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Mr. Gerald Semasek
Office of Associate Chief Counsel, Procedure and Administration

Mr. Sheldon Iskow
Office of the Associate Chief Counsel, Income Tax and Accounting
Internal Revenue Service
PO Box 7604 Ben Franklin Station
Washington, DC 20044

Docket: REG-131418-14

Dear Mr. Semasek and Mr. Iskow:

We appreciate the opportunity to submit comments on the August 2 Notice of Proposed Rulemaking (NPRM), which addresses changes to the reporting requirements related to information reporting on Form 1098-T as well as to the definitions of the education tax credits. The National Association of College and University Business Officers (NACUBO) represents chief business officers and their staff at more than 2,100 colleges and universities, which issue Forms 1098-T to millions of taxpayers each year. The 10 higher education associations listed below join NACUBO in these comments.

NACUBO has consulted extensively with campus professionals responsible for 1098-T compliance at large and small, public and independent nonprofit colleges and universities to analyze the NPRM and identify issues and concerns as well as areas where further clarification is needed. In addition, we collected data from almost 400 colleges and universities to help us understand the potential impact of the proposed changes on campuses around the country. The following recommendations represent the collective input we have received from member institutions, many of which will be submitting their own comment letters.

NACUBO, together with other national higher education associations, has advocated for simplifying and adjusting federal tax incentives that help students and families pay for college. A single, permanent, refundable credit, available beyond the first four years of college, would go a long way toward eliminating much of the confusion students, families, institutions, and the federal government contend with under current law. Beyond this overarching reform of the credits themselves, more should be done to make claiming the credit straightforward for taxpayers.

We fully appreciate the goals of the Internal Revenue Service (IRS) and the Department of Treasury to conform the regulations to statute, to clarify rules, and to establish effective processes that both efficiently enable taxpayers to claim credits due to them and prevent individuals from claiming them erroneously.

This letter provides comments on the provisions in the NPRM that implement changes made to section 6050S by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) as well as changes to section 25A enacted as part of the Trade Preferences Extension Act of 2015 (TPEA) and the PATH Act. The comments also address proposed new requirements for colleges and universities that go beyond the changes enacted in 2015.

Many of our concerns emerge from the fact that institutions of higher education are constantly evolving to provide flexible and accessible ways to deliver education and enable students to access education in ways that meet their needs. We urge the IRS to recognize that the complexities outlined below in response to the NPRM are a reflection of these positive and beneficial attributes of American colleges and universities.

It is clear the IRS is seeking third-party data with which to verify taxpayers' claims; however, much of the new information you propose to collect misses the mark and will not bolster compliance efforts vis–à–vis the education tax credits. For example, the vast majority of nonresident alien students are not eligible to receive education tax benefits, nor are the many students who are registered through formal billing arrangements. Reporting full-time status in terms of months is incongruent with academic practices and counter to the way other federal agencies consider enrollment.

We recognize IRS efforts to improve Form 1098-T as a tool to assist taxpayers in claiming education tax credits. However, information reporting to the IRS should be a simple, straightforward portrayal of information readily available as a part of standard business practices. Unfortunately, the 1098-T already requires a complex reporting regime, which the IRS now proposes to further expand under this NPRM. The proposed changes to the form will require colleges and universities to dramatically alter current business practices and develop costly new software enhancements.

NACUBO looks forward to the public hearing scheduled for November 30 and will recommend witnesses for this hearing in separate correspondence.

In summary, we support the continued reporting exception for noncredit classes. We are also in agreement that the reporting exception for students whose qualified tuition and related expenses are paid entirely with scholarships and grants can be eliminated. However, we have serious concerns with many of the other newly proposed reporting requirements. We recognize the intended goals of the IRS—to both simplify claims for taxpayers and to reduce erroneous credits— but several of the recommendations in the NPRM will only serve to increase burden and confusion; they simply do not reflect the complex, innovative, and unique pathways by which educational offerings are delivered to students.

Changes to the Education Tax Credits (§1.25A)

The IRS proposes to make several revisions to §1.25A to implement statutory changes made by TPEA and the PATH Act and others that attempt to clarify timing and characterization of certain payments and refunds. But the IRS has omitted the most significant changes that are needed to these code sections.

