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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-105316-98; REG-161424-01]

[RIN 1545-AW67; 1545-BA43]

Information Reporting for Qualified Tuition and Related Expenses;
Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of previous proposed rules; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws in part proposed regulations relating to the information reporting requirements under section 6050S. This document also contains new proposed regulations relating to the information reporting requirements under section 6050S for qualified tuition and related expenses. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 and the amendments made by the Internal Revenue Service Restructuring and Reform Act of 1998 and Public Law 107-131. The regulations provide guidance to eligible educational institutions that enroll any individual for any academic period. The regulations also provide guidance to insurers that make reimbursements or refunds of qualified tuition and related expenses. This document provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 29, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for August 13, 2002, at

10 a.m. must be received by July 23, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-161424-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to:

CC:ITA:RU (REG-161424-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622-4910; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Donna Poindexter, (202) 622-7180, and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the Internal Revenue Service, Martinsburg Computing Center, (304) 263-8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1678.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Summary

This document withdraws §1.6050S-1 of the notice of proposed rulemaking (REG-105316-98) relating to the information reporting requirements under section 6050S that was published in the **Federal Register** (65 FR 37728) on June 16, 2000 (the 2000 proposed regulations). This document also contains new proposed amendments to 26 CFR part 1 in §1.6050S-1 relating to information reporting requirements under section 6050S for eligible educational institutions and insurers (these proposed regulations). The IRS and the Treasury Department have determined that the 2000 proposed regulations addressing the information reporting requirements for payees who receive payments of interest on qualified education loans will be finalized in a separate Treasury decision.

2. Effective Date of These Proposed Regulations and Reporting Requirements for the Calendar Year 2002

The information reporting requirements in these proposed regulations are proposed to apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003, for amounts reportable for the calendar year 2003 and subsequent years. These proposed regulations will not be effective until they are finalized. Therefore, the information reporting requirements in Notice 97-73 (1997-2 C.B. 335), as modified, continue for information returns required to be filed, and information statements required to be furnished, for amounts reportable for the calendar year 2002 (for which the returns and statements are required to be filed and furnished in 2003). However, taxpayers may rely on these proposed regulations for guidance pending issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

3. Current Statutory Provisions

The Taxpayer Relief Act of 1997 (Public Law 105-34 (111 Stat. 788) (TRA '97)) added section 25A of the Internal Revenue Code (Code) to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credit). In general, the education tax credit allows certain taxpayers who pay qualified tuition and related expenses (qualified expenses) to an eligible educational institution (an institution) to claim a nonrefundable credit against their Federal income tax liability. On January 6, 1999, the IRS issued proposed regulations under section 25A. See

64 FR 794 (1999).

In addition, TRA '97 added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206 (112 Stat. 685) (RRA '98)). In general, section 6050S requires eligible educational institutions who receive payments of qualified tuition and related expenses to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). See H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319-320 (1998).

In addition, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified tuition and related expenses (an insurer) to file information returns and to furnish written information statements. Lastly, section 6050S requires certain payees who receive payments of interest on one or more qualified education loans to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any interest deduction allowable under section 221.

As currently in effect, section 6050S(b) provides that the information return filed by an eligible educational institution or insurer must contain: (1) the name, address, and taxpayer identification number (TIN) of the individual with respect to

whom payments were received, or the reimbursements or refunds were made, of qualified tuition and related expenses; (2) the name, address, and TIN of any individual certified by the individual as the taxpayer who will claim that individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the year for which the information return is filed; (3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution during the calendar year with respect to the individual; (4) the aggregate amount of reimbursements or refunds of qualified tuition and related expenses paid by an institution or an insurer during the calendar year with respect to the individual; (5) the aggregate amount of any scholarships or grants that the eligible educational institution processed during the calendar year for the individual's costs of attendance; and (6) such other information as the Secretary may prescribe.

4. Previous Guidance Under Section 6050S

The IRS has published several notices prescribing limited information reporting for eligible educational institutions for the years 1998, 1999, 2000, and 2001. See Notice 97-73 (1997-2 C.B. 335), Notice 98-46 (1998-36 I.R.B. 21), Notice 98-59 (1998-49 I.R.B. 16), Notice 99-37 (1999-30 I.R.B. 124), and Notice 2000-62 (2000-51 I.R.B. 587).

A notice of proposed rulemaking under section 6050S (REG-105316-98) was published in the **Federal Register** (65 FR 37728) on

June 16, 2000. A public hearing was held on the proposed regulations on February 13, 2001. The IRS received written and electronic comments responding to the 2000 notice of proposed rulemaking.

