

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[REG-131418-14]

RIN 1545-BN27

#### Reporting for Qualified Tuition and Related Expenses; Education Tax Credits

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that revise the rules for reporting qualified tuition and related expenses under section 6050S on a Form 1098-T, "Tuition Statement," and conforms the regulations to the changes made to section 6050S by the Protecting Americans from Tax Hikes Act of 2015. This document also seeks to amend the regulations on the education tax credits under section 25A generally as well as to conform the regulations to changes made to section 25A by the Trade Preferences Extension Act of 2015 and the Protecting Americans from Tax Hikes Act of 2015. The proposed regulations affect certain higher educational institutions required to file Form 1098-T and taxpayers eligible to claim an education tax credit. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by October 31, 2016. Outlines of topics to be discussed at the public hearing scheduled for November 30, 2016 must be received by October 31, 2016.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-131418-14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m.

and 4:00 p.m. to CC:PA:LPD:PR (REG-131418-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-131418-14).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Gerald Semasek of the Office of Associate Chief Counsel (Procedure and Administration) for the proposed regulations under sections 6050S and 6724, (202) 317-6845, and Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) for the proposed regulations under section 25A, (202) 317-4718; concerning the submission of comments and requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free calls).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget through Form 1040 (OMB No. 1545-0074), Form 8863 (OMB No. 1545-0074) and Form 1098-T (OMB No. 1545-1574) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Notice and an opportunity to comment on the proposed changes to burden hours for the forms related to this proposed rule will be published in a separate notice in the **Federal Register**.

##### Background

This document contains proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under section 25A of the Internal Revenue Code (Code) and the Procedure and Administration Regulations (26 CFR part 301) under section 6050S, to reflect the amendments to sections 25A and 6724 under the Trade Preferences Extension Act of 2015 (Pub. L. 114-27 (129 Stat. 362 (2015))) (TPEA) and the amendments to sections 25A and 6050S under the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. 114-113 (129 Stat. 2242 (2015))) (PATH). Furthermore, the document contains proposed regulations to amend the Income Tax Regulations under section

25A to update the definition of qualified tuition and related expenses in § 1.25A-2(d) to reflect the changes made by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5 (123 Stat. 115) (ARRA)), to clarify the prepayment rule in § 1.25A-5(e), and to clarify the rule for refunds in § 1.25A-5(f).

##### 1. Section 25A—Education Tax Credits

The Taxpayer Relief Act of 1997 (Pub. L. 105-34 (111 Stat. 788) (TRA '97)) added section 25A to provide students and their families with two new nonrefundable tax credits to help pay for college (education tax credits). Pursuant to TRA '97, section 25A allowed eligible taxpayers to claim either the Hope Scholarship Credit or the Lifetime Learning Credit (LLC) for qualified tuition and related expenses paid during the taxable year for an academic period beginning during the taxable year. In general, either the student or the parent who claims a dependency exemption for the student may claim a credit for the student's qualified tuition and related expenses. Section 25A(f)(1) defines "qualified tuition and related expenses" as tuition and fees required for enrollment or attendance at an eligible educational institution (institution). Section 25A(f)(2) generally defines an "eligible educational institution" as an institution described in the Higher Education Act of 1965 that is eligible to participate in federal college financial aid programs. Section 25A(g)(4) provides that amounts paid during the taxable year for enrollment during an academic period beginning within the first three months of the following taxable year are treated as amounts paid for an academic period beginning during the taxable year. Section 25A(g)(5) provides that no credit is allowed for any expenses for which a deduction is allowed under another provision of the Code.

Final regulations under section 25A were published in the **Federal Register** (67 FR 78687) on December 26, 2002. Section 1.25A-2(d)(1) of these regulations defines "qualified tuition and related expenses" to mean tuition and fees required for the enrollment or attendance of a student for courses of instruction at an institution. Section 1.25A-2(d)(2)(i) provides that only fees required to be paid to the institution as a condition of the student's enrollment

or attendance at the institution are treated as qualified tuition and related expenses for purposes of section 25A. Under this rule, fees for books, supplies, and equipment used in a course of study are required fees only if the fees must be paid to the institution for the enrollment or attendance of the student at the institution. See § 1.25A–2(d)(2)(ii). In addition, § 1.25A–5(e)(1) provides that an education tax credit is allowed only for payments of qualified tuition and related expenses for an academic period beginning in the same taxable year as the year the payment is made. Section 1.25A–5(e)(2) provides that qualified tuition and related expenses paid during one taxable year for an academic period beginning in the first three months of the taxable year following the taxable year in which the payment is made will be treated as paid for an academic period beginning in the same taxable year as the year the payment is made (prepayment rule).

Section 1.25A–5(f) provides rules for refunds of qualified tuition and related expenses. If qualified tuition and related expenses are paid and a refund of these expenses is received in the same taxable year, qualified tuition and related expenses for the taxable year are reduced by the amount of the refund. Section 1.25A–5(f)(1). If a taxpayer receives a refund of qualified tuition and related expenses in the current taxable year (current year) that were paid in the prior taxable year (prior year) before the taxpayer files his/her federal income tax return for the prior year, the taxpayer reduces the qualified tuition and related expenses for the prior year by the refund amount. Section 1.25A–5(f)(2). However, if the taxpayer receives the refund after filing his/her federal income tax return for the prior year, the taxpayer must increase the tax imposed for the current year by the recapture amount. Section 1.25A–5(f)(3)(i). The recapture amount is calculated in the manner provided in § 1.25A–5(f)(3)(ii). Sections 1.25A–5(f)(4) and (f)(5) provide that refunds of loan proceeds and receipt of excludable educational assistance are treated as refunds for purposes of § 1.25A–5(f)(1), (2), and (3), as appropriate.

In 2009, ARRA enacted section 25A(i), which expanded the Hope Scholarship Credit with the American Opportunity Tax Credit (AOTC) for taxable years beginning after 2008. The definition of “qualified tuition and related expenses” for purposes of the AOTC is broader than the definition of qualified tuition and related expenses for the Hope Scholarship Credit and the LLC because it includes expenses paid

for course materials. See section 25A(i)(3).

## 2. Section 222—Deduction for Qualified Expenses

Section 431(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) added section 222, which generally allows a deduction for qualified tuition and related expenses paid by a taxpayer during the taxable year subject to certain dollar and income limitations. Section 222(b) provides that no deduction is allowed if the taxpayer claims an education tax credit for the student.

## 3. Section 6050S—Information Reporting for Eligible Educational Institutions

TRA '97 also added section 6050S to require eligible educational institutions to file information returns and to furnish written statements to assist taxpayers and the IRS in determining whether a taxpayer is eligible for an education tax credit under section 25A, as well as other education tax benefits. These returns and statements are made on Form 1098–T, “Tuition Statement.” Prior to the enactment of PATH, section 6050S(b)(2)(B)(i) permitted institutions to report either the aggregate amount of payments received or the aggregate amount billed for qualified tuition and related expenses during the calendar year for individuals enrolled for any academic period. Institutions also must report the aggregate amount of scholarships or grants received for an individual’s costs of attendance at the institution administered and processed during the calendar year. See section 6050S(b)(2)(B)(ii). Section 6050S(b)(2)(B)(iii) requires that institutions must separately report adjustments (that is, refunds of payments or reductions in charges) made during the calendar year to qualified tuition and related expenses that were reported in a prior calendar year and that institutions also must separately report adjustments (that is, refunds or reductions) made during the calendar year to scholarships that were reported in a prior calendar year. Section 6050S(b)(2)(D) requires that the information return include other information as the Secretary may prescribe.

In addition, sections 6050S(a)(2) and (a)(3) require any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified expenses (an insurer) or who receives from any individual \$600 or more of interest during the calendar

year on qualified education loans to file information returns and to furnish written information statements. Section 6050S(b)(2) provides that these information returns must contain the name, address, and TIN of any individual with respect to whom these payments were made or received, the aggregate amount of reimbursements or refunds (or similar amounts paid to such individuals during the calendar year by an insurer), the aggregate amount of interest received for the calendar year from the individual, and such other information as the Secretary may prescribe.

Section 6050S(d) provides that every person required to make a return under section 6050S(a) must furnish a written statement to each individual whose name is set forth on the return showing the name, address, and phone number of the person required to make the return and the amounts described in section 6050S(b)(2)(B). For taxable years beginning after June 29, 2015, all of the information required by section 6050S(b)(2), not just the amounts, must be included on the written statement. The written statement must be furnished by January 31 of the year following the year for which the return is required to be made.

Final regulations under section 6050S were published in the **Federal Register** (67 FR 77678) in the same Treasury Decision as the final regulations for section 25A on December 19, 2002. The section 6050S regulations provide exceptions to the reporting requirements for educational institutions for students who are nonresident aliens, for noncredit courses, for certain billing arrangements, and in cases where qualified tuition and related expenses are paid entirely with scholarships or grants. These regulations also set forth the specific information that institutions must report to the IRS, as well as information that the institution must include with the statement furnished to the student. These regulations also include requirements regarding the time and manner for soliciting the student’s TIN.