The American Opportunity Tax credit (AOTC) has been, since its inception in 2009, the premier education tax benefit. Remarkably, the rules in §1.25A have not yet been updated to encompass its establishment. Since the PATH Act also made the AOTC permanent, this would seem to be an opportune time to update the regulations. The references to the AOTC that have been added in the NPRM to §1.25A-1(e)(2) and §1.25A-2(d)(2)(ii) and (3) seem incongruent given that the AOTC has not been added into the rules, defined, or otherwise mentioned.

The IRS has not made any revisions to its regulations governing the education tax credits in almost 15 years. NACUBO is concerned that if this opportunity to bring them up to date is missed, it will be years before the regulations are updated to reflect the current statute.

Proposed 1098-T Reporting Changes (§1.6050S)

Exceptions to Reporting

Under current regulations, colleges and universities are not required to generate Forms 1098-T for certain categories of students, including those taking noncredit courses, nonresident aliens, students whose qualified tuition and related expenses (QTRE) are waived or paid with scholarships, and students who are covered under a formal billing arrangement where no student account exists.

Noncredit Classes. We are grateful that the proposed rules preserve the reporting exception for noncredit classes and strongly urge retention of this exception.

Colleges and universities in the United States offer hundreds of thousands of noncredit courses: anything from motorcycle safety courses to resume-writing classes to seminars on parenting skills to computer literacy or continuing medical education. While the students in such classes may have an ongoing relationship with the institution, they often do not and are choosing to take noncredit classes as one-time experiences to meet a unique educational need in their lives. As noted in the NPRM, these classes are not eligible for the AOTC and are only eligible for the Lifetime Learning credit (LLC) if they are related to the student's field of employment.

Participation in noncredit courses, for the most part, is effectuated via a simple transaction (when payment is required for registration). Institutions often do not create a comprehensive student record or financial account as they would for students taking courses for academic credit, and do not solicit taxpayer identification numbers (TINs) from students. At some universities operating on a decentralized model, noncredit courses or programs may be offered by individual colleges or schools within the university, or at the departmental level requiring little to no interaction with the university's main administrative functions.

NACUBO's survey found that, as one might guess, community colleges serve the most noncredit students, averaging more than 6,000 per institution. Research universities serve about 3,900 each. Less than 13 percent of the schools responding to NACUBO's survey indicated that they currently file 1098-Ts for students taking only noncredit classes, with a few more indicating that they did so for certain groups of students only.

Fewer than half indicated that financial records for noncredit classes were integrated into the school's student information system, while 20 percent reported that some portion of records was integrated. More than 30 percent, however, said that noncredit course information was maintained in separate systems that did not interface with the school's student account system used for students taking for-credit courses. Research universities were far more likely to report that their systems were not integrated— almost half reported using separate systems.

Tracking systems for noncredit courses range from spreadsheets maintained by a department to records used to document and verify continuing education compliance for maintenance of professional credentials. At many institutions, multiple systems are used for noncredit classes. NACUBO sees no way that those institutions could generate 1098-Ts for this class of students without dramatic changes to current practices and infrastructure, including creation of systems that currently do not exist.

Even though we do not support providing Forms 1098-T for noncredit courses, we recognize the potential confusion created by TPEA that requires taxpayers to have a Form 1098-T in order to claim

an education tax credit. We stand ready to work with the IRS to develop plain language information for students and taxpayers to clarify that they will not need a Form 1098-T to substantiate amounts paid for noncredit coursework for which they might claim a tax credit.

Nonresident Aliens. Under current rules, institutions are only required to generate a Form 1098-T upon request for a nonresident alien (NRA) student. Most schools therefore do not generate 1098-Ts for nonresident aliens, unless requested to do so. The proposed rules would eliminate the exception for nonresident aliens.

Mandating 1098-T reporting for NRA students will increase the burden and processing costs for many schools, especially for those schools with large numbers of foreign students, while providing little discernible benefit.