5. Recent Amendments to Section 6050S

Section 6050S was further amended by Public Law 107-131 (115 Stat. 2410), effective for qualified expenses paid or billed after December 31, 2002, for academic periods beginning after December 31, 2002. For calendar years beginning after December 31, 2002, eligible educational institutions may elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified tuition and related expenses during the calendar year with respect to individuals enrolled for any academic period. Institutions will no longer be required to report separately any refunds or reimbursements of qualified expenses made during the calendar year that relate to payments received for qualified expenses during the current calendar year. Rather, institutions will be required to report separately only adjustments made during the calendar year to payments received, or amounts billed, for qualified expenses that were reported in a prior calendar year. Institutions will be required to report scholarships or grants received for the individual's costs of attendance that the institution administered and processed during the calendar year. In addition, institutions will be required to report separately adjustments made during the calendar year to scholarships that

were reported in a prior calendar year. Section 6050S will no longer require institutions to report the name, address, and TIN of any individual certified by the individual as the taxpayer who will claim that individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the year for which the information return is filed.

These proposed regulations reflect the amendments to section 6050S by Public Law 107-131 and address many of the concerns raised by the educational community in their comments to the 2000 proposed regulations. These proposed regulations for eligible educational institutions and insurers are discussed below.

Explanation of Provisions

1. Information Reporting Relating to Qualified Tuition and Related Expenses

A. Required reporting and exceptions to reporting

Consistent with the amendments to section 6050S by Public Law 107-131, these proposed regulations require an eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) to file a Form 1098-T, "Tuition Payment Statement," with respect to each individual who is or has been enrolled for any academic period (as defined in the regulations under section 25A) and for whom reportable transactions are made during the calendar year. In addition, these proposed regulations require any person engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified

tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) to file a Form 1098-T with the IRS with respect to each individual for whom it makes reimbursements or refunds of qualified expenses.

(i) Reporting Based on Academic Year vs. Calendar Year

The commentators to the 2000 proposed regulations requested that an institution be allowed to report financial data based on an academic year, and not based on a calendar year. Section 6050S requires institutions to report on a calendar year in order to assist taxpayers in calculating the education tax credit that is allowable for qualified expenses paid during a calendar year. Therefore, these proposed regulations do not adopt this recommendation.

(ii) Eligible Educational Institution for Portion of Calendar Year

The commentators to the 2000 proposed regulations requested clarification of the rules for determining which institutions are required to report under section 6050S and the exceptions to reporting. One commentator asked whether an institution that is not an eligible educational institution within the meaning of section 25A(f)(2) at the beginning of the calendar year, but becomes an eligible educational institution during the calendar year, is required to report under section 6050S, and, if so, whether the institution must report for the entire calendar year or only the portion of the year in which it is an eligible educational institution. An institution that is an eligible educational institution for any portion of a calendar year must

report under section 6050S. Further, because the education tax credit is allowable only for payments made to an eligible educational institution, the institution must report for only the portion of the year in which it is an eligible educational institution.

(iii) Exception for Nonresident Aliens

Several commentators to the 2000 proposed regulations requested clarification of the exception to reporting for an individual who is a nonresident alien. The 2000 proposed regulations provide that an institution or insurer must report for the year that the institution or insurer receives a request from a nonresident alien individual to report and all subsequent years. The commentators recommended that reporting be limited to the calendar year for which the institution or insurer receives the request. The commentators explained that institutions would need to create a new database to report automatically for subsequent years. These proposed regulations provide that any reporting for a nonresident alien individual is limited to the calendar year for which the institution or insurer receives a request.

(iv) Exception for Noncredit Courses

Several commentators to the 2000 proposed regulations requested clarification of the exception to reporting for an individual who is enrolled during the calendar year only in noncredit courses. The commentators noted that the exception is intended to cover students enrolled in courses for which no

academic credit is offered, not students who do not receive academic credit in a particular course. Therefore, these proposed regulations clarify that the exception applies to students enrolled only in courses for which academic credit is not offered. In addition, several commentators suggested that the word "only" should be removed and that the exception should apply to students who are enrolled both in courses for which no academic credit is offered and in courses offered for credit that may lead toward a postsecondary degree. The exception is intended to cover nondegree students enrolled in courses for which no academic credit is offered, consistent with the legislative history to section 6050S. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., p. 322 (1998). Therefore, these proposed regulations do not adopt this recommendation.

Several commentators to the 2000 proposed regulations recommended that institutions should have discretion to define what constitutes academic credit. The 2000 proposed regulations define academic credit as credit awarded by an institution for the completion of coursework leading toward a postsecondary degree, certificate, or other recognized postsecondary educational credential. This definition provides a uniform test to determine academic credit for information reporting purposes. These proposed regulations retain the definition of academic credit and do not adopt this recommendation.