## 4. Sections 6721, 6722 and 6724—Information Reporting Penalties and Penalty Relief

Section 6721 imposes a penalty on an eligible educational institution that fails to timely file correct information returns with the IRS. Section 6722 imposes a penalty on an educational institution that fails to timely furnish correct written statements to the student. Generally, the penalty under section 6721 and section 6722 is \$100 per failure, with an annual maximum

penalty of \$1.5 million. The penalty is increased to \$250 per failure and the annual maximum penalty is increased to \$3 million for returns required to be filed and statements required to be made after December 31, 2015. However, section 6724(a) provides that the penalty under section 6721 or 6722 may be waived if it is shown that the failure was due to reasonable cause and not due to willful neglect.

Section 301.6724-1(a)(2) provides that the penalty is waived for reasonable cause only if the filer establishes that: (1) Either there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control and (2) the filer acted in a responsible manner both before and after the failure. In the case of a missing or incorrect TIN, § 301.6724-1(d)(2) provides that the filer acted in a responsible manner if the filer satisfies the solicitation requirements in § 301.6724-1(e) (regarding a missing TIN) or (f) (regarding an incorrect TIN).

Section 1.6050S-1(e)(3) provides that the rules regarding reasonable cause under § 301.6724-1 do not apply in the case of failure to include a correct TIN on a Form 1098-T. Instead, § 1.6050S-1(e)(3) provides special rules for institutions to establish reasonable cause for a failure to include a correct TIN on Form 1098-T.

Section 1.6050S-1(e)(3)(i) provides that reasonable cause for a failure to include a correct TIN on the Form 1098-T may be established if (1) the failure arose from events beyond the institution's control, such as a failure of the individual to furnish a correct TIN, and (2) the institution acted in a responsible manner before and after the failure. Section 1.6050S-1(e)(3)(ii) provides that if the institution does not have the student's correct TIN in its records, acting in a responsible manner means making a single solicitation for the TIN by December 31 of the calendar year for which the payment is made, the amount is billed, or a reimbursement is made. Section 1.6050S-1(e)(3)(iii) also provides for the manner by which an educational institution should request the individual's TIN. The solicitation must be done 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. The solicitation may be made on Form W-9S, "Request for Student's or Borrower's Taxpayer Identification Number and Certification," or the institution may develop its own form and incorporate it into other forms customarily used by the institution, such as financial aid forms.

In the instance that an institution does not have a student's TIN in its records and the student does not provide the TIN in response to a solicitation described in § 1.6050S-1(e), the institution must file and furnish the Form 1098-T, leaving the space for the TIN blank.

#### 5. TPEA Amendments to Sections 25A, 222 and 6724

Section 804(a) of TPEA amended section 25A by adding a new subparagraph (g)(8), which provides that, for taxable years beginning after June 29, 2015, except as provided by the Secretary, a taxpayer may not claim an education tax credit under section 25A unless the taxpayer receives a statement furnished by an eligible educational institution that contains all of the information required in section 6050S(d)(2) (that is, the recipient's copy of the Form 1098-T). Section 804(b) similarly amends section 222(d) to provide that, for taxable years beginning after June 29, 2015, except as provided by the Secretary, a taxpayer may not claim a deduction for qualified tuition and related expenses unless the taxpayer receives the recipient's copy of the Form 1098-T. For purposes of both the education tax credit and the deduction, a taxpayer who claims a student as a dependent will be treated as receiving the statement if the student receives the statement.

Section 805 of TPEA amends section 6724 by adding a new subsection (f), which provides that no penalty will be imposed under section 6721 or 6722 against an eligible educational institution solely by reason of failing to include the individual's TIN on a Form 1098-T or related statement if the institution contemporaneously certifies under penalties of perjury in the form and manner prescribed by the Secretary that it has complied with the standards promulgated by the Secretary for obtaining the individual's TIN. The provision applies to returns required to be made and statements required to be furnished after December 31, 2015.

#### 6. PATH Amendments to Sections 25A, 222 and 6050S

##### a. AOTC Permanent and Section 222 Extended

Section 102(a) of PATH amends section 25A(i) to make the AOTC permanent. Section 153(a) of PATH amends section 222(e) to retroactively extend the deduction for qualified tuition and related expenses for taxable years beginning after December 31, 2014, and ending on or before December 31, 2016.

##### b. Amendments to Section 25A

Section 206(a)(2) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the student's TIN and the TIN of the taxpayer claiming the credit is issued after the due date for filing the return for the taxable year. Pursuant to section 206(b)(1), this amendment is effective for returns (including an amended return) filed after December 18, 2015. Section 206(b)(2) of PATH provides, however, that this amendment does not apply to any return (other than an amendment to any return) for a taxable year that includes the date of enactment of PATH (December 18, 2015) if the return is filed on or before the due date for such return.

Section 211(a) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the return does not include the employer identification number (EIN) of any institution to which the qualified tuition and related expenses were paid with respect to the student. This amendment is effective for taxable years beginning after December 31, 2015.

##### c. Amendments to Section 6050S

Section 211(b) of PATH amends section 6050S(b)(2) to require eligible educational institutions and insurers to report their EIN on the return and statement. This amendment is effective for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date.

Section 212 of PATH amends section 6050S(b)(2)(B)(i) to eliminate the option for eligible educational institutions to report aggregate qualified tuition and related expenses billed for the calendar year. Accordingly, for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date, eligible educational institutions are required to report aggregate payments of qualified tuition and related expenses received during the calendar year.

#### Explanation of Provisions

##### 1. Changes To Implement TPEA and PATH

##### a. Changes to Section 25A and Section 222

Both TPEA and PATH add new requirements for claiming education tax benefits. Under TPEA, the student is required to receive a Form 1098-T in order to claim the LLC or the AOTC or claim the deduction under section 222. Under PATH, the ability to claim the AOTC is further limited. First, the

taxpayer can claim the AOTC only if the taxpayer includes, on his/her return for which the credit is claimed, the EIN of any educational institution to which qualified tuition and related expenses are paid. Second, the taxpayer can claim the AOTC only if the TIN of the student and the TIN of the taxpayer, on the return for which the credit is claimed, are issued on or before the due date of the original return.

#### i. Form 1098-T Requirement Under TPEA

Form 1098-T assists taxpayers in determining whether they are eligible to claim education tax credits under section 25A or the deduction for qualified tuition and related expenses under section 222. However, before TPEA, there was no requirement that the taxpayer (or the taxpayer's dependent if the taxpayer's dependent is the student) receive a Form 1098-T to claim these tax benefits.

Section 804 of TPEA changes the requirements for a taxpayer to claim education tax benefits under section 25A or section 222. For qualified tuition and related expenses paid during taxable years beginning after June 29, 2015, TPEA provides that, unless the Secretary provides otherwise, a taxpayer must receive a Form 1098-T to claim either a credit under section 25A or a deduction under section 222.

The proposed regulations reflect these changes. Specifically, the proposed regulations add a new paragraph (f) to § 1.25A-1 to require that for taxable years beginning after June 29, 2015, unless an exception applies, no education tax credit is allowed unless the taxpayer (or the taxpayer's dependent) receives a Form 1098-T. However, the proposed regulations explain that the amount reported on the Form 1098-T may not reflect the total amount of qualified tuition and related expenses that the taxpayer has paid during the taxable year because certain expenses are not required to be reported on the Form 1098-T. For example, under § 1.25A-2(d)(3), expenses for course materials paid to a vendor other than an eligible educational institution are eligible for the AOTC. However, because these expenses are not paid to an eligible educational institution, these expenses are not required to be reported on a Form 1098-T. Accordingly, a taxpayer who meets the requirements in § 1.25A-1(f) regarding the Form 1098-T requirement to claim the credit and who can substantiate payment of qualified tuition and related expenses may include these unreported expenses in the computation of the amount of the education tax credit allowable for the

taxable year even though the expenses are not reported on a Form 1098-T.

Proposed § 1.25A-1(f)(2)(i) provides an exception to the Form 1098-T requirement in § 1.25A-1(f)(1) if the student has not received a Form 1098-T by the later of (a) January 31 of the taxable year following the taxable year to which the education credit relates or (b) the date the federal income tax return claiming the education tax credit is filed. This exception only applies if the taxpayer or taxpayer's dependent (i) has requested, in the manner prescribed in publications, forms and instructions, or published guidance, the eligible educational institution to furnish the Form 1098-T after January 31 of the year following the taxable year to which the education tax credit relates but on or before the date the return is filed claiming the education tax credit, and (ii) has cooperated fully with the eligible educational institution's efforts to obtain information necessary to furnish the statement. Proposed § 1.25A-1(f)(2)(ii) provides that the receipt of a Form 1098-T is not required if the reporting rules under section 6050S and related regulations provide that the eligible educational institution is exempt from providing a Form 1098-T to the student (for example, non-credit courses). Proposed § 1.25A-1(f)(2)(iii) also provides that the IRS may provide additional exceptions in published guidance of general applicability, see § 601.601(d)(2). The proposed regulations under § 1.25A-1(f) apply to education tax credits claimed for taxable years beginning after June 29, 2015.