- The vast majority of nonresident alien students are ineligible to receive education tax benefits. Under §1.25A-1(i), NRAs are only eligible for education tax credits if they are married to a U.S. citizen or resident and make an election under Internal Revenue Code (IRC) section 6013(g) or (h). This represents a very small portion of the NRAs studying at U.S. institutions.
- Most NRAs do not have a taxpayer identification number (TIN), and many are not eligible for one. It makes little sense for institutions to repeatedly solicit TINs from NRAs, or to file thousands of 1098-Ts without identification numbers that the IRS cannot use.
- IRS rules at §1.6050S-1(c)(2) require the school to mail the student's copy of the 1098-T to his or her permanent address, if known. For most NRAs this is a foreign address, which will further increase cost to schools. Results of our survey indicate that almost 70 percent of 1098-T statements are mailed to students, rather than provided online.

This mandate, if adopted, would result in the generation of tens of thousands of superfluous Forms 1098-T being filed with the IRS and furnished to students. Colleges and universities will face additional costs, the IRS will receive information it cannot use, and foreign students will get forms they don't understand and don't need. Both the IRS and institutions will experience unnecessary contact from foreign students trying to understand why they received the form and what they are supposed to do with it.

The current system—allowing those NRAs who need a 1098-T to request one—works well. NACUBO strongly urges the preservation of the existing rules that only require institutions to provide a 1098-T to NRA students upon request.

Alternatively, the IRS might consider only requiring reporting 1098-Ts for nonresident aliens who have provided a TIN to their respective institution prior to the end of the calendar year.

QTRE Paid Entirely by Scholarships. We support the elimination of the reporting exception for students whose QTRE is paid entirely with scholarships and grants. NACUBO's survey found that two-thirds of responding institutions already provide 1098-Ts to these students, even though they are not required to do so. Unlike the other categories of exceptions, it will not be difficult for institutions to provide forms for these students (although it will be costly for some). They already need to gather the pertinent financial information in order to determine which students fall into the excepted category.

We recognize that many students in this situation are eligible for education tax benefits, if they have additional costs for books and supplies or choose to allocate some of their grant funds to nonqualified costs of attendance. Therefore, Form 1098-T will provide useful information and help these students claim tax benefits.

QTRE Paid Under Formal Billing Arrangements. The current exemption for students whose QTRE is paid under a formal billing arrangement where the institution does not maintain a financial account for the student should be retained. The third-party sponsor, rather than the school, often handles administrative duties vis–à–vis the students. In these arrangements, the employer or other paying organization remits payment to the college or university usually to cover costs for a group of students. No individual student accounts are maintained, nor are TINs solicited from these students. If the institution does not maintain a student financial account, it follows that it will not be able to provide the student-level financial information required to complete Form 1098-T.

In many (if not most) states, high school students can enroll in courses that count for both high school and college credit. These are typically referred to as "dual enrollment" programs and most often involve a partnership with community colleges. Payment mechanisms vary across states and school systems. In some, the school system covers the cost of tuition or contracts with the college by the class. For others, tuition is the responsibility of the student/parent. Courses might be delivered at the high school, at a postsecondary institution, or online by faculty under the college's control and supervision. In some arrangements, the college may be compensated based on a per student basis, on a per class basis, or some combination.

Contract education refers to circumstances whereby a college or university contracts with a public or private entity, corporation, association, person, or body, for the purposes of providing instruction, services, or both. The party contracting for the instruction or services typically signs an agreement that outlines the instruction to be provided and covers the costs necessary to provide the instruction/training. It is possible for students to earn academic credits and, when applicable, receive certificates and degrees for work completed through contract education.

Thirty-eight percent of the institutions that answered this question on the NACUBO survey had at least one arrangement of this type. About 45 percent of the students involved attended either dual-enrollment or employer-based programs. The remainder cited programs such as vocational rehabilitation, teacher education, and other government-funded education including foreign governments. Sometimes the contract between the college and the third-party sponsor is based on per-student charges while other contracts may offer a flat fee for the course regardless of the number of students enrolled. The burden and cost of implementing this change would far outweigh its value to taxpayers/students who would be ineligible to claim the amounts reported (since QTRE was paid by others) towards any tax credit. Providing 1098-Ts to these students would be misleading and confusing.

