e-and-c-launches-bipartisan-oversight-inquiry-into-organ-transplant-contractor-and-implementation-of-bipartisan-reforms>;

<sup>5</sup> Lenny Bernstein, Mark Johnson, and Lisa Rein, *U.S. launches probe into possible fraud by organ collection groups*, THE WASHINGTON POST (Feb. 26, 2024), <https://www.washingtonpost.com/health/2024/02/26/organ-transplant-investigation/>.

questions about whether tax-exempt organizations within our nation’s organ transplantation system are operating in a manner consistent with the laws and regulations that govern such organizations and whether taxpayer funds are paying for activities that are outside these organizations’ tax-exempt purpose.

According to preliminary data from the Organ Procurement and Transplantation Network (“OPTN”), there were 48,149 transplants in the United States in 2024.<sup>6</sup> These transplants represent a 3.3 percent increase compared to 2023 and a 23.3 percent increase over the previous five years.<sup>7</sup> There are 55 organ procurement organizations (“OPOs”) in the United States and each one plays a vital role in the procurement, preservation, and transportation of organs that have saved the lives of countless Americans.

By law, qualified OPOs must operate as nonprofit entities, and all 55 OPOs currently hold tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (“IRC”).<sup>8</sup> In addition to their ability to accept tax-deductible contributions as charitable organizations under IRC Section 501(c)(3), OPOs receive reimbursement at 100 percent of cost from Medicare for all costs classified as allowable under program regulations,<sup>9</sup> which raises concerns as to whether unallowable costs are being reimbursed with taxpayer dollars in light of reports conducted by the Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”).<sup>10</sup> OPOs may be independent or hospital-based.<sup>11</sup> Independent OPOs (“IOPOs”) are standalone organizations that file their own Medicare cost reports (“MCRs”) with the Centers for Medicare & Medicaid Services (“CMS”) separately and are not subject to the control of any hospital.<sup>12</sup>

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<sup>6</sup> Press Release, Organ Procurement and Transplantation Network, *Organ transplants exceeded 48,000 in 2024; a 3.3 percent increase from the transplants performed in 2023*, (Jan. 15, 2025), <https://optn.transplant.hrsa.gov/news/organ-transplants-exceeded-48-000-in-2024-a-33-percent-increase-from-the-transplants-performed-in-2023>.

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. § 273(b)(1).

<sup>9</sup> Paul Rosenberg, et al., *Transforming Organ Donation in America: Serving Patients by Expanding High-Performing Organ Procurement Organizations*, THE BRIDGESPAN GROUP (Nov. 2020), <https://www.bridgespan.org/getmedia/45f7b2a2-f4f7-4464-a013-71659b9236ee/transforming-organ-donation-in-america-november2020.pdf>.

<sup>10</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN Report No. A-09-21-03020, *MEDICARE PAID INDEPENDENT ORGAN PROCUREMENT ORGANIZATIONS OVER HALF A MILLION DOLLARS FOR PROFESSIONAL AND PUBLIC EDUCATION OVERHEAD COSTS THAT DID NOT MEET MEDICARE REQUIREMENTS*, (AUG. 2023), <https://oig.hhs.gov/documents/audit/9635/A-09-21-03020-Report%20in%20Brief.pdf>; U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *NATIONWIDE AUDITS OF ORGAN PROCUREMENT ORGANIZATIONS AND CERTIFIED TRANSPLANT CENTERS*, (LAST ACCESSED MAR. 24, 2025), <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000853.asp>; U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-08-00033, *REVIEW OF ONELEGACY’S REPORTED FISCAL YEAR 2006 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS*, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>; U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-09-00087, *REVIEW OF CALIFORNIA TRANSPLANT DONOR NETWORK’S REPORTED FISCAL YEAR 2007 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS*, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>.

<sup>11</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-21-03020, *MEDICARE PAID INDEPENDENT ORGAN PROCUREMENT ORGANIZATIONS OVER HALF A MILLION DOLLARS FOR PROFESSIONAL AND PUBLIC EDUCATION OVERHEAD COSTS THAT DID NOT MEET MEDICARE REQUIREMENTS*, (AUG. 2023), <https://oig.hhs.gov/documents/audit/9635/A-09-21-03020-Report%20in%20Brief.pdf>.

<sup>12</sup> *Id.*

Hospital-based OPOs (“HOPOs”) are classified as departments of the hospitals in which they operate and report their own organ acquisition costs on the hospital’s MCR, rather than filing a separate report.<sup>13</sup>

The Committee understands and appreciates that OPOs conduct lifesaving work which led to the recovery of over 45,000 organs and saving more than 39,000 lives in 2024 alone.<sup>14</sup> We also recognize that there are thousands of dedicated and ethical clinicians, professionals, and volunteers who play a crucial role in our nation’s organ transplantation system. The Committee also recognizes that the first Trump Administration took important steps that were “widely hailed by health care groups, patient advocacy organizations and Democrats” to hold OPOs more accountable for their performance.<sup>15</sup>

However, the Committee has received reports that “OPO frontline staff are systematically understaffed, under-supported, and, sadly, treated as disposables.”<sup>16</sup> This letter outlines concerns regarding certain OPO executives who have fallen short in their responsibilities to patients and the dedicated staff working under their leadership. Given the critical role that OPOs play in our nation’s healthcare system, it is of vital importance that they act in accordance with their tax-exempt status.