(v) No Exception for Small Institutions or Small Amounts of Qualified Tuition and Related Expenses

One commentator to the 2000 proposed regulations suggested

that the regulations should provide an exception to reporting for institutions with 500 or fewer students, and another commentator suggested that the regulations should provide an exception for qualified expenses of \$250 or less. The limited exceptions to required reporting are based on the fact that certain categories of students may not be eligible to claim the education tax credit (e.g., nondegree students enrolled in noncredit courses cannot claim the Hope Scholarship Credit and nonresident alien students are generally not eligible to claim the education tax credit). See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., p. 322 (1998). Exceptions to reporting for small institutions or small amounts of qualified expenses have no relationship to a student's eligibility to claim the education tax credit. Therefore, these proposed regulations do not adopt these recommendations.

(vi) Exception for Students Whose Qualified Expenses Are Paid with Scholarships

Several commentators to the 2000 proposed regulations suggested that the regulations should include an exception to reporting for students whose qualified expenses are waived in their entirety or are paid entirely with scholarships. Notice 97-73 provides that institutions are not required to report for such students because the institutions will not have received any payment of qualified expenses on behalf of such students for which the student could, in general, claim the education tax credit. These proposed regulations follow the rule in Notice 97-73 and provide that an institution is not required to report on students whose qualified expenses for the calendar year are

waived in their entirety or are paid entirely with scholarships.

(vii) Exception for Students Whose Qualified Expenses Are Covered by Formal Billing Arrangement between Institution and Student's Employer

Several commentators to the 2000 proposed regulations suggested that the regulations should provide an exception to reporting for students whose qualified expenses are paid by a third party (such as an employer) to the institution through a formal billing arrangement. The commentators explained that often an employer and an institution enter into an agreement in which employees attend the institution, and the institution bills only the employer. In this situation, the institution does not maintain a separate account for each employee/student. These arrangements often constitute employer-provided educational assistance excludable from the employee's gross income under section 127. Under section 25A and the regulations thereunder, taxpayers cannot claim the education tax credit for education expenses paid by an employer which are tax-free to the employee. Therefore, these proposed regulations provide an exception to reporting with respect to any individual whose qualified expenses are covered by a formal billing arrangement between an institution and the individual's employer.

(viii) Family Educational Rights and Privacy Act and Optional Reporting

Several commentators to the 2000 proposed regulations requested clarification as to whether an institution that chooses to report on students otherwise covered by an exception to

required reporting would violate the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. section 1232g). The Department of Education has previously determined that reporting under section 6050S does not violate FERPA. We have asked the Department of Education to consider whether this determination extends to institutions that choose to report on students otherwise covered by an exception to required reporting in these proposed regulations.

B. Required information for institutions

(i) Reporting of Payments Received vs. Amounts Billed

Based on the provisions of section 6050S prior to the amendments by Public Law 107-131, the 2000 proposed regulations provide that an institution must report the aggregate amount of payments received for qualified expenses, and the aggregate amount of reimbursements or refunds made of qualified expenses, with respect to any individual during the calendar year.

Numerous commentators explained that their institutions cannot report payments for, and reimbursements or refunds of, qualified expenses, because their financial systems do not apply payments and reimbursements or refunds to specific charges. According to these institutions, a student's account is a running balance of undesignated payments and reimbursements or refunds. These commentators suggested that the regulations should allow institutions that are unable to report payments received for, and reimbursements or refunds made of, qualified expenses, to report instead: (1) the amount billed with respect to any individual

for qualified expenses during the calendar year; and (2) the amount of any reductions to the amounts billed with respect to the individual.

Consistent with section 6050S as amended by Public Law 107-131, these proposed regulations provide that institutions may elect to report either the payments received, or the amounts billed, during the calendar year for qualified tuition and related expenses with respect to individuals enrolled for an academic period beginning during the calendar year or during a prior calendar year.

(ii) Reporting Adjustments to Payments Received (or Amounts Billed) for a Prior Calendar Year

The commentators to the 2000 proposed regulations suggested that the regulations should distinguish between reimbursements or refunds that relate to payments received during the current calendar year and those that relate to payments for prior calendar years. The commentators suggested that, rather than reporting separately aggregate payments and aggregate reimbursements or refunds, institutions should be permitted to net current year payments of qualified expenses against any refunds of such current year payments, and to report only the net payments received for qualified expenses during the current calendar year. These commentators suggested that institutions should be required to report separately only the amount of any reimbursements or refunds made in the current year that relate to qualified expenses paid that were reported in a prior calendar year.

Consistent with this approach, the commentators also suggested that institutions reporting amounts billed should be permitted to net amounts billed for qualified expenses for the current year against any reductions in amounts billed for qualified expenses for the current year, and to report only the net amount billed for qualified expenses during the current calendar year. Similarly, the commentators suggested that these institutions should be required to report separately only those reductions made in the current year that relate to amounts billed for qualified expenses that were reported in a prior calendar year.