Additional Data Elements

The IRS proposes to add two new data elements to the 1098-T that it argues will help ensure accuracy and guard against fraudulent claims. The additions are unrelated to recent statutory changes.

Amounts Paid Relating to Next Calendar Year. Existing rules require institutions opting to use Box 1 to report the total amount of QTRE paid by or on behalf of the student during that calendar year. Form 1098-T also includes a check box in Box 7 for the institution to indicate a portion of the amount reported is attributable to an academic period beginning in the first three months of the next calendar year.

The NPRM proposes to require schools to parse out the amount paid for QTRE related to an academic year beginning in January, February, or March of the coming calendar year. Although the Service suggests that this information would be useful in helping it identify credits claimed in two years for the same qualified expenses, we do not see how it would do that. Such reporting might have been helpful when institutions were allowed to report amounts billed in one year that pertained to a term beginning in the following year since taxpayers might actually pay and claim the credit in the

following year. However, the new requirement that schools report only amounts *paid* for QTRE during the calendar year makes which term the payments apply to irrelevant. Reporting is based on the date of payment without regard to when the charge is posted to the student account.

NACUBO is also concerned that reporting payments attributable to terms beginning in the following year may be misleading and confusing to taxpayers, leading them to add the amount to the amount of payments for QTRE reporting in Box 1. This would cause them to overstate their payments.

Student accounting systems do not typically identify or track payments in this manner. About 80 percent of NACUBO's survey respondents described the proposed requirement of reporting dollar amounts of payments attributable to future terms as either "difficult" or "very difficult," commonly citing again that existing programs and systems do not characterize payments in this way, so extensive reprogramming would be required to identify and report these amounts.

The term is usually attached to each charge, so institutions have been able to tell if a charge posted in November or December was for the term beginning in January or February of the following year. However, a payment posted in November or December may be paying charges for the fall term, in part or in full, and for the term that begins in January or February. Institutions would have to know what portion of a payment is applying to exactly what charge to do this reporting accurately. Many systems do not have this granularity.

Number of Months Student Is Full-Time. The IRS is also proposing to add a box to Form 1098-T for the school to provide the number of months that the student was enrolled on a full-time basis. The preamble explains that the purpose of this proposal is to aid 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 expenses. The definition in the NPRM specifies that enrollment for one day in any given month would constitute one month.

We strongly oppose adoption of this provision in the final regulations. Colleges and universities do not track student attendance or enrollment by month. Campus systems typically assess the enrollment status of a student by academic period (semester, quarter, or other term). Student enrollment status is complex and may vary day-to-day depending on how and when it is assessed. Just as a student account can be in constant flux, so too can enrollment status.

Schools already face difficulty meeting disparate rules on full-time status imposed by other federal agencies: The Department of Education uses terms based on status as of a census date. The Department of Veterans Affairs ignores terms and looks at the number of credits the student is taking on a week-by-week basis. Now, the IRS wants to count enrollment status in yet another way that would require extensive work on the part of institutions.

- Most colleges and universities track enrollment status by term, not by month, and would have to do considerable reprogramming to be able to report in this manner accurately.
- Schools cannot look at terms independently, count the months for each, and add them up over the course of the year because terms may overlap calendar months. Summer session could end in August and the fall term might start in August, for instance.
- Student enrollment is fluid, even at institutions with traditional calendars. Students add and drop courses regularly. Students may even withdraw from classes retroactively, after the end of the term (and perhaps in a different year). Note that even if a student withdraws, their enrollment status as recognized by the Department of Education may or may not change. Mandating this reporting element may cause an

increase in adjustments or amended forms, thus increasing workloads for the IRS and institutions, not to mention confusion to taxpayers.

- Class schedules have become much more varied in recent years as schools have experimented with new ways to offer programs. Modular classes come in different lengths, and may overlap with other courses or run sequentially, making it challenging to determine enrollment status at any given point in time other than for the term as a whole.
- This reporting would result in a large number of "false negatives" for first-term freshmen who typically were full-time students in high school for the first five months of the year. If the fall term at the college did not start until September, the 1098-T would only show four months of full-time enrollment rather than nine.
- Discerning full-time enrollment by month would be particularly challenging for students enrolled in practicums, internships, and master's degree projects and professional programs whose terms frequently do not line up with the more traditional term structure of the rest of the institution.