Given these concerning reports, we are issuing this Request for Information (“RFI”) to solicit input from stakeholders and the public to more effectively evaluate the conduct of certain tax-exempt OPOs under Section 501(c)(3) of the Internal Revenue Code. Please submit your responses to the questions below to [waysandmeansRFI@mail.house.gov](mailto:waysandmeansRFI@mail.house.gov) by May 16, 2025.

### **Request for Information and Input**

1. Are you aware of any OPOs that are reporting unallowable costs?
  - a. For example, are you aware of any OPOs that have received Medicare reimbursement for organs that were sent to foreign countries?
2. Are you aware of OPOs that have used organ-transport jets for personal use?
  - a. If so, are you aware if the OPO(s) included the trip(s) on their MCRs?
  - b. If so, are you aware of whether the individual(s) who benefited from the use of the jet is affiliated with the organization?

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<sup>13</sup> *Id.*

<sup>14</sup> Press Release, *U.S. Organ Procurement Organizations Achieve Record Organs Recovered and Transplanted in 2024 Amid Policy Challenges*, Association of Organ Procurement Organizations (Mar. 5, 2025), <https://aopo.org/donation-perspectives/us-organ-procurement-organizations-achieve-record-organs-recovered-and-transplanted-in-2024-amid-policy-challenges/>.

<sup>15</sup> Adam Cancryn and Dan Diamond, *The Trump administration’s split-screen coronavirus message*, POLITICO (July 7, 2020), <https://www.politico.com/newsletters/politico-pulse/2020/07/10/the-trump-administrations-split-screen-coronavirus-message-789088>; 42 CFR 486.

<sup>16</sup> Paul Rosenberg, et al., *Transforming Organ Donation in America: Serving Patients by Expanding High-Performing Organ Procurement Organizations*, The Bridgespan Group (Nov. 2020), <https://www.bridgespan.org/getmedia/45f7b2a2-f4f7-4464-a013-71659b9236ee/transforming-organ-donation-in-america-november2020.pdf>.

- c. If so, are you aware of whether the individual(s) who benefited from the use of the jet paid a reasonable value for the use of the jet?
    - d. If so, are you aware of whether the private use of the jet made the OPO(s) unable to properly deliver organs for transplant?
3. Do you have knowledge of OPOs that have used the organization's assets to provide private benefit(s) to executive officers, employees, or donors?
  - a. If so, are you aware of whether the OPO(s) included the use of the asset(s) on their MCRs?
  - b. If so, are you aware of whether the individual(s) who benefited from the use of the asset(s) is affiliated with the organization?
  - c. If so, are you aware of whether the individual(s) who benefited from the use of the asset(s) paid a reasonable value for the use of the asset(s)?
4. Does the private use of an asset controlled by a 501(c)(3) organization, such as an OPO, correlate to an excess benefit or excess benefit transaction under 26 U.S.C. § 4958?
5. Does the Internal Revenue Service ("IRS") sufficient authority to oversee and collect information from OPOs related to the use of assets for non-mission-critical activities?
6. Are you aware of any OPO that provides benefits to its executive officers that are unreported in the organization's Form 990?
7. Are you aware of any OPOs whose CEO or other executives received reported income that would cause the OPO to be taxed under 26 U.S.C. § 4960?
  - a. If so, does that income correlate to a well-run OPO? Does that CEO provide a reasonable benefit to the OPO to call for that specific salary?
8. Are you aware of the executive salary for tax-exempt organizations that are similarly situated to OPOs, with the same educational and experiential requirements?
9. Should the salary of an OPO executive officer be subject to the performance of the OPO as a whole?
  - a. If so, is the CMS tier rating system for OPOs the appropriate metric for determining salary caps for OPO CEOs?
  - b. If so, and if the CMS tier rating system for OPOs is insufficient, what recommendations can you provide related to what would be the appropriate metric to connect CEO salary to an OPO's performance?
10. Are you aware of OPOs that are organized as 501(c)(3) tax-exempt entities that have made asset purchases or other transactions that would raise concern regarding their tax-exempt status?
11. Are you aware of OPOs that are organized as 501(c)(3) tax-exempt entities that have been approved for a merger by CMS, while failing to comply with the merger standards set by CMS, the requirements for OPO designation, or to enrich the organization, board

members, or executives or otherwise operating outside of the purpose of their tax-exempt status?

12. Are you aware of OPOs that perform business dealings or activities that could be considered financial conflicts of interest?
  - a. Specifically, do any of these financial conflicts of interests directly conflict with an OPOs standing goal to procure organs for patients in need?
  - b. Are there any requirements in the IRC or federal tax regulations that prohibit tax-exempt organizations from taking part in activities that create financial conflicts of interest for the organization?
  
13. Are you aware of the business structure of OPOs that operate independent donor care units or organ recovery centers and whether those are separate entities that receive the OPO's tax-exempt status?