Congress adopted this approach in the amendments to section 6050S by Public Law 107-131. As amended, section 6050S will require institutions to report separately only adjustments made during the calendar year to payments received, or amounts billed, that relate to amounts that were reported for a prior calendar year. For example, for institutions that report based on payments received, separate reporting will be required only for refunds or reimbursements of qualified expenses made during the calendar year that relate to payments of qualified expenses that were reported for a prior calendar year. For institutions that report based on amounts billed, separate reporting will be required only for reductions in charges made during the calendar year that relate to amounts billed for qualified expenses that were reported for a prior calendar year.

Therefore, for institutions that report based on payments

received, these proposed regulations provide that, in determining the amounts to be reported under section 6050S for a calendar year, payments received for qualified expenses during the calendar year must be netted against any reimbursements or refunds of qualified expenses made during the calendar year that relate to payments received for qualified expenses during the same calendar year. These regulations also provide that reimbursements or refunds made during the calendar year that relate to payments of qualified expenses that were reported for a prior calendar year must be reported separately.

Similarly, for institutions that report based on amounts billed, these proposed regulations provide that, in determining the amounts to be reported under section 6050S for a calendar year, the amount billed for qualified expenses during the calendar year must be netted against any reductions in charges for qualified expenses made during the calendar year that relate to amounts billed for qualified expenses during the same calendar year. These regulations also provide that any reductions in charges made during the calendar year that relate to amounts reported as billed for a prior calendar year must be reported separately.

These regulations are proposed to apply to payments received, and amounts billed, for qualified expenses beginning in 2003. Therefore, the first year for which institutions may be required to collect information regarding any reimbursements or refunds of prior year reportable payments (or any reductions in

reportable amounts billed for a prior year) is 2004. The amount of any reimbursements or refunds (or reductions) made in 2004 for amounts paid (or billed) in 2003 would be reported on the 2004 Forms 1098-T filed in early 2005.

(iii) Reporting Adjustments to Scholarships for a Prior Calendar Year

Consistent with section 6050S as amended by Public Law 107-131, these proposed regulations provide that all institutions must report separately any reductions in the amount of scholarships or grant aid reported for a prior calendar year.

(iv) Name, Address, and TIN of Taxpayer

The 2000 proposed regulations reserve the requirement in section 6050S(b)(2)(B) that an institution or insurer obtain and report the name, address, and TIN of any taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for the taxable year. This statutory requirement will be eliminated by the amendments to section 6050S by Public Law 107-131. Therefore, consistent with section 6050S as amended, these proposed regulations remove this requirement.

(v) Half-time Indicator

Several commentators to the 2000 proposed regulations suggested that institutions should not be required to indicate whether a student was enrolled at least half time. Another commentator suggested that institutions should be required to provide the half-time indicator only for students enrolled in undergraduate studies. An indication as to whether a student was enrolled at least half time for one academic period is useful

information for the IRS to verify whether the student may be eligible to claim the Hope Scholarship Credit and certain other education tax benefits, and this information is readily available to institutions. Therefore, these proposed regulations do not adopt these recommendations.

(vi) Information Statement

The 2000 proposed regulations provide that an institution or insurer must furnish an information statement to each individual for whom it is required to file a Form 1098-T. The statement must include specific instructions to the taxpayer. These proposed regulations provide that the instructions must state that a taxpayer may claim an education tax credit only for amounts actually paid during the calendar year. These proposed regulations also provide that the instructions must state that the amount of any refunds or reimbursements of payments received, or reductions in charges, for qualified expenses or any reductions in grant aid reported for a prior calendar year may affect the amount of any education tax credit allowable for the prior calendar year.

The 2000 proposed regulations provide that the statement must include the name, address, and phone number of the individual who is the information contact for the institution or insurer that filed the Form 1098-T. Several commentators to the 2000 proposed regulations requested that the regulations should not require the name of an individual. The commentators explained that it is not feasible for institutions to provide an

individual as the information contact and requested that institutions be allowed to provide an office or department of the institution as the information contact. These proposed regulations adopt this recommendation.

The 2000 proposed regulations reserve the requirement in section 6050S(d) that an institution or insurer furnish a statement to any taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for the taxable year. This statutory requirement will be eliminated by the amendments to section 6050S by Public Law 107-131. Therefore, consistent with section 6050S as amended, these regulations remove this requirement.

C. Required information for insurers

The information reporting requirements for insurers is not changed by the amendments to section 6050S by Public Law 107-131.

Therefore, these proposed regulations continue to provide that an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year. An insurer must include: (1) the name, address, and TIN of the insurer; (2) the name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made; and (3) the aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year.