Until the proposed regulations under §§ 1.25A-1(f) and 1.6050S-1(a) are published in the **Federal Register** as final regulations, a taxpayer (or the taxpayer's dependent) (other than a non-resident alien) who does not receive a Form 1098-T because its institution is exempt from furnishing a Form 1098-T under current § 1.6050S-1(a)(2) may claim an education tax credit under section 25A(a) if the taxpayer (1) is otherwise qualified, (2) can demonstrate that the taxpayer (or the taxpayer's dependent) was enrolled at an eligible educational institution, and (3) can substantiate the payment of qualified tuition and related expenses. Section 804(b) of TPEA also amends section 222 to require a Form 1098-T to claim a deduction for qualified tuition and related expenses for taxable years beginning after June 29, 2015. Rules similar to those in proposed § 1.25A-1(f), including the exceptions, apply for purposes of section 222.

#### ii. Identification Requirements for AOTC Under PATH

Section 206(a)(2) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the student's TIN or the TIN of the taxpayer claiming the credit is issued after the due date for filing the return for the taxable year. This amendment is generally effective for any return or amended return filed after December 18, 2015. The proposed regulations reflect this change. Specifically, the proposed regulations add new § 1.25A-1(e)(2)(i), which provides that, for any federal income tax return (including an amended return) filed after December 18, 2015, no AOTC is allowed unless the student's TIN and the taxpayer's TIN are issued on or before the due date (including an extension, if timely requested) for filing the return for that taxable year.

Section 211 of PATH amends section 25A(i) to provide that the AOTC is not allowed unless the taxpayer's return includes the EIN of any institution to which the qualified tuition and related expenses were paid with respect to the student. The proposed regulations reflect this change by adding new § 1.25A-1(e)(2)(ii).

#### b. Changes to Section 6050S Reporting To Conform With TPEA 1098-T Requirement

##### i. Exceptions To Reporting Requirement and Clarifying Changes

Currently, the regulations under section 6050S include exceptions to reporting. For instance, under § 1.6050S-1(a)(2)(i), institutions are not required to file a Form 1098-T with the IRS or provide a Form 1098-T to a nonresident alien, unless the individual requests a Form 1098-T. Under § 1.6050S-1(a)(2)(ii), institutions are not required to report information with respect to courses for which no academic credit is awarded. In addition, reporting is not required with respect to individuals whose qualified tuition and related expenses are paid entirely with scholarships under § 1.6050S-1(a)(2)(iii) or individuals whose qualified tuition and related expenses are paid under a formal billing arrangement under § 1.6050S-1(a)(2)(iv).

The exceptions in §§ 1.6050S-1(a)(2)(i), (iii), and (iv) to reporting on Form 1098-T are inconsistent with the TPEA, which generally requires a student to receive a Form 1098-T from the educational institution to claim a section 25A education credit. With these exceptions, a significant number of taxpayers claiming the credit will not have a Form 1098-T, which would frustrate the explicit purpose of TPEA.

Therefore, the proposed regulations remove these exceptions.

Removal of the exceptions in §§ 1.6050S-1(a)(2)(i), (iii), and (iv) also assists students. Students to whom these exceptions apply are deprived of important information that they need to determine their eligibility for education tax credits. The Form 1098-T provides students with the amount of tuition paid (or billed for calendar year 2016 only), the amount of scholarships and grants that the institution administered and processed, and an indication of whether the student was enrolled at least a half time for an academic period. Students who do not receive a Form 1098-T cannot use the information that would be provided on the form to assist them in determining the proper amount of education credits they may claim. Further, removal of these exceptions will improve the IRS's ability to use the Form 1098-T to verify whether taxpayers should be allowed the education tax benefits that are claimed. In addition, removal of these exceptions would improve the IRS's ability to determine whether the institutions are complying with their reporting obligations.

The proposed regulations would not remove the exception to reporting under § 1.6050S-1(a)(2)(ii) for courses for which no academic credit is awarded. Treasury and the IRS understand that in many cases fees for these courses are charged outside of the financial systems used for students who are taking courses for credit. In addition, given that non-credit courses would not be eligible for the AOTC (or Hope Credit) and would only be eligible for the LLC if the student is taking the course to acquire or improve job skills, reporting expenses paid for non-credit courses could cause confusion and unintended non-compliance.

Treasury and the IRS believe that students benefit from receipt of the Form 1098-T because the information on the form assists the student in determining eligibility for education tax benefits that make higher education more affordable. Reporting that does not provide useful information to students and the IRS, however, unduly burdens institutions and the IRS and could confuse students about whether they are eligible to claim education tax benefits. Therefore, Treasury and the IRS are asking for comments regarding exceptions to the reporting under section 6050S. Specifically, comments are requested regarding the exception to reporting for students who are nonresident aliens, including how an institution determines that a student is a nonresident alien and experience

administering the existing exception. Comments are also requested regarding whether the exception for noncredit courses should be retained, and if so, whether there should be any changes to the exception.

The proposed regulations also revise the information that institutions are required to report on the Form 1098-T in an effort to provide more precise information for students to use when determining eligibility for and the amount of an education tax credit and for the IRS to use to verify compliance with the requirements for claiming the education tax credits. For instance, the current regulations under § 1.6050S-1(b)(2)(ii)(D) require that the Form 1098-T include an indication of whether amounts reported relate to an academic period that begins in the first three months of the next calendar year pursuant to the prepayment rule in § 1.25A-5(e)(2). The proposed regulations revise this section to include a requirement that the amount paid that relates to an academic period that begins in the first three months of the next calendar year be specifically stated on the Form 1098-T. This will assist the IRS in identifying credits claimed in two years for the same qualified tuition and related expenses.

In addition, the proposed regulations add a new paragraph (I) to § 1.6050S-1(b)(2)(ii) to require the institution to indicate the number of months that a student was a full-time student during the calendar year. The proposed regulations also add to that paragraph a definition of what constitutes a month. This information will assist the IRS in determining whether a parent properly claimed the student as a dependent and, therefore, properly claimed the credit for the student's qualified tuition and related expenses. See § 1.25A-1(f) for rules relating to claiming the credit in the case of a dependent.

The proposed regulations clarify § 1.6050S-1(b)(2)(v) regarding the rules for determining the amount of payments received for qualified tuition and related expenses. This clarification is intended to provide a uniform rule for all institutions to determine whether a payment received by an institution should be reported on a Form 1098-T as qualified tuition and related expenses in the current year. Under the proposed rule, payments received during a calendar year are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year and then as payments of expenses other than qualified tuition and related expenses

for enrollment during the calendar year. A similar rule applies in the case of payments received during the calendar year with respect to enrollment in an academic period beginning during the first three months of the next calendar year. In that case, the payments received by the institution with respect to the amount billed for enrollment in an academic period beginning during the first three months of the next calendar year are treated as payments of qualified tuition and related expenses for the calendar year in which the payments are received. Examples have been added to § 1.6050S-1(b)(2)(vii) to illustrate these rules. Treasury and the IRS request comments regarding these rules, including alternative approaches and recommendations for addressing other issues that should be covered by these rules.

The proposed regulations also revise § 1.6050S-1(c)(1)(iii) regarding the instructions accompanying the Form 1098-T that the institution must furnish to students. The proposed regulations add a new paragraph (D) to § 1.6050S-1(c)(1)(iii) to require institutions to include a paragraph in the instructions informing students that they may be able to optimize their federal tax benefits by taking a portion of a scholarship or grant into income. This new paragraph will alert students about their ability to optimize their federal education tax benefits by allocating all or a portion of their scholarship or grant to pay the student's actual living expenses (if permitted by the terms of the scholarship or grant) by including such amounts in income on the student's tax return if the student is required to file a return. By including such amounts in income, the scholarship or grant is no longer tax free, and the student is not required to reduce qualified tuition and related expenses by the amount paid with the now taxable scholarship or grant. See section 25A(g)(2) and § 1.25A-5(c)(3) for rules regarding allocation of scholarships and grants between qualified tuition and related expenses and other expenses. Minor revisions have also been made to the other paragraphs required to be included in instructions, including addition of the name of the form (Form 1098-T) on which reporting occurs and specific identification of Publication 970, "Tax Benefits for Education," as a resource for taxpayers.

The proposed regulations also provide a definition of "administered and processed" for purposes of determining which scholarships and grants an institution is required to report on the Form 1098-T. The current regulations

do not have a definition of this term, and the lack of a definition has resulted in uncertainty and inconsistent reporting. The proposed regulations resolve this by adding a definition of “administered and processed” to § 1.6050S-1(e)(1)(i). Under this definition, a scholarship or grant is administered and processed by an institution if the institution receives payment of an amount (whether by cash, check, or other means of payment) that the institution knows or reasonably should know, is a scholarship or grant, regardless of whether the institution is named as the payee or a co-payee of the amount and regardless of whether, in the case of a payment other than in cash, the student endorses the check or other means of payment for the benefit of the institution. Pell Grants are provided as an example of a scholarship or grant that is treated as administered and processed by an institution.

ii. PATH Eliminates Option To Report Amount Billed

These proposed regulations also implement the amendment to section 6050S(b)(2)(B)(i) under PATH, which eliminates the option for eligible educational institutions to report the aggregate amount billed for qualified tuition and related expenses for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date. Eligible educational institutions have informed the IRS that they cannot implement the necessary changes in technology to enable reporting of aggregate payments of qualified tuition and expenses for the first year in which the statutory amendment applies, calendar year 2016. Therefore, in Announcement 2016-17, I.R.B. 2016-20, the IRS stated that it will not impose penalties under section 6721 or 6722 against an eligible educational institution required to file 2016 Forms 1098-T solely because the institution reports the aggregate amount billed for qualified tuition and expenses rather than the aggregate payments of qualified tuition and related expenses received. Thus, for calendar year 2016, no penalties will be imposed if an educational institution fails to implement the PATH’s amendment to section 6050S(b)(2)(B)(i) and continues to report the amount billed.