### **Section 501(c)(3) Organizations and the Law**

To qualify for tax-exempt status<sup>17</sup> under Section 501(c)(3), “an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.”<sup>18</sup> Those include charitable, religious, or educational purposes, among others.<sup>19</sup> In accordance with IRC Section 170, organizations registered under Section 501(c)(3) “are eligible to receive tax-deductible contributions,” with the exception of “testing for public safety organizations.”<sup>20</sup>

As part of the exemption requirements laid out in Section 501(c)(3), none of an organization’s earnings may inure to any private shareholder or individual.<sup>21</sup> As the IRS’s website on inurement and private benefit for charitable organizations states, inure to any private shareholder or individual could include people such as “the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests.”<sup>22</sup> The IRS also says that “[a] private shareholder or individual is a person having a personal and private interest in the activities of the organization.”<sup>23</sup>

Organizations with tax-exempt status under Section 501(c)(3) must also refrain from completing excess benefit transactions to disqualified persons.<sup>24</sup> An excess benefit transaction occurs when the organization provides an economic benefit to a disqualified person, which is someone who has substantial control or influence over the tax-exempt organization, and that economic benefit exceeds the value of work or service received by the organization.<sup>25</sup> If the benefit outweighs the work performed for the organization, it could amount to an excess benefit transaction, leaving the organization liable for an excise tax on the value of that excess benefit.<sup>26</sup>

### **Need for Congressional Review**

The Committee recognizes the important work that OPOs do within our nation’s healthcare system to save lives. However, several concerning reports allege that certain OPOs are engaging in non-mission critical activities, seeking Medicare reimbursement for those activities, and misallocating financial resources in ways that undermine their core mission and harm patient care. The Committee is concerned that, in some instances, vital resources intended for mission

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<sup>17</sup> INTERNAL REVENUE SERVICE, Exemption Requirements - 501(c)(3) Organizations, <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations#:~:> (last accessed Mar. 24, 2025).

<sup>18</sup> *Id.*; 26 U.S.C. § 501(c)(3).

<sup>19</sup> *Id.*

<sup>20</sup> 26 U.S.C. § 170; INTERNAL REVENUE SERVICE, Exemption Requirements - 501(c)(3) Organizations, <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations#:~:> (last accessed Mar. 24, 2025).

<sup>21</sup> 26 U.S.C. § 501(c)(3).

<sup>22</sup> INTERNAL REVENUE SERVICE, Inurement/private benefit: Charitable organizations, <https://www.irs.gov/charities-non-profits/charitable-organizations/inurement-private-benefit-charitable-organizations> (last accessed Mar. 24, 2025).

<sup>23</sup> *Id.*

<sup>24</sup> 26 U.S.C. § 4958.

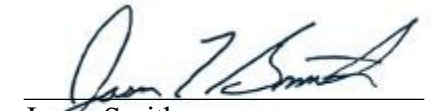
<sup>25</sup> *See* 26 U.S.C. § 4958(c)(1)(A)-(B).

<sup>26</sup> 26 C.F.R. § 53.4958-4(a).

critical activities that support organ recipients and their families are being diverted to private benefits for executives, board members, or donors. This would not only be a misuse of taxpayer dollars and abuse of the benefits afforded to these organizations but would deplete these critical funds through misallocation. The Committee wants to ensure that taxpayer dollars allocated to organ transportation and donation services are not subject to waste, fraud, and abuse or otherwise directed to the private benefit of OPO executives and donors.


The resources and benefits provided to the OPOs as a tax-exempt organization, and the Medicare cost reimbursement allowed for OPOs mission critical activities should be directed to lifesaving services that these organizations provide. The Committee's examination of OPOs aims to reinforce the focus on ensuring this focus on lifesaving services and ensuring that patients are the number one priority at OPOs across the country.

Sincerely,



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Jason Smith  
Chairman  
Committee on Ways and Means



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David Schweikert  
Chairman  
Subcommittee on Oversight  
Committee on Ways and Means

### **Appendix A: OPOs Reporting Unallowable Costs to Medicare**

Medicare covers most of the medical and hospital services related to organ transplants.<sup>27</sup> OPOs are paid by certified transplant centers (“CTCs”) for their standard acquisition costs, then Medicare reconciles for usable organs or kidneys after the Medicare cost report is filed.<sup>28</sup> OPOs must abide by the statutory requirements in Section 1138 of the Social Security Act (“the Act”) and 42 U.S.C. § 273 to qualify for reimbursement under the Medicare program.<sup>29</sup> Section 273 describes several requirements that OPOs must follow to be considered “qualified organizations.”<sup>30</sup> OPOs must be structured as a nonprofit entity; have an agreement with the Secretary to be reimbursed under the Medicare program – Title XVIII of the Act – for the procurement of kidneys; been certified or recertified by the Secretary within the previous four-year period as meeting the performance standards to be a qualified organ procurement organization; and has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical or does not include any part of the area, among other requirements.<sup>31</sup>