D. Information reporting penalties

(i) Penalty Notification

These proposed regulations, as well as the 2000 proposed regulations, provide that an institution or insurer may be subject to a penalty under section 6721 for failure to file correct Forms 1098-T and a penalty under section 6722 for failure to furnish correct information statements. The 2000 proposed regulations provide that an institution or insurer must notify the individual that the IRS may impose a \$50 penalty for failure to provide a TIN. Several commentators to the 2000 proposed regulations requested that the penalty notification be removed. Section 6723 and the regulations thereunder authorize the IRS to impose a \$50 penalty if an individual fails to provide his or her TIN as required but do not require an institution or insurer to give prior notification of the penalty. Therefore, these proposed regulations adopt this recommendation.

(ii) Annual TIN Solicitation Requirement

Several commentators to the 2000 proposed regulations recommended that institutions not be required to request an individual's TIN annually if the institution does not have the individual's TIN. These proposed regulations continue to provide that, in order to establish a waiver of the information reporting penalties for reasonable cause, an institution or insurer must request an individual's TIN annually if it does not have the TIN. The annual solicitation rule in these regulations is consistent with the general solicitation requirements in section 301.6724-

1(e) and (f) that a filer must meet in order to establish reasonable cause. These proposed regulations clarify that a separate solicitation is not necessary if an institution requests an individual's TIN through admission or enrollment forms or financial aid applications.

(iii) Filing Information Returns with Missing TINs

Several commentators to the 2000 proposed regulations requested that institutions not be required to file information returns and to furnish information statements for individuals who refuse to provide their TINs. Information returns and information statements with missing TINs are useful to both the IRS and the individual in verifying the amount of any allowable education tax credit (as well as other tax benefits for higher education expenses). Therefore, these proposed regulations do not adopt this recommendation.

2. Requirement to File Information Returns on Magnetic Media

These regulations propose to amend the regulations under section 6011(e) to require institutions and insurers who are required to file 250 or more Forms 1098-T to file on magnetic media.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply

to these regulations. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under section 5 U.S.C. 603 and is set forth under the heading "Initial Regulatory Flexibility Analysis" in this preamble. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

The collection of information contained in §1.6050S-1 is needed to assist the IRS and taxpayers in determining the amount of any education tax credit allowable under section 25A. The objectives of these regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities) and certain insurers who reimburse educational expenses. As of the end of 2001, a total of 19,817,563 Forms 1098-T were filed with the IRS for 2000. The estimated reporting burden for 2001 is 9 minutes per Form 1098-T. No special professional skills are necessary for preparation of the reports or records. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the proposed regulations requiring filing Forms

1098-T on magnetic media impose no additional reporting or recordkeeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that an institution or insurer is not required to file Forms 1098-T on magnetic media unless required to file at least 250 or more returns during the year. Finally, the economic impact caused by requiring Forms 1098-T on magnetic media should be minimal because most institution's or insurer's operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden institutions and insurers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 13, 2002, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 23, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment tax, Estate tax, Excise tax, Gift tax, Income tax, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1--INCOME TAX

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050S-1 also issued under section 26 U.S.C. 6050S(g). *
* *

Par. 2. Sections 1.6050S-0 is amended by revising the introductory language and adding new entries for §1.6050S-1 to read as follows:

§1.6050S-0 Table of contents

This section lists captions contained in contained in §§1.6050S-1, 1.6050S-2T, 1.6050S-3, and 1.6050S-4T.

§1.6050S-1 Information reporting for qualified tuition and related expenses.

- (a) Information reporting requirement.
 - (1) In general.
 - (2) Exceptions.
 - (i) No reporting by institutions or insurers for nonresident alien individuals.
 - (ii) No reporting by institutions for individuals enrolled only in noncredit courses.
 - (A) In general.
 - (B) Academic credit defined.

(C) Example.

(iii) No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships.

(iv) No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement.

(A) In general.

(B) Formal billing arrangement defined.

(b) Requirement to file return.

(1) In general.

(2) Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses.

(i) In general.

(ii) Information included on return.

(iii) Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.

(iv) Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.

(v) Payments received for qualified tuition and related expenses determined.

(vi) Reimbursements or refunds of payments for qualified tuition and related expenses determined.

(vii) Examples.

(3) Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses.

(i) In general.

(ii) Information included on return.

(iii) Reportable amounts billed for qualified tuition and related expenses during calendar year determined.

(iv) Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year.

(v) Examples.

(4) Requirements for insurers.

(i) In general.

(ii) Information included on return.

(5) Time and place for filing return.

(i) In general.

(ii) Return for nonresident alien individual.

(iii) Extensions of time.

(6) Use of magnetic media.

(c) Requirement to furnish statement.

(1) In general.

(2) Time and manner for furnishing statement.

(i) In general.

(ii) Statement to nonresident alien individual.

(iii) Extensions of time.

(3) Copy of Form 1098-T.