There is also considerable confusion on whether the IRS is seeking reporting of enrollment or attendance. Few colleges and universities take attendance on a regular basis. (Some require faculty to take attendance only at the beginning of a term, for example.) A student could be enrolled full time for a semester but stop attending at some point. If they did not take steps to officially withdraw, the student would still be considered "enrolled." It would be extremely burdensome for colleges to be asked to track student attendance for this purpose.

Enrollment is currently reported on a regular basis to the Department of Education's National Student Loan Data System but not in a manner that would meet IRS-proposed criteria. At many institutions, this data is pulled from a separate database maintained by a different office and not always easily integrated with the student account system used for tax reporting.

This provision significantly expands the Form 1098-T's intended purposes of helping taxpayers utilize education tax credits to that of verifying student enrollment in academic programs at eligible institutions and payment of QTRE so the IRS can validate dependency—information that is already provided on Form 1040. To compel higher education institutions to further retool their information gathering and systems to do IRS enforcement work goes far beyond any of the mandated legislative changes to 1098-T. We strongly oppose adoption of this provision in the final regulations.

Clarifications of Definitions and Rules

Payments for QTRE. The IRS proposes to clarify the rule in §1.6050S-1(b)(2)(v) regarding how schools determine the amount of payments received for QTRE. The revised paragraph would read (new language highlighted in red):

> (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.

While this provision is generally helpful, it doesn't reflect the realities of how most student account application of payment protocols operate. We suggest this as a safe harbor rather than a requirement. Few, if any, institutions evaluate student accounts on a calendar-year basis. Charges are tracked by term. Most schools could accept the notion that payments received should be applied (at least for tax reporting purposes) to QTRE first, and then once QTRE is satisfied to nonqualified charges—and indeed would find this stipulation helpful. It would make more sense for many institutions, however, to base this calculation on a term (the unit for which students are enrolled and billed) rather than a year.

Say a student owed $4,000 for QTRE and $3,000 for nonqualified charges for spring semester and the student pays $7,000. The student is then billed $1,500 in QTRE and $1,000 for nonqualified expenses for summer term, and makes a payment of $500. The student attends more than half of the summer session, withdraws, but is not owed a refund. Under the proposed rule, the institution would be required to consider the amounts paid for nonqualified charges for spring semester as paying QTRE for the summer term.

Spring charges	$4,000 QTRE	$3,000 other charges
Payment	$7,000	
Summer charges	$1,500 QTRE	$1,000 other charges
Payment	$ 500	

Under school application of funds policies, Box 1 = $4,500

Under proposed IRS policy, Box 1 = $5,500

The problem is exacerbated if terms straddle two years, since the school needs to know how much QTRE was paid in year 1 in order to calculate how much was still owed in year 2. Students and taxpayers need to be able to tie the amounts that the school reports on the 1098-T to the information that students will find in the details on their student account. For example, they will need to recognize that an institution may have certain mandatory fees, such as those for health and transportation, and understand that they are excluded from Form 1098-T Box 1 reporting because they are not QTRE.

We also caution that, in discussions among institutional representatives, there is considerable variation in understanding of this provision. Some read it as calling for two separate evaluations of payments, first pertaining to enrollment in the current year and then separately for payments attributable to a term beginning in the following year. Others would combine them into one calculation. If they were combined, the problem noted above would be exacerbated as amounts intended to pay nonqualified charges from terms in the tax year might instead be characterized as paying QTRE for the term starting in the following year instead. We note that Example 5 in this section appears to treat terms (or years) separately when determining payments for QTRE reported in Box 1.

How is a payment determined to be "made with respect to amount billed for enrollment in the next year" except if the school has applied the funds that way? Most payment systems do not have a way for the payer to label a payment by term. Also, if a payment has specifically been applied to a nonqualified charge, say a housing deposit made in December to hold a dormitory room, may the institution exclude it from Box 1 reporting?

NACUBO believes that this provision would be more helpful if it was structured as a safe harbor for institutions, rather than as an instruction that they must follow. Student accounting systems approach application of funds in different ways, so while one system may apply payments to specific charges,

another may not be able to do so. The former should not be required to use a shadow system for tax reporting purposes if it can provide an appropriate item-by-item accounting.