Federal regulations state that payments to OPOs for organ acquisition costs must be related to patient care as well as reasonable and allowable.<sup>32</sup> Reasonable costs include necessary and proper costs that are incurred by a provider.<sup>33</sup> In order to receive cost-based reimbursement from the Medicare program, OPOs are required to provide cost information that is accurate and in sufficient detail to support payments made for services furnished to beneficiaries.<sup>34</sup> Organ acquisition costs incurred by HOPOs and IOPOs are included on the organ acquisition cost center on their respective MCRs.<sup>35</sup> IOPOs are not reimbursed by Medicare for the cost of procuring organs other than kidneys.<sup>36</sup>

Chapter 21 of the Manual says that “[c]osts not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities.”<sup>37</sup> Section 1861 of the Act lists certain items which are not

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<sup>27</sup> TMF 2021 presenter Robert Howey explains the complexities and essential components for transplant programs dealing with Medicare reimbursement, United Network for Organ Sharing (Feb. 16, 2021), <https://unos.org/news/tmf-2021-robert-howey-explains-medicare-reimbursement/>.

<sup>28</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., CENTERS FOR MEDICARE & MEDICAID SERV., THE PROVIDER REIMBURSEMENT MANUAL - PART 1 – CHAPTER 21 (CMS PUB. 15-1), <https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021929>.

<sup>29</sup> 42 U.S.C. § 1320b–8; 42 U.S.C. 273.

<sup>30</sup> 42 U.S.C. 273.

<sup>31</sup> *Id.*

<sup>32</sup> 42 CFR 413.402.

<sup>33</sup> 42 CFR 413.9

<sup>34</sup> 42 CFR 413.24

<sup>35</sup> *Id.*

<sup>36</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-21-03020, MEDICARE PAID INDEPENDENT ORGAN PROCUREMENT ORGANIZATIONS OVER HALF A MILLION DOLLARS FOR PROFESSIONAL AND PUBLIC EDUCATION OVERHEAD COSTS THAT DID NOT MEET MEDICARE REQUIREMENTS, (AUG. 2023), <https://oig.hhs.gov/documents/audit/9635/A-09-21-03020-Report%20in%20Brief.pdf>.

<sup>37</sup> U.S. DEP’T OF HEALTH AND HUMAN SERV., CENTERS FOR MEDICARE & MEDICAID SERV., THE PROVIDER REIMBURSEMENT MANUAL - PART 1 – CHAPTER 21 (CMS PUB. 15-1), <https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021929>.



considered reasonable costs including entertainment, tickets to sporting and other entertainment events; gifts or donations; personal use of motor vehicles; costs for fines and penalties resulting from violations of Federal, State, or local laws; and education expenses for spouses or other dependents of providers of services, their employees or contractors.<sup>38</sup>

Reports from government watchdogs and media outlets suggest that certain OPOs may be inappropriately reporting costs that do not qualify for reimbursement.<sup>39</sup> In 2023, the HHS OIG reported that IOPOs were paid over half a million dollars for professional and public education overhead costs that did not meet Medicare requirements.<sup>40</sup> Based on HHS OIG's sample results and additional findings, OPOs reported \$664,295 in professional and public education costs that were unallowable.<sup>41</sup> Some of the professional and public education overhead costs that didn't meet Medicare requirements included meals, lobbying, and entertainment.<sup>42</sup> HHS OIG is currently conducting nationwide audits of OPOs and CTCs to "determine whether costs reported by OPOs and CTCs were allowable, reasonable, and according to Medicare requirements, and whether OPOs met required process performance and outcome measures."<sup>43</sup>

HHS OIG has previously found that certain OPOs have included unallowable or unsupported costs on their MCRs.<sup>44</sup> A review of the California Transplant Donor Network's reported Fiscal Year 2007 organ acquisition overhead costs and administrative and general costs found that the California Transplant Donor Network reported \$65,912 of unallowable costs and

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<sup>38</sup> 42 U.S.C. 1395x(v)(8)

<sup>39</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN Report No. A-09-21-03020, MEDICARE PAID INDEPENDENT ORGAN PROCUREMENT ORGANIZATIONS OVER HALF A MILLION DOLLARS FOR PROFESSIONAL AND PUBLIC EDUCATION OVERHEAD COSTS THAT DID NOT MEET MEDICARE REQUIREMENTS, (AUG. 2023), <https://oig.hhs.gov/documents/audit/9635/A-09-21-03020-Report%20in%20Brief.pdf>; U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., NATIONWIDE AUDITS OF ORGAN PROCUREMENT ORGANIZATIONS AND CERTIFIED TRANSPLANT CENTERS, (LAST ACCESSED MAR. 24, 2025), <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000853.asp>; U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-08-00033, REVIEW OF ONELEGACY'S REPORTED FISCAL YEAR 2006 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>; U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-09-00087; REVIEW OF CALIFORNIA TRANSPLANT DONOR NETWORK'S REPORTED FISCAL YEAR 2007 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>.