- (d) Special rules.
 - (1) Enrollment determined.
 - (2) Payments of qualified tuition and related expenses received or collected by one or more persons.
 - (i) In general.
 - (ii) Exception.
 - (3) Governmental units.
- (e) Penalty provisions.
 - (1) Failure to file correct returns.
 - (2) Failure to furnish correct information statements.
 - (3) Waiver of penalties for failures to include a correct TIN.
 - (i) In general.
 - (ii) Acting in a responsible manner.
 - (iii) Manner of soliciting TIN.
 - (4) Failure to furnish TIN.
- (f) Effective date.

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Par. 3. Section 1.6050S-1 is added to read as follows:

§1.6050S-1 Information reporting for qualified tuition and related expenses.

(a) Information reporting requirement--(1) In general.

Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder)(an institution) that enrolls (as determined under paragraph (d)(1) of this section) any individual for any academic period (as defined in the regulations under section 25A), and any person that is engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder)(an insurer) must--

- (i) File an information return, as described in paragraph
- (b) of this section, with the Internal Revenue Service (IRS) with

respect to each individual described in paragraph (b) of this section; and

(ii) Furnish a statement, as described in paragraph (c) of this section, to each individual described in paragraph (c) of this section.

(2) Exceptions--(i) No reporting by institution or insurer for nonresident alien individuals. The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and §301.7701(b)-3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the calendar year with respect to which the request is made.

(ii) No reporting by institutions for individuals enrolled only in noncredit courses--(A) In general. The information reporting requirements of this section do not apply with respect to any individual who is enrolled during the calendar year only in courses for which no academic credit is offered by the institution.

(B) Academic credit defined. Academic credit means credit offered by an institution for the completion of coursework leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) Example. The following example illustrates the rules of

this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not offer Student A credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(iii) No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships. The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are waived in their entirety or are paid entirely with scholarships.

(iv) No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement--(A) In general. The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are covered by a formal billing arrangement between an institution and the individual's employer.

(B) Formal billing arrangement defined. A formal billing arrangement means an arrangement in which the institution bills only the employer for education furnished by the institution to an individual who is the employer's employee and the institution does not maintain a separate financial account for that

individual.

(b) Requirement to file return--(1) In general.

Institutions may elect to report either the information described in paragraph (b)(2) of this section, or the information described in paragraph (b)(3) of this section. Once an institution elects to report under either paragraph (b)(2) or (3) of this section, the institution must use the same reporting method for all calendar years in which it is required to file returns, unless permission is granted to change reporting methods. Paragraph (b)(2) requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2), an adjustment made to payments received means a reimbursement or refund. Paragraph (b)(3) requires institutions to report, among other information, the amounts billed during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(3), an adjustment made to amounts billed means a reduction in charges. Insurers must report the information described in paragraph (b)(4) of this section.

(2) Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses--(i) In general. Except as provided in paragraph (a)(2) of this section, an institution reporting payments received for qualified tuition and related expenses must file an information return with the IRS on Form 1098-T, "Tuition Payments Statement," with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a reportable transaction described in paragraph (b)(2)(ii) of this section is made during the calendar year. An institution may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms (see §601.601(d)(2) of this chapter).

(ii) Information included on return. An institution reporting payments received for qualified tuition and related expenses must include on Form 1098-T--

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount of payments of qualified tuition and related expenses from any source that the institution received with respect to the individual during the calendar year;

(D) An indication by the institution whether any payments

received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reimbursements or refunds of qualified tuition and related expenses made during the calendar year with respect to the individual that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) An indication by the institution whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) An indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098-T and its instructions.

(iii) Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.

The amount of payments received for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098-T is determined by netting the amount of payments received (as defined in paragraph (b)(2)(v) of this section) for qualified tuition and related expenses during the calendar year against any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the calendar year that relate to payments received for qualified tuition and related expenses during the same calendar year.

(iv) Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year. An institution must

separately report on Form 1098-T any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds shall not be netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) Payments received for qualified tuition and related expenses determined. For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an

individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) Reimbursements or refunds of payments for qualified tuition and related expenses determined. For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board), is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for such expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) Examples. The following examples illustrate the rules in this paragraph (b)(2):

Example 1. (i) In early August 2003, University X bills enrolled Student A \$10,000 for tuition and \$6,000 for room and

board for the 2003 Fall semester. In late August 2003, Student A pays \$11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses. In late September 2003, University X applies the \$5,000 positive account balance toward current charges.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the \$10,000 tuition payment received during 2003 against the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that Student A pays the full \$16,000 in late August 2003. In late September 2003, University X reduces the tuition charges by \$5,000 and issues a \$5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$16,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the \$10,000 tuition payment received during 2003 against the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2003.