NACUBO finds the examples provided in §1.6050S-1(b)(2)(vii) inadequate. They fail to illustrate common scenarios that cause confusion for institutions. Most notably, none of the hypothetical students receive scholarships or grants. Student aid may be credited to accounts (or adjusted) before, during, or sometimes after a term. It is important for schools to understand how these payments should be reported.

"Administered and Processed" by the Institution. For years, colleges and universities have had difficulty figuring out which scholarship payments must be reported in Box 5. To help alleviate confusion and encourage more conformity across institutions, NACUBO published voluntary guidance on the issue in 2013. At that time, we suggested that schools consider the following factors in determining whether a payment constitutes a reportable scholarship or grant that is administered and processed by the institution:

Does the institution:

a. Determine eligibility of student for award?
b. Certify enrollment/attendance to the sponsor or granting organization?
c. Calculate the amount awarded?
d. Allocate funds across terms?
e. Return overpayments to source?
f. Count the payment as aid when packaging financial aid (to avoid over awards under Title IV financial aid rules)?

The IRS is proposing to add a new definition of "administered and processed" under §1.6050S-1(e)(1) that defines the act of accepting a payment "that the institution knows, or reasonably should know, is a scholarship or grant" and then stresses that whether or not the institution is a payee on a check or the student endorses it over to the school is not determinative. Two examples are provided. This definition seems to take language that points to actions on the part of the institution and redefine it as knowledge.

Respondents to NACUBO's survey offered mixed reviews of the new definition, with 36 percent saying it was easy to understand, 38 percent difficult, and 26 percent very difficult. Their concerns included the vagueness of the proposed standard, the simplistic fact patterns of the examples provided, and the impression that they were going to be expected to examine the source of every check or electronic payment. Comments included:

> "The volume of checks received makes this impossible and online authorized payment functionality allows sponsors/donors to make payments that do not pass through any human hands."
>
> "It seems to imply that if a student receives a scholarship check directly from an outside source, cashes the check and uses the cash to pay their tuition, the institution may somehow know that the payment was from a scholarship."
>
> "The phrase "reasonably should know" is still a vague judgment call [for information reporting purposes]. IRS needs to provide examples of these gray area payments, where it is reasonable and where it is not."

The examples illustrate only the most straightforward cases that institutions readily recognize and apply. Pell Grants are provided as an example both in §1.6050S-1(e)(1) and in Example 1. Frankly, there has never been any question that Pell Grants are reportable scholarships since schools are quite

active participants in administering the program and disbursing funds. In Example 2, a check (made out to the student) is mailed to University N along with a letter clearly identifying it as payment of a scholarship. What if that check and letter had been mailed directly to the student? It would be helpful for examples in this area to elucidate less clear-cut fact patterns where interpretation of the definition might be required, rather than presenting what is already evident to the regulated community.

Checks are frequently made payable to the institution referencing the student on the memo line, but with no indication that they are meant as scholarships for the student. The check could be from a grandparent's bank, a parent's company savings plan, or the family's business account. Further, schools often use lockbox processing for checks (whereby banks retrieve the payments, process them, and deposit the funds directly into the institution's bank account).

Penalty Relief

Colleges and universities are grateful that Congress has provided a resolution to the frustrating cycle of fines and waivers that has plagued the higher education community for several years. We believe that the checkbox certification will work well but seek clarification on several questions about implementation.

Should the institution check the box on all Forms 1098-T filed or only on those with missing TINs? The language in proposed §1.6050S-1(f)(3)(ii) is clear that an institution needs to solicit a TIN only if it doesn't already have a record of the individual's correct TIN. So, if the school has a TIN, it can certify compliance with the regulatory requirement even if it has not taken any action during the year to solicit a TIN (since it has no need to) but it is not clear if the IRS wants the box checked in this case.

The instructions for the 2016 1098-T are also confusing. They state:

> If you solicited the student's TIN in writing (Form W-9S or other form), check the box. By checking the box and filing Form 1098-T with the IRS (for electronic filers), you certify under penalty of perjury that you have in good faith complied with the standards in regulation section 1.6050S-1 governing the time and manner of soliciting the taxpayer identification number of the student.