<sup>40</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN Report No. A-09-21-03020, MEDICARE PAID INDEPENDENT ORGAN PROCUREMENT ORGANIZATIONS OVER HALF A MILLION DOLLARS FOR PROFESSIONAL AND PUBLIC EDUCATION OVERHEAD COSTS THAT DID NOT MEET MEDICARE REQUIREMENTS, (AUG. 2023), <https://oig.hhs.gov/documents/audit/9635/A-09-21-03020-Report%20in%20Brief.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., NATIONWIDE AUDITS OF ORGAN PROCUREMENT ORGANIZATIONS AND CERTIFIED TRANSPLANT CENTERS, (LAST ACCESSED MAR. 24, 2025), <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000853.asp>.

<sup>44</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-08-00033, REVIEW OF ONELEGACY'S REPORTED FISCAL YEAR 2006 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>; U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-09-00087; REVIEW OF CALIFORNIA TRANSPLANT DONOR NETWORK'S REPORTED FISCAL YEAR 2007 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>.

\$101,152 of unsupported costs.<sup>45</sup> Some of the unallowable costs that did not meet Medicare requirements included donations and gifts, entertainment, and a retirement party.<sup>46</sup> A separate review of another OPO, called OneLegacy, found that the organization's reported Fiscal Year 2006 organ acquisition costs and administrative and general costs showed that the OneLegacy reported \$290,968 of unallowable costs and \$240,492 of unsupported costs.<sup>47</sup> Some of the unallowable costs that did not meet Medicare requirements included costs that were incurred for the Rose Parade, deferred compensation, lobbying, meals, and entertainment.<sup>48</sup>

Given HHS OIG's findings and reports that the ongoing federal investigation to determine whether six OPOs defrauded Medicare,<sup>49</sup> the Committee has reason to believe that there are additional unallowable costs that OPOs have received Medicare reimbursement from. While the Committee is committed to ensuring that Medicare is reimbursing OPOs for reasonable and allowable organ acquisition costs related to patient care, we must root out fraudulent reimbursements in order to protect patients and taxpayers.

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<sup>45</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN REPORT NO. A-09-09-00087, REVIEW OF CALIFORNIA TRANSPLANT DONOR NETWORK'S REPORTED FISCAL YEAR 2007 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>.

<sup>46</sup> *Id.*

<sup>47</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., REPORT NO. A-09-08-00033, REVIEW OF ONELEGACY'S REPORTED FISCAL YEAR 2006 ORGAN ACQUISITION OVERHEAD COSTS AND ADMINISTRATIVE AND GENERAL COSTS, (JAN. 2010), <https://oig.hhs.gov/oas/reports/region9/90800033.pdf>.

<sup>48</sup> *Id.*

<sup>49</sup> Lenny Bernstein, Mark Johnson, and Lisa Rein, *U.S. launches probe into possible fraud by organ collection groups*, THE WASHINGTON POST (Feb. 26, 2024), <https://www.washingtonpost.com/health/2024/02/26/organ-transplant-investigation/>.

### **Appendix B: The Private Use of Business Jets**

In November 2024, the *Wall Street Journal* (“*WSJ*”) wrote an article alleging illicit use of one OPO’s jet fleet.<sup>50</sup> The OPO, Indiana Donor Network, founded a nonprofit subsidiary named TxJet in 2014, which now owns three jets for the purpose of transporting organs around the country.<sup>51</sup> However, the OPO has reportedly allowed its high-value donors, executives, and staff to use the fleet of jets for personal travel.<sup>52</sup> In one instance, the OPO allowed executives and staff of the organization to travel in one of their jets to a funeral service in 2016.<sup>53</sup> There were also several occasions in which the OPO allowed a jet from its fleet to be used by donors to fly between their homes in different states.<sup>54</sup>

The *WSJ* article alleges that the OPO’s executives and staff flew to the funeral of Indiana Donor Network’s CEO’s father in 2016, opting to use a jet in the OPO’s fleet rather than making the two hour and 45 minute drive to their destination.<sup>55</sup> One donor who used jets from the fleet on several occasions, for his part, claims to have paid for each flight taken by a jet owned by the OPO.<sup>56</sup> During one of these flights, the *WSJ* article states that the jet was redirected to transport a kidney to Baltimore.<sup>57</sup> The donor stated that he was asked for “permission” to allow the flight to redirect toward Baltimore to deliver the kidney and the donor acquiesced to the request.<sup>58</sup> The donor went on to say that “somebody was able to have a better life because we *allowed* them to do it” [emphasis added].<sup>59</sup>

While Indiana Donor Network has stated that they properly reported non-mission flights that did not carry organs,<sup>60</sup> the Committee is still concerned that OPOs may be redirecting critical resources to non-mission activities. If OPOs fail to dedicate all their resources to their mission of delivering organs to patients in need, the consequences are borne by those patients and families who rely on the life saving care OPOs provide.

This is not the first instance that Congress or the federal government have taken the opportunity to review how OPOs are using their jet fleets. In 2016, the IRS issued a private letter ruling to an OPO stating that flights exclusively dedicated to the transportation of organs, transplant teams, and return flights to reposition aircrafts for the next emergency flight would not be subject to taxes imposed under Sections 4261 or 4271 of the IRC due to the exception listed under the same title in Section 4261(g).<sup>61</sup> Section 4261(a) imposes a tax on amounts paid for

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<sup>50</sup> See Joseph Walker, *Transplant Charity Used Organ-Transport Jet for Personal Trips*, THE WALL STREET JOURNAL, (Nov. 7, 2024), <https://www.wsj.com/business/organ-transplant-corruption-private-flights-4d27b9ca>,

<sup>51</sup> Press Release, *TxJet, an Indiana Donor Network Innovation, Wins Award*, Indiana Donor Network (Oct. 13, 2017), <https://indianadonornetwork.org/feature-story/txjet-an-indiana-donor-network-innovation-wins-award/>.