Example 3. (i) The facts are the same as in Example 1, except that Student A is enrolled full-time, and, in early September 2003, Student A decides to live at home with her parents. In late September 2003, University X adjusts Student A's account to eliminate room and board charges and issues a \$1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses, because there is no reduction in charges for qualified tuition and related expenses. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report \$10,000 of payments received for qualified tuition and related expenses during 2003.

Example 4. (i) In early December 2003, College Y bills enrolled Student B \$10,000 for tuition and \$6,000 for room and board for the 2004 Spring semester. In late December 2003, Student B pays \$16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2004, College Y credits Student B's account with \$5,000, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. In early August 2004, College Y bills Student B \$10,000 for tuition and \$6,000 for room and board for the 2004 Fall semester. In early September 2004, College Y applies the \$5,000 positive account balance toward Student B's \$16,000 bill for the 2004 Fall semester. In late September 2004, Student B pays \$6,000 towards the charges.

(ii) Reporting for calendar year 2003. Under paragraph (b)(2)(v) of this section, the \$16,000 payment in December 2003 is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(iii) of this section, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2003. In addition, College Y is required to indicate that the payments reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) Reporting for calendar year 2004. Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to Student B's account is treated as a reimbursement or refund of qualified tuition and related expenses, because the charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iv) of this section, the \$5,000 reimbursement or refund of qualified tuition and related expenses must be separately reported on Form 1098-T because it relates to payments of qualified tuition and related expenses reported by College Y for 2003. Under paragraph (b)(2)(v) of this section, the \$5,000 positive account balance that is applied toward charges for the 2004 Fall semester is treated as a payment. Therefore, College Y received total payments of \$11,000 during 2004 (the \$5,000 credit plus the \$6,000 payment). Under paragraph (b)(2)(v) of this section, the \$11,000 of total payments are treated as a payment

of qualified tuition and related expenses up to the \$10,000 billed for such expenses. Therefore, for 2004, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2004 and a \$5,000 refund of payments of qualified tuition and related expenses reported for 2003.

(3) Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses--(i) In general. Except as provided in paragraph (a)(2) of this section, an institution reporting amounts billed for qualified tuition and related expenses must file an information return on Form 1098-T with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a reportable transaction described in paragraph (b)(3)(ii) of this section is made during the calendar year. An institution may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms.

(ii) Information included on return. An institution reporting amounts billed for qualified tuition and related expenses must include on Form 1098-T--

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution;

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount billed for qualified tuition and related expenses with respect to the individual during the calendar year;

(D) An indication by the institution whether any amounts

billed for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reductions in charges made during the calendar year with respect to the individual that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) An indication by the institution whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) An indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098-T and its instructions.

(iii) Reportable amounts billed for qualified tuition and

related expenses during calendar year determined. The amount billed for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098-T is determined by netting the amounts billed for qualified tuition and related expenses during the calendar year against any reductions in charges for qualified tuition and related expenses made during the calendar year that relate to amounts billed for qualified tuition and related expenses during the same calendar year.

(iv) Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. An institution must separately report on Form 1098-T any reductions in charges made during the current calendar year that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reductions shall not be netted against amounts billed for qualified tuition and related expenses during the current calendar year.

(v) Examples. The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (i) In early August 2003, University X bills enrolled Student A \$10,000 for tuition and \$6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays \$11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X adjusts Student A's account and reduces the tuition charges by \$5,000 to reflect half-time enrollment. In late September 2003, University X applies the \$5,000 account balance toward current charges.

(ii) Under paragraph (b)(3)(iii) of this section, University X is required to net the \$10,000 amount of tuition

billed during 2003 against the \$5,000 reduction in charges for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 in amounts billed for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that, in addition, in early December 2003, College X bills Student A \$10,000 for tuition and \$6,000 for room and board for the 2004 Spring semester. In late December 2003, Student A pays \$16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student A drops to half-time enrollment. In mid-January 2004, College X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund check to Student A. In early August 2004, College X bills Student A \$10,000 for tuition and \$6,000 for room and board for the 2004 Fall semester. In early September 2004, College X applies the \$5,000 positive account balance toward Student A's \$16,000 bill for the 2004 Fall semester. In late September 2004, Student A pays \$6,000 toward the charges.

(ii) Reporting for calendar year 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report \$15,000 amounts billed for qualified tuition and related expenses during 2003 (\$5,000 for the 2003 Fall semester and \$10,000 for the 2004 Spring semester). In addition, College X is required to indicate that some of the amounts billed for qualified tuition and related expenses reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) Reporting for calendar year 2004. Under paragraph (b)(3)(iv) of this section, the \$5,000 reduction in charges for qualified tuition and related expenses must be separately reported on Form 1098-T because it relates to amounts billed for qualified tuition and related expenses that were reported by College X for 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report \$10,000 in amounts billed for qualified tuition and related expenses during 2004.