The proposed regulations reflect the PATH amendment by eliminating the option to report the amount billed. These regulations are proposed to be effective on publication of final regulations in the **Federal Register**. In the interim, the limited penalty relief in Announcement 2016-17 will apply to

allow educational institutions to report the amount billed for calendar year 2016.

iii. No Change Required To Implement EIN Reporting Requirement

Current regulations under § 1.6050S-1(b)(2)(ii)(A) require that the eligible educational institution report its name, address, and TIN on the Form 1098-T. Accordingly, the amendment to section 6050S(b)(2) by section 211(b) of PATH requiring eligible educational institution and insurers to report their EIN does not require a change to the regulations.

c. Changes To Implement New Section 6724(f)

Section 1.6050S-1(f)(4) of the proposed regulations reflects the enactment of section 6724(f) by section 805 of TPEA. Under section 6724(f), the IRS may not impose information reporting penalties under section 6721 and section 6722 against an eligible educational institution for failure to include a correct TIN on the Form 1098-T if the institution certifies compliance with IRS standards for soliciting TINs. Relief under section 6724(f) applies only to eligible educational institutions and does not apply to insurers required to file Forms 1098-T under section 6050S(a)(2).

The IRS generally sends penalty notices to taxpayers who fail to file information returns when required or who file incorrect information returns. Filers seeking penalty relief based on reasonable cause must respond to the penalty notice with a statement explaining how the filer qualifies for relief. Under section 6724(f), however, no penalty under section 6721 or 6722 is imposed in the first instance if the educational institution contemporaneously makes a true and accurate certification under penalties of perjury in such form and manner as may be prescribed by the Secretary that it complied with the standards promulgated by the Secretary to obtain the student’s TIN. Section 6724(f) is effective for returns required to be filed and statements required to be furnished after December 31, 2015.

Standards for obtaining the student’s TIN are set forth in § 1.6050S-1(e)(3)(ii) and (iii) of the existing regulations. These regulations are proposed to be redesignated as § 1.6050S-1(f)(3)(ii) and (iii). Under these standards, the institution does not have to solicit a student’s TIN, but may use the TIN that it has in its records. If the institution does not have the student’s correct TIN in its records, then it must solicit the TIN in the time and manner described in redesignated § 1.6050S-1(f). To

implement section 6724(f), § 1.6050S-1(f)(4) of the proposed regulations has been added to provide that for returns required to be filed and statements required to be furnished after December 31, 2015, the IRS will not impose a penalty against an institution under section 6721 or 6722 for failure to include the student’s correct TIN on the return or statement if the institution certifies to the IRS under penalties of perjury in the form and manner prescribed by the Secretary in publications, forms and instructions, or other published guidance at the time of filing of the return that the institution complied with the requirements in § 1.6050S-1(f)(3)(ii) and (iii). However, the proposed regulations make clear that the certification will not protect the institution from penalty if the IRS determines subsequently that the requirements of § 1.6050S-1(f)(3)(ii) and (iii) were not satisfied or if the failure to file correct information returns relates to something other than a failure to provide the correct TIN for the student. In addition, a cross-reference is proposed to be added to the regulations under section 6724 to alert taxpayers that the rules for penalty relief for eligible educational institutions with respect to reporting obligations under section 6050S are contained in § 1.6050S-1(f).

d. Penalty Relief Under Section 6724(f) for Calendar Year 2015 Forms 1098-T

Section 6724(f) requires the IRS to develop procedures enabling an eligible educational institution to avoid imposition of the section 6721 and section 6722 penalty for failure to include a student’s correct TIN on the Form 1098-T by certifying under penalties of perjury at the time of filing or furnishing the form that the institution complied with the IRS standards for obtaining a student’s TIN. In Announcement 2016-03, I.R.B. 2016-4, the IRS stated that it will not impose penalties under section 6721 or 6722 against an eligible educational institution required to file Forms 1098-T for calendar year 2015 solely because the student’s TIN is missing or incorrect.

2. Other Changes to Regulations Under Section 25A and Section 6050S

The proposed regulations also update and clarify the regulations under section 25A. The proposed regulations update § 1.25A-2(d) to reflect the changes made by ARRA allowing students to claim the AOTC for expenses paid for course materials (such as books, supplies, and equipment) required for enrollment or attendance, whether or not the course

materials are purchased from the institution. Prior to ARRA, the term “qualified tuition and related expenses” included tuition and fees, but did not include course materials, such as books, unless the cost of these materials was a fee that was required to be paid to the institution as a condition of attendance or enrollment. See section 25A(f)(1) and § 1.25A–2(d)(2)(ii).

When Congress enacted the AOTC in 2009, it expanded the definition of qualified tuition and related expenses for purposes of the AOTC to include expenses paid for course materials. See H.R. Conf. Rep. 111–16, 111th Cong., 1st Sess. p. 525 (February 29, 2009). Course materials are qualified expenses only for the AOTC and not for the LLC. See Tax Increase Prevention Act of 2014 (Pub. L. 113–295, 128 Stat. 4010). The proposed regulations update § 1.25A–2(d) to provide that, for purposes of claiming the AOTC for tax years beginning after December 31, 2008, the definition of qualified tuition and related expenses includes not only tuition and fees required for enrollment or attendance at an eligible educational institution, but also expenses paid for course materials needed for enrollment or attendance at an eligible educational institution. Accordingly, after ARRA, for purposes of claiming the Hope Scholarship Credit and LLC, qualified tuition and related expenses continue to exclude the cost of books, supplies, and equipment if they can be purchased from any vendor. However, for purposes of claiming the AOTC, qualified tuition and related expenses includes the cost of course materials such as books, supplies and equipment that is needed for meaningful attendance or enrollment in a course of study, whether or not the materials are purchased from the institution. The proposed regulations provide an example that illustrates that for purposes of the AOTC qualified tuition and related expenses includes the cost of course material, including books, even if a taxpayer purchases these materials from a vendor other than the institution.

In addition, the proposed regulations add a new section under section 6050S to eliminate uncertainty in the reporting requirements that may result from these proposed amendments to § 1.25A–2(d). Under proposed § 1.6050S–1(a)(2)(i), an institution is not required to report the amount paid or billed for books, supplies, and equipment unless the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance under § 1.25A–2(d)(2)(ii).

The proposed regulations also clarify the example in § 1.25A–5(e)(2)(ii)

regarding the prepayment rule. Under § 1.25A–5(e)(2)(i), if qualified tuition and related expenses are paid during one taxable year for an academic period that begins during the first three months of the taxpayer’s next taxable year (that is, in January, February, or March of the next taxable year for calendar year taxpayers), an education tax credit is allowed for the qualified tuition and related expenses only in the taxable year in which the taxpayer pays the expenses. The Treasury Department and the IRS are aware that there is some uncertainty regarding the application of the prepayment rule to amounts paid in the prior year and the current year for an academic period beginning during the current year. The proposed regulations clarify the proper treatment in this situation by expanding the Example in § 1.25A–5(e)(2)(ii) to illustrate that a student who pays part of a semester’s tuition in Year 1, and the remainder in Year 2, may claim a credit for Year 1, for the portion of the tuition paid in December Year 1 and a separate credit for Year 2 for the portion of the tuition paid in February Year 2.

The proposed regulations also clarify the rules under § 1.25A–5(f) regarding a refund of qualified tuition and related expenses received from an eligible educational institution. The current regulations do not address the situation where the taxpayer receives a refund in the current taxable year of qualified tuition and related expenses for an academic period beginning in the current taxable year for which payments were made during the prior taxable year under the prepayment rule and payments were made during the current taxable year. To address this situation, the proposed regulations provide that the taxpayer may allocate the refund in any proportion to reduce qualified tuition and related expenses paid in either taxable year, except that the amount of the refund allocated to a taxable year may not exceed the qualified tuition and related expenses paid in the taxable year for the academic period to which the refund relates. The sum of the amounts allocated to each taxable year cannot exceed the amount of the refund. The proposed regulations add an example to illustrate this rule.

#### **Proposed Effective and Applicability Dates**

These regulations are proposed to take effect when published in the **Federal Register** as final regulations.

#### **Statement of Availability of IRS Documents**

IRS published guidance cited in this preamble is published in the Internal

Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS Web site at <http://www.irs.gov>.

#### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact 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.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The type of small entities to which the regulations may apply are small eligible educational institutions (generally colleges and universities eligible to receive federal financial aid for education under the Higher Education Act of 1965). This certification is based on the fact that few, if any, new eligible educational institutions will be subject to reporting and the changes made by this notice of proposed rulemaking require little, if any, additional time for compliance by institutions currently subject to reporting requirements. The collection of information in this regulation implements the statute and should not require eligible educational institutions to collect information that is not already maintained by the institution. Eligible educational institutions have been subject to information reporting under section 6050S since 1998, and the obligations under the existing final regulations that are the foundation for these proposed regulations are already in place. Any additional information returns required to be filed under this notice of proposed rulemaking should result in few, if any, new eligible educational institutions being subject to reporting that were not already required to file Forms 1098–T. Only eligible educational institutions, not all educational institutions, are subject to these reporting rules. For this purpose, an eligible educational institution means an institution described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on the date of enactment (August 5, 1997), and which is eligible to participate in a program under title IV of such act (generally colleges and universities whose students are eligible to receive

federal financial aid for higher education). See sections 25A(f)(2) and 6050S(e). Further, this notice of proposed rulemaking contains modifications that should simplify compliance and thereby reduce the time needed to comply with the information reporting obligations under section 6050S. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The Internal Revenue Service invites the public to comment on this certification.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **DATES** and **ADDRESSES** headings. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for November 30, 2016 at 10:00 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, 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 onto 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 by October 31, 2016 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 31, 2016. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of 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 these proposed regulations is Gerald Semasek of the Office of Associate Chief Counsel (Procedure and Administration) for the proposed regulations under section 6050S and section 6724 and Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) for the proposed regulations under section 25A.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, 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 TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.25A–0 is amended by:

- 1. Revising the entry for § 1.25A–1(e)(1) introductory text.
- 2. Adding entries for § 1.25A–1(e)(1), (2), and (3).
- 3. Revising the entries for § 1.25A–1(f) introductory text and (f)(2).
- 4. Adding entries for § 1.25A–1(f)(3) and (4).
- 5. Revising the entries for § 1.25A–1(g) and (h).
- 6. Adding an entry for § 1.25A–1(i).
- 7. Revising the entries for §§ 1.25A–2(d)(3), (4), (5), and (6).
- 8. Adding entries for §§ 1.25A–2(d)(7) and (e).
- 9. Revising the entry for § 1.25A–2(f)(6).
- 10. Adding entries for §§ 1.25A–5(f)(7) and (g).

The revisions and additions read as follows:

#### § 1.25A–0 Table of Contents.

\* \* \* \* \*

#### § 1.25A–1 Calculation of Education Tax Credit and General Eligibility Requirements

\* \* \* \* \*

- (e) Identification requirements.
  - (1) In general.
  - (2) Additional identification requirements for the American Opportunity Tax Credit.

(i) TIN must be issued on or before the due date of the original return.

(ii) Return must include the eligible educational institution's employer identification number (EIN).

(3) Effective/applicability dates.

(f) Statement requirement.

\* \* \* \* \*

(2) Exceptions.

(3) Transition rule.

(4) Effective/applicability date.

(g) Claiming the credit in the case of a dependent.

(h) Married taxpayers.

(i) Nonresident alien taxpayers and dependents.

#### § 1.25A–2 Definitions

\* \* \* \* \*

(d) \* \* \*

(3) Course materials for the American Opportunity Tax Credit for taxable years beginning after December 31, 2008.

(4) Personal expenses.

(5) Treatment of a comprehensive or bundled fee.

(6) Hobby courses.

(7) Examples.

(e) Effective/applicability date.

\* \* \* \* \*

#### § 1.25A–5 Special Rules Relating to Characterization and Timing of Payments

\* \* \* \* \*

(f) \* \* \*

(6) Treatment of refunds where qualified tuition and related expenses paid in two taxable years for the same academic period.

(7) Examples.

(g) Effective/applicability date.

■ **Par. 3.** Section 1.25A–1 is amended by:

- 1. Revising paragraph (e).
- 2. Redesignating paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively.
- 3. Adding a new paragraph (f).
- 4. In newly redesignated paragraph (g)(2), removing the language “(f)” and adding “(g)” in its place.

The revisions and additions read as follows:

#### § 1.25A–1 Calculation of education tax credit and general eligibility requirements.

\* \* \* \* \*

(e) *Identification requirements*—(1) *In general.* No education tax credit is allowed unless a taxpayer includes on the federal income tax return claiming the credit the name and the taxpayer identification number (TIN) of the student for whom the credit is claimed. For rules relating to assessment for an omission of a correct taxpayer identification number, see section 6213(b) and (g)(2)(f).

(2) *Additional identification requirements for the American*



*Opportunity Tax Credit (AOTC)*—(i) *TIN must be issued on or before the due date of the original return.* For any federal income tax return (including an amended return) filed after December 18, 2015, no AOTC is allowed unless the TIN of the student and the TIN for the taxpayer claiming the credit are issued on or before the due date, or the extended due date if the extension request is timely filed, for filing the return for the taxable year for which the credit is claimed.

(ii) *Return must include the eligible educational institution's employer identification number (EIN).* For taxable years beginning after December 31, 2015, no AOTC is allowed unless the taxpayer includes the EIN of each eligible educational institution to which qualified tuition and related expenses were paid.

(3) *Applicability dates.* (i) Except as provided in paragraphs (e)(3)(ii) and (iii) of this section, this paragraph (e) applies on or after December 26, 2002.

(ii) Paragraph (e)(2)(i) of this section applies to federal income tax returns (including amended returns) filed after December 18, 2015.

(iii) Paragraph (e)(2)(ii) of this section applies to taxable years beginning after December 31, 2015.

(f) *Statement requirement*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, for taxable years beginning after June 29, 2015, no education tax credit is allowed unless the taxpayer (or the taxpayer's dependent) receives a statement furnished by an eligible educational institution, as defined in § 1.25A-2(b), containing all of the information required under § 1.6050S-1(b)(2). The amount of qualified tuition and related expenses reported on the statement furnished by an eligible educational institution may not reflect the total amount of the qualified tuition and related expenses paid during the taxable year for which a taxpayer may claim an education tax credit. A taxpayer that substantiates payment of qualified tuition and related expenses that are not reported on Form 1098-T, "Tuition Statement", may include those expenses in computing the amount of the education tax credit allowable for the taxable year.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply—

(i) If the taxpayer or the taxpayer's dependent:

(A) Has not received such a statement from an eligible educational institution required to furnish such statement under section 6050S and the regulations thereunder as of January 31 of the year following the taxable year to which the

education tax credit relates or the date the return is filed claiming the education tax credit, whichever is later;

(B) Has requested, in the manner prescribed in forms, instructions, or in other published guidance, the eligible educational institution to furnish the Form 1098-T after January 31 of the year following the taxable year to which the education tax credit relates but on or before the date the return is filed claiming the education tax credit; and

(C) Has cooperated fully with the eligible educational institution's efforts to obtain information necessary to furnish the statement;

(ii) If the eligible educational institution is not required to furnish a statement to the student under section 6050S and the regulations thereunder; or

(iii) As otherwise provided in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(3) *Applicability date.* Paragraph (f) of this section applies to credits claimed for taxable years beginning after June 29, 2015.

\* \* \* \* \*

■ **Par. 4.** Section 1.25A-2 is amended by:

■ 1. Revising paragraphs (d)(2)(i) and (ii).

■ 2. In paragraph (d)(2)(iii), removing the language "(d)(3)" and adding "(d)(4)" in its place.

■ 3. Redesignating paragraphs (d)(3), (4), (5), and (6) as paragraphs (d)(4), (5), (6), and (7), respectively.

■ 4. Adding a new paragraph (d)(3).

■ 5. In newly redesignated paragraph (d)(5), by removing the language "(d)(3)" and adding "(d)(4)" in its place.

■ 6. In newly redesignated paragraph (d)(7), revising *Example 2*, redesignating *Examples 3, 4, 5, and 6*, as *Examples 4, 5, 6, and 7*, and adding a new *Example 3*.

■ 7. Adding paragraph (e).

The revisions and additions read as follows:

§ 1.25A-2 Definitions.

\* \* \* \* \*

(d) \* \* \*

(2) *Required fees*—(i) *In general.* Except as provided in paragraphs (d)(3) and (4) of this section, the test for determining whether any fee is a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution as a condition of the student's enrollment or attendance at the institution.

(ii) *Books, supplies, and equipment.* For taxable years beginning before January 1, 2009, for purposes of the Hope Scholarship Credit, and for

taxable years beginning after December 31, 1997, for purposes of the Lifetime Learning Credit, qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution. For taxable years beginning after December 31, 2008, see paragraph (d)(3) of this section for rules relating to books, supplies and equipment for purposes of the American Opportunity Tax Credit.

\* \* \* \* \*

(3) *Course materials for the American Opportunity Tax Credit for taxable years beginning after December 31, 2008.* For taxable years beginning after December 31, 2008, the term "qualified tuition and related expenses" for purposes of the American Opportunity Tax Credit under section 25A(i) includes the amount paid for course materials (such as books, supplies, and equipment) required for enrollment or attendance at an eligible educational institution. For this purpose, "required for enrollment or attendance" means that the course materials are needed for meaningful attendance or enrollment in a course of study, regardless of whether the course materials are purchased from the institution.