As noted above, if the institution already has the student's TIN, it may not have solicited the TIN in writing, but it has complied in good faith with the regulations. Many institutions retrieve the TIN from Free Application for Federal Student Aid (FAFSA) information on file. There is no need to actively solicit the student as they have effectively already provided an IRS-validated TIN.

We are also concerned about the stipulation that the institution has the student's correct TIN. As the IRS knows, colleges and universities are statutorily prohibited from using the IRS/SSA tools for checking TIN-name matches. Therefore, we would assume that if the institution provides a TIN supplied by the student the institution will not be subject to fines if it is found to be erroneous.

Issues Not Addressed in NPRM

Payments Attributable to Prior Years. One of the sticking points that colleges, universities, and their software providers have encountered in modifying their student account systems to support reporting of amounts paid for QTRE is how to treat payments made during the year that are attributable to an academic period that took place in a previous calendar year. It is not unusual for a student (or former student) to pay an outstanding account balance for an earlier term when registering or paying for a current or upcoming academic term. Most institutions will not allow a student with a balance to attend without paying past amounts due from an academic period in a previous calendar year.

There is a contradiction between the statutory language in IRC section 25A and that in section 6050S about payments that is reflected in the regulatory language as well. Section 25A in (b)(1)(A), (c)(1), and (i)(1)(A) states that only QTRE paid during the taxable year *for education furnished to the eligible student during any academic period beginning in such taxable year* is eligible for the tax credits. (Paragraph (g)(4) provides for special treatment for prepayments of QTRE attributable to an academic period beginning in the following year.)

The language in section 6050S(b)(2)(B)(i), however, requires schools to report "the aggregate amount of payments received for qualified tuition and related expenses with respect to the individual …during the calendar year." With no mention of what academic period is tied to the payment, schools seem to be required to artificially increase the amount reported in Box 1 on the 1098-T by amounts paid for QTRE that is rightfully attributable to a previous year and ineligible for a tax credit.

The wording proposed for §1.6050S-1(b)(2)(v) on determining payments received for QTRE seems to treat any payment received during the calendar year first as a payment for QTRE for that year. It acknowledges that payments may be made "with respect to" an educational term in a future year, but not that payments may also be made with respect to a term in a prior year. Would this mean that a payment that the school applied to prior-year charges would be treated as paying current-year QTRE for tax purposes?

NACUBO believes that this result is likely contrary to Congressional intent and not in the best interests of schools, the IRS, and most importantly, students and taxpayers. Schools face challenges in tracking whether payments are applied to qualified or unqualified charges long after the distinctions have meaning. It is an impossible task to explain to students and taxpayers how the institution came up with the number in Box 1. The IRS would receive information that makes it look like the taxpayer is entitled to a higher credit than they should be. Students and taxpayers will find it very difficult to reconcile their records and the student account to their Form 1098-T and will be encouraged to claim a higher credit than they are due. Given the harsh new penalties for taxpayers who file improper claims enacted in the PATH Act, it is imperative that the numbers institutions are required to report on Form 1098-T not be misleading.

Foreign Institutions. There are some 400 non-U.S.-based institutions of higher education that are eligible to participate in the Federal Direct Loan program and are, strictly speaking, included in the definition of eligible educational institution under section 25A(f)(2) and the regulations thereunder. IRS, however, does not have the authority to require these foreign institutions to file U.S. tax forms. Many are public institutions which would find it difficult to obtain permission from their governments to file foreign tax forms for a small fraction of their students.

American students attending foreign institutions will also face difficulties in complying with the new requirement added to §1.25A-1(e)(2)(ii) to include the federal employer identification number (EIN) of the eligible educational institution they attended on their tax form to claim the AOTC. Even if foreign institutions filed 1098-Ts, they generally do not have and are not eligible for EINs. NACUBO recommends that the IRS exempt eligible educational institutions that are not domiciled in the U.S. from the requirement to file Form 1098-T, and specifically allow students attending such institutions to claim a tax credit without reporting the institution's EIN.