<sup>52</sup> See Joseph Walker, *Transplant Charity Used Organ-Transport Jet for Personal Trips*, THE WALL STREET JOURNAL, (Nov. 7, 2024), <https://www.wsj.com/business/organ-transplant-corruption-private-flights-4d27b9ca>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> INTERNAL REVENUE SERVICE, PRL-100740-16, (SEP. 16, 2016), <https://www.irs.gov/pub/irs-wd/201638002.pdf>.

taxable transportation of any person, while Section 4271 imposes a tax on amounts paid for the taxable transportation of property.<sup>62</sup> However, the private ruling letter highlights that the facts, as provided by the OPO in question, fall under the exemption provided by Section 4621(g) which states that no tax shall be imposed under Sections 4261 or 4271, provided that the air transportation is for the purpose of emergency medical services.<sup>63</sup>

Just three years later, in 2019, Senator Grassley and Senator Young wrote a letter to the HHS OIG requesting information on whether the OIG had performed any audits or investigations of the Indiana Donor Network's use of its jet fleet or identified other OPOs that submitted reimbursement claims for flights that were not related to the legitimate business purpose of the OPO.<sup>64</sup> In addition, the letter requested information regarding oversight mechanisms in place to ensure that OPO jets used for personal travel would not be reimbursed by taxpayers.<sup>65</sup>

In addition to public scrutiny, there are questions as to whether use of an OPO's jet fleet for personal travel amounts to an excess benefit transaction under the law. Tax-exempt organizations must refrain from inurement, meaning a tax-exempt organization cannot operate for the benefit of a private individual or for a private interest.<sup>66</sup> 501(c)(3) organizations are also required to ensure that none of the organization's net earnings are used to provide a benefit to a private shareholder or individual.<sup>67</sup> In this context, the private benefits or interests the Committee is requesting information regarding do not include situations where an individual is receiving a benefit from a 501(c)(3) organization that aligns with the organization's stated mission—for example, receiving an organ through the OPO's services. Rather, this is an instance where the individual is uniquely benefiting from an organization's action that is not within the scope of the tax-exempt purpose for which the organization operates, such as an employee or donor receiving access to an OPO's jet fleet for private travel and limiting the OPO's ability to perform mission-critical flights while the jet is in private use.

If an individual does receive an excessive private benefit from a 501(c)(3) organization, that individual may be considered to receive an "excess benefit" or "excess benefit transaction" under the IRC.<sup>68</sup> An excess benefit transaction occurs when an organization engages in a transaction that provides an economic benefit to a person who has substantial control or influence over the tax-exempt organization and that economic benefit exceeds the value of consideration received by the organization.<sup>69</sup> In this instance, the question is whether individuals are able to access OPO resources due to their control of the organization or status as a donor, such as the Indiana Donor Network donor, and whether or not the access amounts to an excess benefit under the law.

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Letter from Sen. Charles Grassley et al., Chairman, S. Comm. on Finance, to Joanne M. Chiedi, Acting Inspector Gen., Office of Inspector Gen., U.S. Dep't of Health and Human Serv. (Dec. 18, 2019), [https://www.finance.senate.gov/imo/media/doc/CEG.Young%20to%20HHSOIG%20\(OPO%20Oversight\)%20Dec.18.2019.pdf](https://www.finance.senate.gov/imo/media/doc/CEG.Young%20to%20HHSOIG%20(OPO%20Oversight)%20Dec.18.2019.pdf).

<sup>65</sup> *Id.*

<sup>66</sup> *See* 26 U.S.C. § 501(c)(3).

<sup>67</sup> *Id.*

<sup>68</sup> *See* 26 U.S.C. § 4958.

<sup>69</sup> *See* 26 U.S.C. § 4958(c)(1)(A)-(B).

If a disqualified person receives an excess benefit from an organization, that transaction can create tax liability for the organization.<sup>70</sup> A disqualified person includes a person who can or has exercised control of the organization within five years of the transaction, a member of the family of an individual with control of the organization, or a 35 percent controlled entity.<sup>71</sup> A donor may also be a disqualified person if they are a “substantial contributor” to the organization.<sup>72</sup> A “substantial contributor” is a person who contributes an aggregate amount of \$5,000 to the organization, if that amount is more than two percent of total contributions to the organization in a single taxable year.<sup>73</sup> If a donor meets the threshold to be considered a “substantial contributor” to the organization, they would be unable to be provided with excess benefits, such as access to an OPOs jet fleet for private travel, without creating a tax liability for the OPO.