\* \* \* \* \*

(7) \* \* \*

*Example 2.* First-year students attending College W during 2008 are required to obtain books and other materials used in its mandatory first-year curriculum. The books and other reading materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. The expenses paid for the first-year books and materials purchased at College W's bookstore are not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution. In addition, expenses paid for the first-year books and materials borrowed from other students or purchased from vendors other than College W's bookstore are also not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

*Example 3.* Assume the same facts as *Example 2*, except that the books and materials are required for first-year students attending College W during 2009. Because the expenses are paid with respect to enrollment or attendance after 2008, § 1.25A-1(d)(3) applies rather than § 1.25A-1(d)(2)(ii), if the taxpayer claims the American

Opportunity Tax Credit under section 25A(i). Under § 1.25A-1(d)(3), expenses for books and other course materials are qualified tuition and related expenses for purposes of the American Opportunity Tax Credit if they are needed for meaningful attendance in the student's course of study at College W. Accordingly, if the taxpayer claims the American Opportunity Tax Credit for 2009, the expenses paid for the first-year books and materials are qualified tuition and related expenses. However, if the taxpayer claims the Lifetime Learning Credit for 2009 under section 25A(c), § 1.25A-2(d)(2)(ii) applies rather than § 1.25A-1(d)(3). Accordingly, if the taxpayer claims the Lifetime Learning Credit, the expenses paid for the first-year books and materials purchased at College W's bookstore are not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

\* \* \* \* \*

(e) *Applicability date.* (1) Except as provided in paragraph (e)(2) of this section, this section applies on or after December 26, 2002.

(2) Paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and *Examples 2* and *3* of paragraph (d)(7) of this section apply to qualified tuition and related expenses paid, and education furnished in academic periods beginning, on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may apply paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and *Examples 2* and *3* of paragraph (d)(7) of this section for taxable years beginning after December 31, 2008, for which the period of limitations on filing a claim for credit or refund under section 6511 has not expired.

■ **Par. 5.** Section 1.25A-5 is amended by:

- 1. In paragraph (e)(2)(ii), revising the *Example*.
- 2. Redesignating paragraph (f)(6) as paragraph (f)(7).
- 3. Adding a new paragraph (f)(6).
- 4. In newly redesignated paragraph (f)(7), adding *Example 4*.
- 5. Adding paragraph (g).

The revisions and additions read as follows:

**§ 1.25A-5 Special rules relating to characterization and timing of payments.**

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

*Example.* In December 2016, Taxpayer A, a calendar year taxpayer who is not a dependent of another taxpayer under section 151, receives a bill from College Z for \$5,000 for qualified tuition and related expenses to attend College Z for the 2017 spring semester, which begins in January 2017. This is the

first semester that Taxpayer A will attend College Z. On December 15, 2016, Taxpayer A pays College Z \$1,000 in qualified tuition and related expenses for the 2017 spring semester. On February 15, 2017, Taxpayer A pays College Z the remaining \$4,000 due for qualified tuition and related expenses for the 2017 spring semester. In August 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend College Z for the 2017 fall semester, which begins in September 2017. Taxpayer A pays the entire \$7,000 on September 1, 2017. In December 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend for the 2018 spring semester. Taxpayer A pays \$1,000 of the 2018 spring semester bill on December 15, 2017 and \$6,000 of that bill in February 15, 2018. Taxpayer A does not enroll in an eligible educational institution for the 2018 fall semester or the 2019 spring semester. Taxpayer A may claim an education tax credit on Taxpayer A's 2016 Form 1040 with respect to the \$1,000 taxpayer paid to College Z on December 15, 2016 for the 2017 spring semester. On Taxpayer A's 2017 Form 1040, Taxpayer A may claim an education credit with respect to the \$12,000 Taxpayer A paid to College Z during 2017 (\$4,000 paid on February 15, 2017 for the 2017 spring semester, \$7,000 paid on September 1, 2017, for the 2017 fall semester, and \$1,000 paid on December 15, 2017, for the 2018 spring semester). On Taxpayer A's 2018 Form 1040, Taxpayer A may claim an education credit with respect to the \$6,000 taxpayer paid to College Z on February 15, 2018.

\* \* \* \* \*

(f) \* \* \*

(6) *Treatment of refunds where qualified tuition and related expenses paid in two taxable years for the same academic period.* If a taxpayer or someone other than the taxpayer—

- (i) Pays qualified tuition and related expenses in one taxable year (prior taxable year) for a student's enrollment or attendance at an eligible educational institution during an academic period beginning in the first three months of the taxpayer's next taxable year (subsequent taxable year);
- (ii) Pays qualified tuition and related expenses in the subsequent taxable year for the academic period beginning in the first three months of the subsequent taxable year; and
- (iii) Receives a refund of qualified tuition and related expenses during the subsequent taxable year for the academic period beginning in the first three months of the subsequent taxable year (including an amount treated as a refund under paragraph (f)(4) or (5) of this section), the taxpayer may allocate the refund in any proportion to qualified tuition and related expenses paid in the prior taxable year under paragraph (f)(2) or (3) of this section or the subsequent taxable year under

paragraph (f)(1) of this section, except that the amount of the refund allocated to a taxable year may not exceed the qualified tuition and related expenses paid during the taxable year with respect to the academic period beginning in the subsequent taxable year. The sum of the amounts allocated to each taxable year cannot exceed the amount of the refund.

(7) \* \* \*

*Example 4.* In December 2016, Taxpayer D, a calendar year taxpayer who is not a dependent of another taxpayer under section 151, receives a bill from University X for \$2,000 for qualified tuition and related expenses to attend University X as a full-time student for the 2017 spring semester, which begins in January 2017. In December 2016, D pays \$500 of qualified tuition and related expenses for the 2017 spring semester. In January 2017, D pays an additional \$1,500 of qualified tuition and related expenses for the 2017 spring semester. Early in the 2017 spring semester, D withdraws from several courses and no longer qualifies as a full-time student. As a result of D's change in status from a full-time student to a part-time student, D receives a \$750 refund from University X on February 16, 2017. D has no other qualified tuition and related expenses for 2017. Under paragraph (f)(6) of this section, D may allocate all, or a portion, of the \$750 refund to reduce the \$1,500 of qualified tuition and related expenses paid in 2017 or D may also allocate a portion of the \$750 refund, up to \$500, to reduce the qualified tuition and related expenses paid in 2016 and allocate the remainder of the refund to reduce the qualified tuition and related expenses paid in 2017.

(g) *Applicability date.* (1) Except as provided in paragraph (g)(2) of this section, this section applies on or after December 26, 2002.

(2) Paragraphs (e)(2)(ii), (f)(6), and *Example 4* in paragraph (f)(7) of this section apply to qualified tuition and related expenses paid and education furnished in academic periods beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may apply paragraphs (e)(2)(ii), (f)(6), and *Example 4* in paragraph (f)(7) of this section in taxable years for which the limitation on filing a claim for credit or refund under section 6511 has not expired.

■ **Par. 6.** Section 1.6050S-0 is amended by:

- 1. Revising the entry for § 1.6050S-1(a)(2)(i).
- 2. Removing the entries for § 1.6050S-1(a)(2)(iii) and (iv).
- 3. Revising the entries for § 1.6050S-1(b)(2) introductory text and (b)(2)(ii).
- 4. Revising the entry for § 1.6050S-1(b)(3) introductory text.
- 5. Removing the entries for § 1.6050S-1(b)(3)(iii), (iv) and (v).

- 6. Revising the entry for § 1.6050S–1(b)(4).
- 7. Removing the entry for § 1.6050S–1(b)(5).
- 8. Redesignating the entry for § 1.6050S–1(b)(6) as § 1.6050S–1(b)(5).
- 9. Adding entries for § 1.6050S–1(c)(1)(i), (ii) and (iii).
- 10. Removing the entry for § 1.6050S–1(c)(2)(ii).
- 11. Redesignating the entry for § 1.6050S–1(c)(2)(iii) as § 1.6050S–1(c)(2)(ii).
- 12. Redesignating the entries for § 1.6050S–1(e) and § 1.6050S–1(f) as § 1.6050S–1(f) and § 1.6050S–1(g), respectively.
- 13. Adding a new entry for § 1.6050S–1(e).
- 14. Revising the newly redesignated entry for § 1.6050S–1(f)(4).
- 15. Adding a new entry for § 1.6050S–1(f)(5).

The revisions and additions to read as follows:

*§ 1.6050S–0 Table of contents.*

\* \* \* \* \*

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

(a) \* \* \*

(2) \* \* \*

(i) No reporting of amounts for books, supplies and equipment unless the amount is a fee required to be paid to the institution.

(A) In general.

(B) Examples.

\* \* \* \* \*

(b) \* \* \*

(2) Information reporting requirements for educational institutions for qualified tuition and related expenses.

\* \* \* \* \*

(ii) Information included on return.

(A) Name, address and TIN of institution

(B) Name address and TIN of individual enrolled at institution

(C) Amount of payments of qualified tuition and related expenses

(D) Indication of whether payments pertain to academic period commencing in first three months of following calendar year

(E) Amount of scholarships or grants

(F) Amount of reimbursements or refunds pertaining to expenses reported in prior year

(G) Amount of reductions of scholarships or grants

(H) Statement of whether individual enrolled for at least half of normal full-time work load

(I) Number of months during which individual enrolled for normal full-time workload

(J) Statement of individual's enrollment in graduate-level program

(K) Any additional information required by Form 1098–T or instructions

\* \* \* \* \*

(3) Requirements for insurers.

\* \* \* \* \*

(4) Time and place for filing return.

(i) In general.

(ii) Extensions of time.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Required information.

(ii) Legend identifying statement as important tax information.

(iii) Instructions.