Eligible Students Not Enrolled in Current Tax Year. Some students are not enrolled during a reporting year, but they may have reportable transactions. For example, a student may register and pay for the spring term in December, but will enroll for the first time in the first three months of the next calendar year (and thus be eligible for the credit). Under current rules and further guidance issued in 2006, institutions are not required to provide 1098-Ts to such students. The students are, however, clearly entitled to education tax credits for the payment made in the year before they began enrollment.

This creates a conflict with the new statutory language requiring the taxpayer to have a Form 1098-T in order to claim the credit. On the other hand, schools have been told that they do need to file a 1098-T for someone who is no longer a student during the tax year if there was a reportable transaction, such as a refund, during the year (that was an adjustment to a previously filed form). We believe the interests of students and taxpayers may be better served by institutions providing a Form 1098-T for any student (or soon-to-be student) with a reportable transaction. We note that Example 4 in proposed 1.6050S-1(b)(2)(vii) illustrates a student who will enroll in spring semester 2017 but pays in 2016 receiving a Form 1098-T for 2016.

Books and Supplies. We urge you to add to §6050S-1(c)(1)(iii) detailing the instructions to be included with the statement provided to students an explanation that "payments related to course materials (books, supplies, and equipment) required as a condition of attendance and purchased through the eligible educational institution are included in Box 1 but the student may also include amounts spent on course materials for a course of study, whether or not the materials are purchased from the educational institution as a condition of enrollment or attendance in determining expenses eligible for the American Opportunity Tax Credit."

Transition to Box 1 Reporting

We would also like to reiterate our concerns with the implementation of changes to reporting requirements for IRS Form 1098-T. As we have shared with you in the past, the revised tuition reporting methodology is complicated by the definition of qualified educational expenses, among other terms, used in calculating the credit under §25A. Because of the way the education tax credits are defined, even an accurate number reported in Box 1 of amounts paid for QTRE does not necessarily translate into the correct amount an individual is entitled to claim for an education tax benefit. Section 25A is complicated and does not reflect how students actually pay for higher education.

Institutions of higher education and their software providers are diligently pursuing the new software solutions required to comply with Box 1 reporting. They are challenged, however, by the lack of guidance on transition issues and potential additional changes looming over their efforts.

NACUBO's February 29, 2016, letter to the IRS presented specific issues and concerns for consideration specific to the transition year. Without further input from the IRS on the scenarios NACUBO presented, which illustrate common academic business practices and tax reporting issues, the transition year will be tremendously confusing to filers and recipients of Form 1098-T. We urge you not to require the transition without providing some form of supplemental guidance. For example, it will be important for the IRS and taxpayers to understand the reporting anomalies in the amounts reported as prior-year adjustments until a few years of Box 1 are underway.

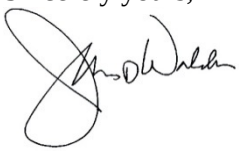
Implementation

We request sufficient transition time after release of the final regulations. Changes to college and university information systems can take months to implement and test, and adequate training for staff demands additional time following software deployment. Even though reporting takes place at the end of the calendar year, colleges and universities need to have systems in place to capture appropriate information beginning on January 1 of the first year the final rules will be effective.

NACUBO also wishes to reiterate its request to delay implementation of changes to reporting requirements for IRS Form 1098-T for tax year 2017. Constant changes to complicated processes are inefficient and expensive to implement. Incremental changes also complicate efforts to educate students, taxpayers, and tax preparers on how to utilize Form 1098-T when claiming education tax benefits.

Thank you for your efforts to clearly and definitively respond to the changes to section 6050S by the PATH Act as well as changes to section 25A enacted as part of the TPEA and for this opportunity to comment. We look forward to working with you to achieve a tax compliance that is fair and straightforward for all parties.

Sincerely yours,



John Walda
President and Chief Executive Officer

The following associations join NACUBO in this statement:

American Association of Community Colleges
American Council on Education
American Association of State Colleges and Universities
Association of American Universities
Association of Community College Trustees
Association of Public and Land-grant Universities
Coalition of Higher Education Assistance Organizations
EDUCAUSE
National Association of College Stores
National Association of Independent Colleges and Universities