(4) Requirements for insurers--(i) In general. Except as otherwise provided in this section, an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year on Form 1098-T. An insurer may use a substitute Form 1098-T if the substitute form

complies with applicable revenue procedures relating to substitute forms (see §601.601(d)(2) of this chapter).

(ii) Information included on return. An insurer must include on Form 1098-T--

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the insurer;

(B) The name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made;

(C) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year; and

(D) Any other information required by Form 1098-T and its instructions.

(5) Time and place for filing return--(i) In general. Except as provided in paragraphs (b)(5)(ii) and (iii) of this section, Form 1098-T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098-T with the IRS according to the instructions to Form 1098-T.

(ii) Return for nonresident alien individual. In general, an institution or insurer is not required to file a return on behalf of a nonresident alien individual. However, if a

nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b) of this section with the IRS on or before the date prescribed in paragraph (b)(5)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) Extensions of time. The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098-T and applicable revenue procedures for rules relating to extensions of time to file (see §601.601(d)(2) of this chapter).

(6) Use of magnetic media. See section 6011(e) and §301.6011-2 of this chapter for rules relating to the requirement to file Forms 1098-T on magnetic media.

(c) Requirement to furnish statement--(1) In general. An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098-T. The statement must include--

(i) The information required under paragraph (b) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that--

(A) State that the statement reports either total payments received by the institution for qualified tuition and related

expenses during the calendar year, or total amounts billed by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may not be able to claim an education tax credit with respect to the entire amount of payments received, or amounts billed, for qualified tuition and related expenses reported for the calendar year;

(C) State that the amount of any scholarships or grants reported for the calendar year and other similar amounts not reported (because they are not administered and processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the institution with respect to the individual for a prior calendar year may affect the amount of any allowable education tax credit for the prior calendar year;

(E) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported by an insurer may reduce the amount of an allowable education tax credit for a

taxable year;

(F) State that the taxpayer should refer to relevant IRS forms and publications, and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(G) Include the name, address, and phone number of the office or department within the institution or insurer that is the information contact for the institution or insurer that filed the Form 1098-T.

(2) Time and manner for furnishing statement--(i) In general. Except as provided in paragraphs (c)(2)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition and related expenses, or reimbursements, refunds, or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address, or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) Statement to nonresident alien individual. If an information return is filed for a nonresident alien individual,

the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner and on or before the date prescribed in paragraph (c)(2)(i) of this section, or on or before the thirtieth day after the nonresident alien's request to report, whichever is later.

(iii) Extensions of time. The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. See the instructions to Form 1098-T and applicable revenue procedures for rules relating to extensions of time to furnish statements (see §601.601(d)(2) of this chapter).

(3) Copy of Form 1098-T. An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098-T and its instructions or another document that contains all of the information filed with the IRS and the information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements (see §601.601(d)(2) of this chapter).

(d) Special rules--(1) Enrollment determined. An institution may determine its enrollment for each academic period under its own rules and policies for determining enrollment or as of any of the following dates--

- (i) 30 days after the first day of the academic period;
- (ii) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post

Secondary Education Data System administered by the Department of Education; or

(iii) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

(2) Payments of qualified tuition and related expenses received or collected by one or more persons--(i) In general. Except as otherwise provided in paragraph (d)(2)(ii) of this section, if a person collects or receives payments of qualified tuition and related expenses on behalf of another person (e.g., an institution), the person collecting or receiving payments must satisfy the information reporting requirements of this section. In this case, the reporting requirements do not apply to the transfer of the payments to the institution.

(ii) Exception. If the person collecting or receiving payments of qualified tuition and related expenses on behalf of another person (e.g., an institution) does not possess the information needed to comply with the information reporting requirements of this section, the other person must satisfy the information reporting requirements of this section.

(3) Governmental units. An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the information reporting requirements of this section and an appropriately designated officer or employee of the governmental entity must satisfy the

information reporting requirements of this section.

(e) Penalty provisions--(1) Failure to file correct returns. The section 6721 penalty may apply to an institution or insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) Failure to furnish correct information statements. The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) Waiver of penalties for failures to include a correct TIN--(i) In general. In the case of a failure to include a correct TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable

cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) Acting in a responsible manner. An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of the solicitation requirements of §301.6724-1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a

responsible manner within the meaning of §301.6724-1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) Manner of soliciting TIN. An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Social Security Number and Certification," satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W-9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) Failure to furnish TIN. The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) Effective date. The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301--PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 301.6011-2 is amended by:

1. In paragraph (b)(1), first sentence, add the language "1098-T," immediately after the language "1098-E,".

2. Revising paragraph (g)(3).

The revision reads as follows:

§301.6011-2 Required use of magnetic media.

* * * * *

(g) * * *

(3) This section applies to returns on Forms 1098-E and 1098-T filed after December 31, 2003.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.