(A) Statement of payments made or reimbursements or refunds made.

(B) Statement regarding extent of individual's eligibility for credit under section 25A.

(C) Statement regarding reduction in tax credit due to grant or scholarship.

(D) Statement notifying individual of ability to allocate scholarship or grant.

(E) Statement notifying individual of consequences of refunds, reimbursements, reductions in tuition charges or grants or scholarships for prior taxable year.

(F) Statement informing individual of consequences of reimbursement or refund by institution or insurer.

(G) Statement notifying individual to consult forms and publications of IRS.

(H) Name, address and phone number of educational institution or insurer.

\* \* \* \* \*

(e) Definitions.

(1) Administered and processed.

(i) In general.

(ii) Examples.

(2) Cost of attendance.

(f) \* \* \*

(4) No penalty imposed on eligible educational institutions that certify compliance with paragraph (f)(3) of this section at the time of filing the return.

(5) Failure to furnish TIN.

\* \* \* \* \*

■ **Par. 7.** Section 1.6050S–1 is amended by:

■ 1. Revising paragraph (a)(2)(i) and removing paragraphs (a)(2)(iii) and (iv).

■ 2. Revising paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii)(D), (E), (G) and (H).

■ 3. Redesignating paragraphs (b)(2)(ii)(I) and (J) as paragraphs (b)(2)(ii)(J) and (K), respectively, and adding a new paragraph (b)(2)(ii)(I).

■ 4. Revising newly redesignated paragraph (b)(2)(ii)(J).

■ 5. Revising paragraphs (b)(2)(iv), (v), (vi) and *Example 1, 2, 3, and 4* in paragraph (b)(2)(vii).

■ 6. In paragraph (b)(2)(vii), adding *Example 5 and 6*.

■ 7. Removing paragraph (b)(3) and redesignating paragraphs (b)(4), (5) and (6) as paragraphs (b)(3), (4) and (5), respectively.

■ 8. Revising newly redesignated paragraph (b)(4)(i).

■ 9. Removing newly redesignated paragraph (b)(4)(ii) and further redesignating paragraph (b)(4)(iii) as paragraph (b)(4)(ii).

■ 10. Revising paragraphs (c)(1)(iii)(A), (B) and (C).

■ 11. Redesignating paragraphs (c)(1)(iii)(D), (E), (F), and (G) as

paragraphs (c)(1)(iii)(E), (F), (G), and (H), respectively.

■ 12. Revising newly re-designated paragraphs (c)(1)(iii)(E), (F), (G), and (H).

■ 13. Adding a new paragraph (c)(1)(iii)(D).

■ 14. Revising paragraph (c)(2)(i).

■ 15. Removing paragraph (c)(2)(ii) and redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(ii).

■ 16. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

■ 17. Adding a new paragraph (e).

■ 18. In newly redesignated paragraph (f):

i. Revising paragraph (f)(3)(ii).

ii. In paragraph (f)(3)(iii), removing the language “(e)(3)(iii)” and adding “(f)(3)(iii)” in its place.

iii. Further redesignating paragraph (f)(4) as paragraph (f)(5).

iv. Adding new paragraph (f)(4).

■ 19. Revising newly redesignated paragraph (g).

The revisions and additions read as follows:

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

(a) \* \* \*

(2) \* \* \*

(i) *No reporting of amounts for books, supplies and equipment unless the amount is a fee required to be paid to the institution—(A) In general.* The information reporting requirements of this section do not apply to amounts paid for books, supplies, and equipment unless the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance under § 1.25A–2(d)(2)(ii).

(B) *Examples.* The following examples illustrates the rules of this paragraph (a)(2):

*Example 1.* First-year students at College W are required to obtain books and other materials used in its mandatory first-year curriculum. The books and other materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. Because the first-year books and materials may be purchased from any vendor, the amount is not a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance and, therefore, is not subject to reporting under paragraph (a)(2)(i) of this section. No amount is reportable even if a first-year student pays College W for the required books and other materials purchased from College W's bookstore.

*Example 2.* Assume the same facts as *Example 1* of this paragraph (a)(2), except College W furnishes the books and other materials to each first-year student and the

books may not be borrowed or purchased from other sources. College W charges a separate fee for books and materials to all first-year students for these items as part of the bill required to be paid to attend the institution. Under paragraph (a)(2)(i) of this section, because the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance, the fee, if paid by or on behalf of the student, must be reported on the Form 1098-T as part of the qualified tuition and related expenses.

\* \* \* \* \*

(b) *Requirement to file return*—(1) *In general.* Eligible educational institutions must report the information described in paragraph (b)(2) of this section, which 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) of this section, an adjustment made to payments received means a reimbursement or refund. Insurers must report the information described in paragraph (b)(3) of this section.

(2) *Information reporting requirements*—(i) *In general.* Except as provided in paragraph (a)(2) of this section (regarding exceptions where no information reporting is required), an eligible educational institution must file an information return with the IRS on Form 1098-T, “Tuition 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 (including an academic period beginning during the first three months of the next calendar year) or during a prior calendar year and for whom a transaction described in paragraph (b)(2)(ii)(C), (E), (F), or (G) of this section is made during the calendar year. An eligible educational 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) \* \* \*

(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 and the amount of such payments;

(E) The amount of any scholarships or grants for the payment of the individual’s cost of attendance (as

defined in paragraph (e)(2) of this section) that the institution administered and processed (as defined in paragraph (e)(1) of this section) during the calendar year;

\* \* \* \* \*

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual’s cost of attendance (as defined in paragraph (e)(2) of this section) that were reported by the eligible educational institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing 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 for more information regarding workload requirements);

(I) A statement or other indication showing the number of months (for this purpose, one day in a month is treated as an entire month) during the calendar year that the individual was enrolled for the normal full-time workload for the course of study the individual is pursuing at the institution;

(J) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential, unless the student is enrolled in both a graduate-level program and an undergraduate level program during the same calendar year at the same institution in which case no statement or indication is required; and

\* \* \* \* \*

(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 are not 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 first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year, and then as payments of expenses other than qualified tuition and related expenses for enrollment during the calendar year. Payments received with respect to an amount billed for enrollment during an academic period beginning in the first 3 months of the following calendar year in which the payment is made are treated as payment of qualified tuition and related expenses in the calendar year during which the payment is received by the institution. 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 a 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 qualified tuition and related 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) \* \* \*

*Example 1.* (i) Student A enrolls in University X as a full-time student for the 2016 fall semester. In early August 2016, University X sends a bill to Student A for \$16,000 for the 2016 fall semester breaking out the current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In late August 2016, Student A pays \$11,000 to University X, leaving a remaining balance to be paid of \$5,000. In early September 2016, Student A drops to half-time enrollment for the 2016 fall semester but remains in on-campus housing. In late September 2016, University

X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in the \$10,000 charge for qualified tuition and related expenses as a result of dropping from full-time to half-time status. No other transactions occur with respect to Student A's account with University X. In late September 2016, University X applies the \$5,000 credit toward Student A's current charges, eliminating any outstanding balance on Student A's account with University X.

(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 there is a reduction in charges for qualified tuition and related expenses equal to the \$5,000 credit due to Student A dropping to half-time for the 2016 fall semester. Under paragraph (b)(2)(iii) of this section, the \$10,000 payment received for qualified tuition and related expenses during 2016 is reduced by the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2016. Therefore, University X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T.

*Example 2.* (i) The facts are the same as in *Example 1* of this paragraph (b)(2)(vii), except that Student A pays the full \$16,000 in late August 2016. In late September 2016, 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 University X reduced the charges for qualified tuition and related expenses equal to the \$5,000 refund disbursed to the student due to dropping to half-time for the 2016 fall semester. Under paragraph (b)(2)(iii) of this section, the \$10,000 payment received for qualified tuition and related expenses during 2016 is reduced by the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2016. Therefore, University X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T.

*Example 3.* (i) The facts are the same as in *Example 1* of this paragraph (b)(2)(vii), except that Student A is enrolled full-time, and, in early September 2016, Student A decides to live at home with her parents. In late September 2016, 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 University X has reduced room and board charges for the 2016 fall semester, rather than reducing charges for qualified tuition and related expenses for the 2016 fall semester. 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 2016 on a 2016 Form 1098-T.

*Example 4.* (i) Student B enrolls in College Y as a full-time student for the 2017 spring semester. In early December 2016, College Y sends a bill to Student B for \$16,000 for the 2017 spring semester breaking out current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In late December 2016, College Y receives a payment of \$16,000 from Student B. In mid-January 2017, after the 2017 spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2017, 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. Thereafter, Student B's account reflects a positive balance of \$5,000 due to the credit and there is no other activity on Student B's account until early August when College Y sends a bill for \$16,000 for the 2017 fall semester breaking out the current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In early September 2017, College Y applies the \$5,000 positive account balance (credit) toward Student B's \$16,000 bill for the 2017 fall semester. In late September 2017, Student B pays \$6,000 towards the charges for the 2017 fall semester.

(ii) For calendar year 2016, under paragraph (b)(2)(v) of this section, \$10,000 of the \$16,000 payment received by College Y in December 2016 is treated as a payment of qualified tuition and related expenses. Therefore, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T. In addition, College Y is required to indicate that \$10,000 of the payments reported on the 2016 Form 1098-T relate to an academic period that begins during the first three months of the next calendar year.