Questions remain as to whether other OPOs across the country are similarly offering non-mission charter flights, whether those flights are properly reported, and whether OPOs are improperly filing claims with the federal government to pay for these flights. For instance, if an OPO were report the cost of a non-mission charter flight to Medicare—claiming that the flight was related to the legitimate business of the OPO—the OPO would violate the False Claims Act and would receive Medicare funding meant for reimbursement of organ transportation services.<sup>74</sup> If an OPO allows executives or staff to use a jet for a non-mission purpose and does not report the flight as taxable noncash compensation, the OPO may not only be violating federal tax law and providing an excess benefit to the employee, but would be occupying a jet that could and should be performing a lifesaving organ transportation.<sup>75</sup>

These examples highlight the importance of the Committee evaluating the frequency with which OPOs use jets or other assets for non-mission related travel or purposes lacking a clear business justification. The Committee is concerned that the personal use of jet planes may have a negative impact on OPOs’ ability to deliver organs to patients who are seeking lifesaving care.

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<sup>70</sup> 26 C.F.R. § 53.4958-4(a).

<sup>71</sup> 26 U.S.C. § 4958 (f)(1).

<sup>72</sup> 26 U.S.C. § 4958 (c)(3)(B).

<sup>73</sup> 26 U.S.C. § 4958 (c)(3)(C).

<sup>74</sup> 31 U.S.C. §§ 3729-3733; *See also The False Claims Act*, U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION, <https://www.justice.gov/civil/false-claims-act>, (lasted visited Mar. 18, 2025).

<sup>75</sup> TAXABLE AND NONTAXABLE INCOME, I.R.S. PUB. NO. 525, CAT. NO. 15047D (FEB. 12, 2025), <https://www.irs.gov/pub/irs-pdf/p525.pdf>.

### **Appendix C: Excessive Executive Compensation**

The compensation of employees who work for a charitable organization is limited under the IRC. OPOs are tax-exempt organizations that are required to operate exclusively for a tax-exempt purpose, as outlined in Section 501(c)(3), and therefore must adhere to limits and other requirements regarding the compensation of the organization's employees.<sup>76</sup>

There are concerns that certain OPOs may be paying their high-level employees, such as the CEO and other executives, above the reasonable threshold for the services provided to the organization. Compensation over the reasonable threshold prescribed by law may also come in the form of excess benefits or “parachute payments” that are not directly related to the employees negotiated salary.<sup>77</sup> A “parachute payment” is defined as any payment in the nature of compensation to, or benefit of, a covered employee if the payment is contingent on such employee's separation from employment with the employer, and if the aggregate present value of the payments in the nature of compensation to, or to the benefit of, such individual which are contingent on such separation equals or exceeds an amount equal to three times the base amount.<sup>78</sup> For instance, a 2013 article from TribLIVE noted that a president and chairman of the OPO OneLegacy received reported compensation of \$109,209 in 2011 while working an average of ten hours per week,<sup>79</sup> while OneLegacy reported its CEO's compensation was \$1,259,032, averaging 40 hours per week. Furthermore, the chairman of OneLegacy's board worked an average of 6.75 hours per week with a reported compensation of \$81,250 in 2023.<sup>80</sup>

The average reported income of OPO CEOs' salaries was \$696,664.24 in 2023, while averaging 43.3 hours of work per week.<sup>81</sup> The lowest paid CEO in 2023 received reportable compensation of \$332,544 reporting an average of 40 hours per work week, while the highest paid CEO received \$3,518,280 reportable compensation reporting an average of 45 hours per work week.<sup>82</sup> Of note, both OPOs with the highest and lowest compensated CEOs received tier 3 ratings for 2021,<sup>83</sup> meaning they perform below the median level of all OPOs in one or more measures and may be subject to decertification by CMS.<sup>84</sup> The Committee is interested in data related to the compensation of OPO employees to ensure that resources are not improperly allocated to executive salaries at the expense of the mission-critical operations of the organizations.

There are several laws in place to ensure that tax-exempt organizations, such as OPOs, do not provide private excessive benefits to individuals—whether through compensation or

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<sup>76</sup> See 26 U.S.C. §§ 501(a), 501(c)(3); See also 26 U.S.C. §§ 4958, 4960.

<sup>77</sup> 26 U.S.C. § 4960(c)(5)(B).

<sup>78</sup> 26 U.S.C. § 4960(c)(5)(B).

<sup>79</sup> Andrew Conte, and Luis Fabregas, *Gift of life worth millions to donation organizations*, TribLIVE, (Aug. 31, 2013), <https://archive.triblive.com/local/pittsburgh-allegheeny/gift-of-life-worth-millions-to-donation-organizations/>.

<sup>80</sup> OneLegacy, Return of Organization Exempt from Income Tax (Form 990), DEP'T OF TREAS., INTERNAL REV. SERV., retrieved from <https://projects.propublica.org/nonprofits/organizations/953138799>, (accessed Mar. 20, 2025).

<sup>81</sup> Data analyzed by the Committee using Form 990 filings of OPOs.