(iii) Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to Student B's account in January 2017 is treated as a reimbursement or refund of qualified tuition and related expenses because there is a reduction in charges for qualified tuition and related expenses of \$5,000 for the 2017 spring semester. Under paragraph (b)(2)(iv) of this section, however, this reduction is a reimbursement or refund of qualified tuition and related expenses made during 2017 and, therefore, must be separately reported on the 2017 Form 1098-T. The 2016 Form 1098-T reporting \$10,000 of qualified tuition and related expenses for 2016 is unchanged.

(iv) Under paragraph (b)(2)(v) of this section, the \$5,000 positive account balance

that is applied toward charges for the 2017 fall semester is treated as a payment made in 2017. Therefore, College Y received total payments of \$11,000 during 2017 (the \$5,000 credit plus the \$6,000 payment). Under paragraph (b)(2)(v) of this section, the \$11,000 of total payments made during 2017 are treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses for the 2017 fall semester. Therefore, for 2017, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2017 and a \$5,000 refund of payments of qualified tuition and related expenses reported for 2016 on the 2017 Form 1098-T.

*Example 5.* (i) Student C enrolls in College Z as a full-time student the 2016 fall semester and the 2017 spring semester. Student C was not enrolled in, and did not attend, any institution of higher education prior to the 2016 fall semester. In August 2016, College Z sends a bill to Student C for \$11,000 for the 2016 fall semester. In December 2016, College Z sends a bill to Student C for \$11,000 for the 2017 spring semesters. Qualified tuition and related expenses billed for each semester is \$6,000 and room and board billed for each semester is \$5,000. In September 2016, College Z receives a payment of \$11,000 which is applied toward the amount billed for Student C's attendance during the 2016 fall semester. In December 2016, College Z receives a payment of \$4,500 which is applied toward the amount billed for Student C's attendance during the 2017 spring semester. In February 2017, College Z receives a payment of \$6,500, the remainder of the amount billed for enrollment during the 2017 spring semester.

(ii) On the 2016 Form 1098-T, College Z reports the payment of \$10,500 of qualified tuition and related expenses determined as follows: \$6,000 for the payment received in September 2016 with respect to the amount billed for qualified tuition and related expenses for the 2016 fall semester and \$4,500 for the payment received in December 2016 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester. On the 2017 Form 1098-T, College Z reports the payment of \$1,500 of qualified tuition and related expenses received in February 2017 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester.

*Example 6.* The facts are the same as *Example 5* of this paragraph (b)(2)(vii) except in January 2017 College Z receives payment of \$11,000 for the entire amount billed for the 2017 spring semester. On the 2016 Form 1098-T, College Z reports the payment of \$6,000 for the payment received in September 2016 with respect to the amount billed for qualified tuition and related expenses for the 2016 fall semester. On the 2017 Form 1098-T, College Z reports the payment of \$6,000 of qualified tuition and related expenses received in January 2017 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester.

\* \* \* \* \*

(4) *Time and place for filing return*—  
 (i) *In general.* Except as provided in paragraph (b)(4)(ii) 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 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 for Form 1098-T.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) State that the statement reports total payments received 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 for qualified tuition and related expenses reported on the Form 1098-T for the calendar year;

(C) State that the amount of any scholarships or grants reported on the Form 1098-T for the calendar year and other similar amounts not reported on the Form 1098-T (because they are not administered and processed by the eligible educational institution as defined in paragraph (e)(1) of this section) that are allocated by the student to pay qualified tuition and related expenses may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that even if the eligible educational institution applies scholarships or grants reported on the Form 1098-T for the calendar year to qualified tuition and related expenses, the student may, for tax purposes, be able to allocate all or a portion of the scholarships or grants to expenses other than qualified tuition and related expenses (and, therefore, forego having to reduce the amount of the education tax credit the student may claim) if the terms of the scholarship or grant permit it to be used for expenses other than qualified tuition and related expenses and the student includes the amount in income on his federal income tax return.

\* \* \* \* \*

(E) 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 eligible educational institution with respect to the individual for a prior calendar year on Form 1098-T may affect the amount of any allowable education tax credit for the prior calendar year (and may result in an increase in tax liability for the year of the refund);

(F) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported on a Form 1098-T by an eligible educational institution or insurer may reduce the amount of an allowable education tax credit for a taxable year (and may result in an increase in tax liability for the year of the refund);

(G) State that the taxpayer should refer to relevant IRS forms and publications, such as Publication 970, “Tax Benefits for Education,” 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

(H) Include the name, address, and phone number of the information contact of the eligible educational 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) 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 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 applicable regulations.

\* \* \* \* \*

(e) *Definitions.* The following definitions apply with respect to this section:

(1) *Administered and processed*—(i) *In general.* A scholarship or grant is “administered and processed” by an eligible educational institution if the institution receives payment of an amount (whether by cash, check, or other means of payment) that the institution knows or reasonably should

know, is a scholarship or grant, regardless of whether the institution is named payee or co-payee of such amount and regardless of whether, in the case of a payment other than in cash, the student endorses the check or other means of payment for the benefit of the institution. For instance, Pell Grants, described in the Higher Education Act of 1965 (20 U.S.C. 1070), as amended, are administered and processed by an institution in all cases.

(ii) *Examples.* The following examples illustrate the definition in this paragraph (e)(1):

*Example 1.* University M received a Pell Grant on behalf of Student B, a student enrolled in a degree program at University M. University M provides all required notifications to and obtains all the necessary paperwork from Student B and applies the Pell Grant to Student B’s account. Because University M received the Pell Grant and University M knows or should know that the Pell Grant is a scholarship or grant, under paragraph (e)(1)(i) of this section, the Pell Grant is administered and processed by University M.

*Example 2.* University N receives a check from Organization Y made out to Student C. University N is not named as a payee on the check. The cover letter accompanying the check provides University N with sufficient information to reasonably know that the check represents payment of a scholarship that may be used to pay Student C’s qualified tuition and related expenses. Under paragraph (e)(1)(i) of this section, the scholarship from Organization Y is administered and processed by University N. This is the case even though University N is not named on the check as a payee and regardless of whether Student C endorses the check over to University N.

(2) *Cost of attendance.* The term “cost of attendance” has the same meaning as section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll.

(f) \* \* \*

(3) \* \* \*

(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 (f)(3)(iii) of this section on or before December 31 of each year during which it receives payments of 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 (f)(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 (f)(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.

\* \* \* \* \*

(4) *No penalty imposed on eligible educational institutions that certify compliance with paragraph (f)(3) of this section at the time of filing the return.* In the case of returns required to be filed and statements required to be furnished after December 31, 2015, the IRS will not impose a penalty against an eligible educational institution under section 6721 or 6722 for failure to include the individual's correct TIN on the return or statement if the institution makes a true and accurate certification to the IRS under penalties of perjury (in the form and manner prescribed by the Secretary in publications, forms and instructions, or other published guidance) at the time of filing of the return that the institution complied with the requirements in paragraphs (f)(3)(ii) and (iii) of this section. Nothing in this paragraph (f)(4) prevents the IRS from imposing a penalty under section 6721 or 6722 if after the IRS receives the certification described in this paragraph (f)(4) the IRS determines that the requirements of paragraph (f)(3) of this section are not satisfied or the failure is unrelated to an incorrect or missing TIN for the individual for whom the institution is required to file a return or statement.

\* \* \* \* \*

(g) *Applicability date.* The rules in this section apply to information returns required to be filed, and statements required to be furnished, after December 31, 2003, except that paragraphs (a)(2) (b)(1), (b)(2)(i), (b)(2)(ii)(D), (E), and (G) through (K), (b)(2)(iv) through (vii), (b)(4)(i) and (ii), (c)(1)(iii)(B) through (H), (e), and (f)(4) apply to information returns required to be filed, and statements required to be furnished, after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For information returns required to be filed, and statements required to be furnished, on or before

the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, § 1.6050S–1 (as contained in 26 CFR part 1, revised April 2014) applies.

### PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 8.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 9.** Section 301.6724–1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

#### § 301.6724–1 Reasonable cause.

(a) \* \* \*

(1) \* \* \* For waiver in the case of eligible educational institutions required to report information under section 6050S with respect to qualified tuition and related expenses, see § 1.6050S–1(f) of this chapter.

\* \* \* \* \*

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016–18032 Filed 7–29–16; 11:15 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[REG–103058–16]

RIN 1545–BN23

#### Information Reporting of Catastrophic Health Coverage and Other Issues Under Section 6055

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to information reporting of minimum essential coverage under section 6055 of the Internal Revenue Code (Code). Health insurance issuers, certain employers, and others that provide minimum essential coverage to individuals must report to the IRS information about the type and period of coverage and furnish related statements to covered individuals. These proposed regulations affect health insurance issuers, employers, governments, and other persons that provide minimum essential coverage to individuals.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 3, 2016.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–103058–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–103058–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG–103058–16).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations under section 6055, John B. Lovelace, (202) 317–7006; concerning the proposed regulations under section 6724, Hollie Marx, (202) 317–6844; concerning the submission of comments, Regina Johnson, (202) 317–6901 (not toll-free calls).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 3, 2016. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.