<sup>82</sup> *Id.*

<sup>83</sup> U.S. DEP'T OF HEALTH AND HUMAN SERV., CENTERS FOR MEDICARE & MEDICAID SERV., 2023 OPO INTERIM ANNUAL PUBLIC AGGREGATED REPORT, (2023) <https://www.cms.gov/files/document/opo-annual-public-performance-report-2023.pdf>

<sup>84</sup> See 42 C.F.R. § 486.318(e)(6).

otherwise.<sup>85</sup> Furthermore all compensation received by employees from the organization must be “reasonable.”<sup>86</sup> Reasonable compensation includes all forms of cash and noncash compensation (salary, fees, bonuses, etc.).<sup>87</sup> For determining whether an amount of compensation is reasonable, the IRS takes into account the services performed as well as salaries received in prior years.<sup>88</sup> When a covered employee of a tax-exempt organization receives over \$1,000,000 in compensation, bonuses, or benefits, it is considered excess compensation and subjects the organization to tax liability.<sup>89</sup>

For instance, the OPO who provides its CEO a salary of \$3,500,000 would be subject to a tax liability on the \$2,500,000 of the salary, or the amount in excess of \$1,000,000. An organization may be subject to tax liability if an employee receives “parachute payments,”<sup>90</sup> regardless of whether their salary exceeds \$1,000,000, if the total value of the contingent benefit exceeds three times the employee’s base compensation.<sup>91</sup> Therefore, at a certain level of compensation, an employee’s salary can subject an OPO to tax liability. The Committee seeks to ensure that tax-exempt organizations are receiving adequate benefit from the work performed by the employee if that employee receives compensation at a level which subjects the organizations to tax liability.

Tax-exempt organizations must refrain from inurement, meaning the tax-exempt organization cannot operate for the benefit of a private individual or for a private interest.<sup>92</sup> 501(c)(3) organizations are also required to ensure that none of the organization’s net earnings are used to provide a benefit to a private shareholder or individual.<sup>93</sup> In this context, the private benefits or interests the Committee is requesting information regarding do not include situations where an individual is receiving a benefit from a 501(c)(3) organization that aligns with the organization’s stated mission—for example, receiving an organ through the OPO’s services. The inurement referenced here is an instance where the individual is uniquely benefiting from a tax-exempt organization’s action that not within the scope of the tax-exempt purpose for which the organization operates, such as an OPO’s executive officer receiving an unreasonable amount of compensation that well exceeds the benefit the employee confers on the organization through their work.

If an individual does receive an excessive private benefit for work performed for a 501(c)(3) organization, that individual may be considered to receive an “excess benefit” or “excess benefit transaction” under the IRC.<sup>94</sup> An excess benefit transaction occurs when the

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<sup>85</sup> See 26 U.S.C. § 4958; 26 U.S.C. § 4960; 26 C.F.R. § 53.4958-1; 26 C.F.R. § 53.4958-4.

<sup>86</sup> 26 C.F.R. § 53.4958-4(b)(ii)(B).

<sup>87</sup> 26 C.F.R. § 53.4958-4(b)(ii)(B).

<sup>88</sup> 26 C.F.R. § 53.4958-4(a).

<sup>89</sup> 26 U.S.C. § 4960(a).

<sup>90</sup> 26 U.S.C. § 4960(c)(5)(B) defines “parachute payments” as follows: “the term ‘parachute payment’ means any payment in the nature of compensation to (or for the benefit of) a covered employee if - (i) such payment is contingent on such employee’s separation from employment with the employer, and (ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such separation equals or exceeds an amount equal to 3 times the base amount.”

<sup>91</sup> 26 U.S.C. § 4960(c)(5)(B).

<sup>92</sup> See 26 U.S.C. § 501(c)(3).

<sup>93</sup> *Id.*

<sup>94</sup> See 26 U.S.C. § 4958.

organization engages in a transaction that provides an economic benefit to a person who has substantial control or influence over the tax-exempt organization and that economic benefit exceeds the value of consideration received by the organization.<sup>95</sup> These excess benefits can occur in the form of direct compensation to the employee.<sup>96</sup>

If a disqualified person receives an excess benefit from the organization, that transaction can create tax liability for the organization.<sup>97</sup> A disqualified person for the purposes of an excess benefit and excess benefit transaction includes a person who can or has exercised control of the organization within five years of the transaction, a member of the family of an individual with control of the organization, or a 35 percent controlled entity.<sup>98</sup> Often times, this exercise of control will relate to executive officers at the 501(c)(3) organization. For the excess executive compensation excise tax, the employee in question does not have to serve as an executive at the organization, rather the law considers the five highest-compensated employees as covered employees for the purposes of the excise tax.<sup>99</sup>

The Committee is interested in data related to potential excess benefits as they occur in the form of employee compensation to better understand how OPOs are allocating their resources to their workforce versus to mission critical operations. The Committee is committed to ensuring that OPOs are prioritizing patients in funding decisions and making sure they are improving their ability to perform lifesaving care.

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<sup>95</sup> See 26 U.S.C. § 4958(c)(1)(A)-(B).

<sup>96</sup> See 26 U.S.C. § 4958(c); 26 U.S.C. § 4960.

<sup>97</sup> 26 C.F.R. § 53.4958-4(a).

<sup>98</sup> 26 U.S.C. § 4958 (f)(1).

<sup>99</sup> 26 C.F.R. § 53.4958-1(d).